

# REGULATIONS OF INTEREST TO FOREIGN INVESTORS

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## CVM RULING No. 359, of January 22, 2002

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Introduces provisions on the organization,  
management and operation of Index Funds having  
units traded on a stock exchange or organized  
over-the-counter market.

The President of the Brazilian Securities Commission ("CVM") hereby announces to the public that the Board, in a meeting held on the date hereof, in view of the provisions in Resolution CMN No. 1,787, dated February 1, 1991, and Section 8, item I and Section 19 of Law No. 6,385, dated December 7, 1976, has decided to issue the following Instruction:

### ARTICLE I

#### SCOPE AND PURPOSE

**Section 1.** This Instruction introduces provisions on the organization, management and operation of Market Index Investment Funds ("Index Funds").

### ARTICLE II

#### CHARACTERISTICS AND ORGANIZATION

##### Chapter I

##### Characteristics

**Section 2.** The fund is a commingling of resources intended for investment in a securities portfolio that seeks to replicate the variations and profitability of a reference index for an indefinite period of time.

Sole Paragraph. For the purposes hereof, reference index shall mean a specific market index recognized by the Brazilian Securities Commission ("CVM"), with which the investment policy of the fund is associated.

**Section 3.** The name of the fund will include the expression Index Fund and the identification of the reference index. The name of the fund may not include names or expressions that might lead to a misinterpretation of the fund's purposes, investment policy or target public.

**Section 4.** The fund will be governed by this Instruction and the provisions of its bylaws, provided that the chief information disclosure channel for the fund will be its site on the World Wide Web.

**Section 5.** The fund will be organized under the legal system of open-end joint ownership.

Sole Paragraph. The units ("quotas") of the fund will be admitted for trading on the secondary market through a stock exchange or organized over-the-counter market entity.

## **Chapter II**

### **Organization**

**Section 6.** Operation of the fund will require a prior permission from CVM.

**Section 7.** Organization of the fund will be approved by the manager of the fund, which will in the same act adopt the bylaws of the fund in their entirety.

**Section 8.** The application for permission to operate will be executed by the manager of the fund and will be supported by the following information and documents:

I - resolution approving organization of the fund and two copies of the full text of the bylaws, duly initialed and executed, together with a copy sent by electronic medium;

II - the publicity material to be used to distribute fund units;

III - a statement from the manager of the fund to the effect that the manager has executed the agreements mentioned in Section 11, Paragraph 1, as the case may be, and that such agreements are at the disposal of CVM;

IV - the name of the independent auditor;

V - the address of the fund's site on the World Wide Web;

VI - a statement from a stock exchange or organized over-the-counter market entity to the effect that the application for listing of fund units has been granted, subject only to registration with CVM, and undertaking to comply with the obligations set forth in Section 26 hereof; and

VII - a statement from the institution responsible for computation of the index, if other than the institutions mentioned in the preceding item, to the effect that it has no objection to the organization of the fund.

Sole Paragraph. After permission to operate is granted by CVM and before distribution of units commences, the organizational documents and the fund bylaws must be filed with a registry of deeds and documents.

**Section 9.** The manager will send to CVM on the date units are first paid in the fund's enrollment number in the National Registry of Legal Entities ("CNPJ").

## **ARTICLE III**

### **MANAGEMENT**

**Section 10.** The management of the fund may only be entrusted to a legal entity authorized by CVM to render professional portfolio management services.

Sole Paragraph. The aforesaid legal entity will designate an officer or managing partner who will be responsible before CVM for management of the fund.

**Section 11.** Subject to any restrictions imposed by law or this Instruction, the manager of the fund will have authority to take all action required for management of the fund's portfolio and to exercise all rights attaching to the assets therein, including authority to retain duly licensed third parties to provide services directly associated with the activities of the fund.

Paragraph 1. In the event the manager is not licensed to perform the functions listed below or does not wish to directly perform them, then the manager will retain one or more licensed institutions to perform such functions:

I - management of the fund's portfolio;

II - performance of treasury services;

III - accounting for issuance, redemption and trading of units;

IV - distribution of fund units; and

V - provision of custody services for the securities in the fund's portfolio.

Paragraph 2. The institutions and persons engaged as mentioned in Paragraph 1 will be jointly and severally liable with the fund's manager for any losses caused to unitholders ("quotaholders") in the discharge of their duties.

Paragraph 3. The manager may execute on behalf of the fund an agreement providing for the right to use a trademark, duly registered with the Brazilian Patent Office (INPI), associated with the name or symbol of the reference index, subject to the provision in Section 61 hereof.

Paragraph 4. A manager that wishes to resign from the management of the fund must promptly call a general unitholders' meeting, provided that such manager will continue to discharge its duties until the general meeting takes action on its replacement or the liquidation of the fund.

**Section 12.** The fund bylaws will set forth the policy of the fund with respect to the exercise of voting rights at the shareholders' meetings of the companies in which the fund holds an interest, such policy and the actual exercise of such rights to further the purposes and interests of the fund.

Paragraph 1. When requested by CVM, the manager will justify the reasons for its vote.

Paragraph 2. A unitholder may directly exercise the right to vote at the shareholders' meetings of the companies included in the fund's portfolio, provided that such unitholder communicates its intention to the manager within the time limit specified in the bylaws, so as to give sufficient notice for the arrangement of such action.

Paragraph 3. In the event described in the preceding paragraph, the management will loan to the unitholder in question, free of any rental and other charges, the shares required for the exercise of the right to vote, and will transfer such shares with the entity in charge of custody thereof against a pledge of fund units owned by such unitholder.

Paragraph 4. The units pledged as mentioned in the preceding paragraph may serve concurrently as security for more than one stock loan.

Paragraph 5. The amount of shares to be loaned according to Paragraph 3 will be determined based on the proportion that the units owned by the requesting unitholder bear to the shares owned by the fund at the close of business on the date that the interest to exercise the right to vote is communicated.

Paragraph 6. A unitholder will hand back to the fund the loaned shares within one (1) business day after the company's shareholders' meeting, and such unitholder may not dispose of the units that he has pledged.

Paragraph 7. The manager may demand from an unitholder compensation for the direct costs, if any, incidental to said loan, provided that such costs have been disclosed in advance, as mentioned in Section 39, item X.

Paragraph 8. The bylaws may provide that, in exceptional cases, and only within a period not in excess of five (5) business days prior to a change in the official composition of the reference index's theoretical portfolio, stock lending as mentioned in this section may be restricted in part, provided that such restriction be limited to a portion of shares owned by the fund the lending of which might have a significant adverse effect on the fund's objectives.

Paragraph 9. In the case mentioned in the preceding paragraph, the manager will disclose, as provided in Section 40 hereof, a list containing the identification and amount of shares owned by the fund that will not be available for lending transactions under this section, and the manager will justify the reasons why such shares will become unavailable, as provided in the preceding paragraph.

**Section 13.** The bylaws will contain provisions on the fixing of the management fee and the method of payment thereof, and the bylaws may also provide for an admission fee and an exit (redemption) fee.

Paragraph 1. The aforesaid fees may not be increased without the prior approval of the general unitholders' meeting, but the manager may reduce such fees unilaterally, in which case the manager will give notice of such fact in accordance with Section 40 hereof and will arrange for the relevant amendment to the bylaws.

Paragraph 2. The bylaws may permit that one or more portions of the management fee be paid directly by the fund to service providers that have been retained, provided that the aggregate amount of such portions may not exceed the total management fee fixed in the fund bylaws.

Paragraph 3. The management fee will accrue on a daily basis, for each business day, and will be recorded as a fund expense.

Paragraph 4. The charging of any performance fee to unitholders or the fund will be prohibited.

**Section 14.** The manager will be barred from taking any of the following action on behalf of the fund:

I - receive deposits in its own checking account;

II - incur or extend any loans, except as provided in Sections 12 and 60 hereof;

III - offer any guaranty (*fiança* or *aval*) or acceptance or assume joint liability on behalf of the fund in any manner;

IV - carry out stock transactions outside of a stock exchange or organized over-the-counter market, except for:

a. subscriptions of public offers;

b. exercise of preemptive rights;

c. private transactions, as mentioned in Section 18, Paragraph 5 hereof; and

d. transactions previously authorized by CVM.

V - take any action as a shareholder that may prevent trading of stock on a stock exchange; and

VI - sell units on credit.

## **ARTICLE IV**

### **UNITS**

#### **Chapter I**

##### **Characteristics**

**Section 15.** Fund units correspond to a proportionate undivided interest in the fund's assets. Fund units will be in registered form and will be recorded in the name of the holders thereof.

Sole Paragraph. The status of unitholder will be evidenced by an entry made in the register of unitholders kept by the registrar.

**Section 16.** The net asset value of each unit will be calculated by dividing the net asset value of the fund by the number of units outstanding at the close of business on each day, all to be determined according to the same criteria used to calculate the closing value of the reference index.

**Section 17.** Fund units may be loaned or posted as security.

Paragraph 1. Units used for the transactions mentioned above must be deposited in custody with an entity licensed by CVM to provide securities clearance, settlement, registration and custody services, and the relevant unitholder must expressly authorize in advance the conduct of any such transaction.

Paragraph 2. The custodian will promptly provide the fund manager with information on the ownership of the units under its custody.

Paragraph 3. A loan of fund units will be governed, where applicable, by prevailing regulations on stock loans.

#### **Chapter II**

##### **Issuance and Redemption of Units**

**Section 18.** Payment and redemption of fund units may only be made by a tender of securities that compose the reference index, pro rata to such composition, subject to the specific procedures described in this chapter.

Paragraph 1. With respect to payment of fund units, the manager may accept from more than one investor a concurrent tender of securities portfolios that collectively meet the pro rata requirement referred to above. In such case the number of units to be allotted to each investor will be determined ratably to the market value of the portfolios tendered to the fund.

Paragraph 2. In order to adjust the portfolio to the reference index and with due regard for the provisions of the fund bylaws, the manager may accept or deliver individual securities, upon payment or redemption of fund

units, respectively.

Paragraph 3. In the event mentioned in the preceding paragraph, and provided that the requests for payment or redemption of units exceed the adjustment needs of the fund's portfolio, the acceptance or delivery of securities will be apportioned among unitholders according to the amount of securities offered or demanded by each unitholder.

Paragraph 4. The event described in Paragraph 2 will only be accepted where the securities covered by the transaction were traded on a stock exchange or organized over-the-counter market on the date that payment or redemption is requested.

Paragraph 5. During the applicability of the Temporary Contribution on the Movement or Transmission of Securities and Financial Credits and Rights ("CPMF"), private securities transactions between the fund and its investors will be permitted, provided that the purpose of any such transaction is the payment or redemption of fund units and provided, further, that the following procedures are complied with:

I - payment of units will be made by check or money order (DOC), concurrently with the sale by a unitholder of securities in an amount equal to the net payment amount, in the manner and according to the proportion set forth in the bylaws and other applicable provisions; and

II - redemption of units will be made by check or money order (DOC), concurrently with the purchase by a unitholder of securities in an amount equal to the net redemption amount, in the manner and according to the proportion set forth in the bylaws and other applicable provisions.

Paragraph 6. Redemption of units will be made without any charge or cost, except an exit fee, if applicable. Redemption will be made within the time limit set forth in the bylaws, which may not exceed the period for settlement of the sale side of trades in the securities underlying the reference index.

Paragraph 7. As set forth in the fund bylaws, during the period in which payment of units is suspended, as mentioned in Section 22 hereof, redemption may be made on the basis of a proportional undivided interest in the fund's portfolio.

Paragraph 8. At the time of payment or redemption of units, there may be added to the securities mentioned in Section 18 coupons, rights, subscription receipts and stock split certificates related to the securities existing in the fund's portfolio at the time payment or redemption is requested, as provided in the fund bylaws.

Paragraph 9. Notwithstanding the provision in Section 18 hereof, the fund bylaws may contemplate cases in which, in connection with a payment or redemption of units, there may be added to the securities delivered or accepted by the fund manager an amount in Brazilian currency no to exceed one fifth of a percentage point (0.2%) of the amount involved in the transaction.

**Section 19.** The fund bylaws may specify minimum or maximum lots of securities for the purpose of issuance or redemption of units, based on the theoretical portfolio of the reference index.

Sole Paragraph. Changes in the composition of the minimum and maximum lots referred to above will be announced to the market as described in Section 39, item IX prior to the opening of trading in fund units, any changes during the course of a day being prohibited.

**Section 20.** Issuance and redemption of units will be made based on the net asset value determined at the close of business on the date of request. Issuance and redemption will be made within the time limit set forth in the fund bylaws, which may not exceed the period for settlement of securities trades on the stock exchange or organized over-the-counter market in which the fund is listed.

**Section 21.** The bylaws of the fund may permit the retirement of fund units, in which case all unitholders will be paid a portion of the net asset value of their units.

**Section 22.** The fund manager may suspend payment of units for a period of time falling within a range from five (5) business days prior to and five (5) business days after a change in the composition of the index with which the investment policy of the fund is associated. The bylaws will describe the procedures to be followed in this event.

Paragraph 1. The fund manager may suspend payment of units whenever secondary trading of units is suspended, as provided in Section 27 hereof.

Paragraph 2. Suspension of unit trading will be deemed a material event for the purpose of the provision in Section 40 hereof.

## ARTICLE V

### TRADING ON THE SECONDARY MARKET

#### Chapter I

##### Trading on a stock exchange or organized over-the-counter market

**Section 23.** It is incumbent on stock exchanges or organized over-the-counter market entities to adopt rules and procedures to supplement this Instruction.

**Section 24.** After expiry of a period of ninety (90) days after authorization to operate given by CVM, no single unitholder may own more than forty-nine percent (49%) of the outstanding units of the fund.

Paragraph 1. The foregoing provision does not apply where a unitholder is an investment fund regulated by CVM or an investor as mentioned in Section 99, items II, III and IV of CVM Instruction No. 302 of May 5, 1999.

Paragraph 2. A fund that fails to comply with the provision in Section 24 hereof for a period in excess of three (3) months will be forthwith liquidated or merged into another fund.

**Section 25.** The stock exchange or organized over-the-counter market entity on which the fund's units are listed for trading may, subject to prevailing regulations, regulate the function of market maker for fund units in order to enhance unit liquidity.

Sole Paragraph. The portfolio manager will be barred from serving as market maker as described above.

**Section 26.** It is incumbent on the stock exchange or organized over-the-counter market entity on which fund units have been listed for trading:

I - to communicate to CVM the date on which units are first traded on the secondary market;

II - to follow special procedures in the event of trading of units in non-customary amounts or at non-customary prices when compared to prior periods or the reference index, according to current stock trading regulations, provided that for such purpose fund units will be treated similarly to preferred shares;

III - to disclose through its trading and information systems the same information on prices and amounts as it discloses for other listed assets, as well as the following additional information:

a. the calling of general unitholders' meetings;

b. material events, pursuant to Section 40 hereof;

c. on a daily basis, the information mentioned in Section 35, items I to III, advising the market and CVM whether the limits therein have been exceeded.

**Section 27.** CVM and the stock exchange or organized over-the-counter market entity on which fund units have been listed for trading may order a temporary suspension of unit trading on the secondary market.

Sole Paragraph. Suspension of unit trading on the secondary market will be deemed a material event for the purpose of the provision in Section 40 hereof.

#### Chapter II

##### Secondary Public Offering of Units

**Section 28.** A secondary public offering of fund units will require a prior authorization from CVM.

Sole Paragraph. The application for authorization for a secondary public offering of units will be supported by:

I - a statement from the offeror to the effect that an agreement was executed with the underwriting institution and has been made available to CVM, as the case may be;

II - the publicity material to be used during the secondary public offering of units;

III - information on the amount of units to be offered, their offering value and other terms and information relevant to the secondary public offering; and

IV - justification of the price adopted for distribution.

## **ARTICLE VI**

### **BYLAWS OF FUND**

**Section 29.** The bylaws of the fund will necessarily include provisions on:

- I - identification of the manager of the fund and the manager of the portfolio of the fund;
- II - the reference index with which the fund's investment policy is associated, and the basic features of such index;
- III - the stock exchange or organized over-the-counter market entity on which fund units have been listed for trading;
- IV - detailed terms for issuance, redemption and retirement of units;
- V - rules with respect to publicity for the fund, including the details of the prospectus, if any;
- VI - the management, admission and exit fees and a clear indication of the basis for determination thereof, to be published in a prominent format;
- VII - access to information on the fund at its site on the World Wide Web;
- VIII - other channels, if any, through which unitholders may gain access to information on the fund, such as telephone lines, the address of the manager, services via telecopy, etc.;
- IX - the possibility of the manager or any person related thereto to trade in fund units, and the conditions therefor;
- X - distribution of the earnings of the fund;
- XI - possibility of and terms for using shares in the fund's portfolio to conduct stock lending transactions; and
- XII - the voting policy at shareholders' meetings (Section 12).

Sole Paragraph. For the purposes of this Instruction, related persons will mean:

- I - a company in which the fund manager or the portfolio manager, their parents, officers, directors or employees hold a management position or in which they hold an equity interest in excess of ten percent (10%), individually or in the aggregate; and
- II - the parents, employees and agents of the fund manager or the portfolio manager.

## **ARTICLE VII**

### **GENERAL UNITHOLDERS' MEETING**

**Section 30.** The general unitholders' meeting will have exclusive authority to pass resolutions on:

- I - the financial statements of the fund;
- II - the retirement of units and the distribution of earnings, where not contemplated in the bylaws of the fund;
- III - replacement of the manager;
- IV - any change in the investment policy;
- V - any increase in the management, admission and exit fees;
- VI - a change in the address of the fund's site on the World Wide Web;
- VII - consolidation, merger, spin-off, conversion or liquidation of the fund;
- VIII - any change in the agreement between the institution owning the index and the manager, if any, where such change entails increased costs to the fund; and

IX - other modifications of the bylaws that do not derive from decisions with respect to items III through VI.

Paragraph 1. The bylaws may be amended, irrespective of a general unitholders' meeting or consultation with unitholders where such amendment refers solely to an adjustment to legal or regulatory provisions, a need to comply with an express requirement from CVM, a change in the time limit referred to in Section 12, Paragraph 2, or the updating of the manager's address.

Paragraph 2. A decision of the general unitholders' meeting with respect to items II through VIII will be deemed a material event for the purpose of the provision in Section 40 hereof.

**Section 31.** An amendment to the bylaws will take effect as of filing of the following documents with CVM:

I - a list of unitholders attending the general meeting;

II - a copy of the minutes of the general meeting; and

III - a copy of the restated bylaws, duly registered with a registry of deeds and documents.

Sole Paragraph. Filing as aforesaid will be made within five (5) business days from the date the general meeting convenes.

**Section 32.** The general unitholders' meeting will be called by notice sent to the stock exchange or organized over-the-counter market entity on which fund units have been listed for trading, such notice to be posted to the fund's site on the World Wide Web.

Paragraph 1. The notice will necessarily state the date, time and place of the general unitholders' meeting, the agenda therefor together with the business to be transacted, as well as a detailed description of any specific proposal for amendment to the bylaws, as the case may be.

Paragraph 2. Notice of a general unitholders' meeting will be given no less than ten (10) days prior to the date the meeting will be held.

Paragraph 3. The calling of a general unitholders' meeting is deemed a material event for the purposes of the provision in Section 40 hereof.

**Section 33.** The annual unitholders' meeting will be called by the manager no later than June 30 of each year to transact the business mentioned in Section 30, item I.

Sole Paragraph. The annual unitholders' meeting may only be held after the financial statements for the year have been posted to the fund's site on the World Wide Web, at least fifteen (15) days in advance, provided that such financial statements will also be made available to unitholders at the registered office of the manager.

**Section 34.** In addition to being called as mentioned in the preceding section, a general unitholders' meeting may be called at any time by the manager or may be requested by a unitholder or group of unitholders owning at least five percent (5%) of the total outstanding units.

Sole Paragraph. Where a general unitholders' meeting is to be held on the initiative of unitholders, the manager will call such meeting within no more than thirty (30) days, at the cost and expense of the requesting unitholders, unless the general unitholders' meeting so called decides otherwise.

**Section 35.** A general unitholders' meeting must also be called by the manager within fifteen (15) days, at the cost and expense of the manager, whenever:

I - a tracking mistake occurs, determined as the population standard deviation for any difference in excess of two (2) percentage points between the daily percentage variation of the fund and the percentage variation of the reference index closing value in the sixty (60) most recent trading days;

II - the difference between the cumulative profitability of the fund and the reference index closing value exceeds two (2) percentage points in any period of sixty (60) trading days;

II - the difference between the cumulative profitability of the fund and the reference index closing value exceeds four (4) percentage points in any period of twelve (12) months.

Paragraph 1. The events mentioned in the items of Section 35 must be promptly disclosed, provided that the first disclosure with respect to items I and II must be made after sixty (60) trading days have elapsed from the listing date for fund units with a stock exchange or organized over-the-counter market entity, whereas the first disclosure with respect to item III must be made after twelve (12) months have elapsed from such date.



Paragraph 2. The order of business for a general unitholders' meeting as mentioned in this section will include the following items:

I - an explanation from the manager of the reasons for the tracking mistake or difference in profitability, which must also be posted to the fund's site on the World Wide Web, at least fifteen (15) days before the meeting, and must be retained therein as late as thirty (30) days after the meeting; and

II - a resolution as to whether or not the fund will be terminated or the manager will be replaced, provided that any person related to the manager may not vote on such resolution.

Paragraph 3. A general unitholders' meeting called for the reasons described in this Section 35 will have a minimum interval of thirty (30) days, where the manager is maintained, and ninety (90) days, where the preceding general meeting has decided to replace the manager.

**Section 36.** A general unitholders' meeting will be constituted upon attendance by at least one (1) unitholder or its authorized representative, and the resolutions thereat will be taken by a majority of units owned by those present, each unit being entitled to one (1) vote.

Paragraph 1. The matters listed in items III, IV, V and VII of Section 30 must be approved by a vote of unitholders owning an absolute majority of fund units, provided that those persons related to the manager will be barred from voting with respect to a resolution on the removal of the manager.

Paragraph 2. The voting requirements defined in Paragraph 1 will not apply to votes cast at a general unitholders' meeting held pursuant to item II of Section 35 and paragraph 4 of Section 11.

**Section 37.** In accordance with the procedures defined in the bylaws, a general unitholders' meeting called for the sole purpose of approving the fund's accounts may be held through an electronic medium, provided that measures have been adopted to protect the participation of unitholders and the authenticity and security of data transmission, particularly votes, which will be cast in the form of a legally recognized electronic signature.

Sole Paragraph. The manager will retain for a period of at least five (5) years all information pertaining to the communications between unitholders and the manager in a general meeting held through an electronic medium.

**Section 38.** Only unitholders of the fund, their legal representatives and attorneys in fact legally appointed no more than one (1) year before the meeting may vote at a general unitholders' meeting.

## **ARTICLE VIII**

### **DISCLOSURE OF INFORMATION**

#### **Chapter I**

##### **Fund's Site on the World Wide Web**

**Section 39.** The manager will maintain a site for the fund on the World Wide Web, in the Portuguese language, which site will include information on the following topics, in addition to any other information deemed relevant:

I - investment policy, target public, and the management goals and objectives for the fund;

II - principal rights and responsibilities of unitholders and the manager;

III - a presentation of the manager, its contact telephone numbers and experience;

IV - a section allowing an unitholder to enter an e-mail address to receive information on the fund, such section also to provide an e-mail address for the fund for communications between the manager and unitholders;

V - the full text of the agreements entered into by and between the fund and third parties, pursuant to Section 11 and, where applicable, Section 58, Paragraph 6, the existence of which will be highlighted on the fund's homepage on the World Wide Web;

VI - identification of the brokerage houses authorized to trade for the fund, as well as the minimum, maximum and average brokerage fees charged to the fund;

VII - a clear and prominent indication of the fees and other costs for the fund;

VIII - the contact telephone numbers and the e-mail address for CVM;

IX - an up-to-date and detailed description of the terms for payment and redemption of units, including minimum and maximum limits for investments and divestments, as well as minimum amounts for continuance in the fund;

X - in a prominent manner, the terms for any stock lending transactions as referred to in Section 12 hereof, including information on time limits and costs;

XI - the policy on distribution of earnings, including time and terms of payment;

XII - risk exposure;

XIII - if applicable, a detailed indication of the compensation payable to the institution that owns the index, pursuant to Section 11, Paragraph 3, including the full text of the relevant agreement;

XIV - taxes applicable to the fund and its unitholders;

XV - composition of the fund's portfolio, to be updated on a daily basis;

XVI - methodology for computation of the underlying index, criteria for selection and exclusion of assets comprising such index as well as the then current composition thereof;

XVII - a section containing the full text of this Instruction, the bylaws of the fund and other applicable regulations;

XVIII - daily update on the amount of shares covered by stock lending transactions, indicating separately the information for Section 12 and Section 60, as well as the value of loaned stock expressed as a percentage of the fund's net asset value;

XIX - a statement containing an unidentified list of unitholders owning more than five percent (5%) of fund units, together with the percentage owned by each such unitholder, such table to be updated on a monthly basis, according to the position on the last business day of each month;

XX - as reflected by the position on the last business day of each month, aggregate percentage ownership by:

- a. domestic institutional investors;
- b. individuals residing or domiciled in Brazil;
- c. financial institutions organized in Brazil;
- d. non-financial entities organized in Brazil; and
- e. foreign investors;

XXI - a list of unit payment or redemption transactions conducted in the most recent period of thirty (30) days that have individually exceeded twenty percent (20%) of the net asset value of the fund, or that have been conducted pursuant to Section 18, Paragraph 2 or 3;

XXII - information on any secondary distribution under way;

XXIII - a list of market makers authorized to trade fund units;

XXIV - a specific section for statistical data, such section to be accessed from the fund's homepage on the World Wide Web and to contain at least:

a) a comparative table showing the daily development of the net asset value of each unit, the average and closing trading value on the secondary market, the fund's net asset value as well as a value expressed in points of the underlying index for the period from the date on which the fund commenced its operations to the date of the latest outstanding unit, together with columns showing, as a percentage, the premium or discount at which the fund was traded vis-à-vis the average value of the underlying index and the theoretical value of its portfolio;

b) a comparative table showing the daily trading volume for fund units and the reference index, as well as the percentage of the former in relation to the latter, from the date of organization of the fund until the most recent date available;

c) a table showing the monthly profitability of the fund as compared to the underlying index, with respect to at least the most recent period of twenty-four (24) months;

d) a chart showing the development of the accumulated profitability of the fund as compared to the underlying index, beginning at the listing of the fund for trading on a stock exchange or organized over-the-counter market up to the most recent unit available; and

e) information with respect to items I, II and II of Section 35, with an indication next to such information as to whether a general unitholders' meeting will be held in the case of an excessive tracking error.

Paragraph 1. The homepage of the fund will show, in a standard format specified by CVM:

I - the logo of CVM with the following legend: "CVM is a governmental agency in charge of regulating variable income funds. This fund has been authorized to operate by CVM under (number of operation permit for the fund). Permission for the sale and trading of units of this fund does not entail any assurance of the part of CVM that any information provided is true or that the fund bylaws conform with prevailing regulations or any judgment as to the quality of the fund or its manager; and

II - under the information in letter "a", in bold face type, a shortcut to the section of CVM's site on the World Wide Web containing the roster of regulated entities with the following wording: "Click here to enter the CVM site and confirm that this is a registered fund."

Paragraph 2. The fund's site on the World Wide Web may have a section in foreign language, provided that the contents of such section does not depart from the contents in Portuguese and provided, further, that the portion in foreign language does not include more information than the portion in Portuguese.

Paragraph 3. Electronic communications between the manager and unitholders taking place through the e-mail address referred to in item IV of this section will be retained by the manager for a period of at least five (5) years.

Paragraph 4. The manager must see to it that the information mentioned in this section will be posted on a continuing basis and will be up-to-date, and that the fund's site on the World Wide Web will have technical capability to handle simultaneous access consistent with the number of fund unitholders.

Paragraph 5. A change in the address of the fund's site on the World Wide Web is deemed a material event, as described in Section 40 hereof.

## **Chapter II**

### **Disclosure of information to market and unitholders**

**Section 40.** The manager of the fund will disclose, promptly and widely, on the homepage of the fund on the World Wide Web and to the e-mail addresses entered as per Section 39, item IV as well as to the e-mail addresses of the information disclosure system of the stock exchange or organized over-the-counter market on which fund units have been listed for trading any and all material acts or events, so as to ensure that all unitholders will have access to information that may, directly or indirectly, have a bearing on their decisions to remain in the fund or, in the case of other investors, purchase units.

**Section 41.** The fund manager will disclose on a daily basis to the stock exchange or the organized over-the-counter market entity on which fund units have been listed for trading the net asset value of each unit, the composition of the fund's portfolio and the fund's net asset value.

Sole Paragraph. Disclosure of intraday estimates of the aforesaid indicators will be permitted, provided the methodology for determination of such estimates is disclosed on the fund's site on the World Wide Web and is in keeping with the provisions in Sections 16 and 55 hereof.

**Section 42.** Unitholders will be apprised of their positions by the custodian or the registrar, in accordance with applicable securities regulations.

Sole Paragraph. A unitholder that pays in or redeems units must receive a written communication containing at least the date, the amount of units and the value of the transaction.

## **Chapter III**

### **Information to be delivered to CVM**

**Section 43.** In addition to any other information that may be required, the manager will deliver to CVM the following information:

I - on a daily basis:

- a) the net asset value of each unit;
- b) the net asset value of the fund; and
- c) the value of any issuance or redemption of units made on each day.

II - on a monthly basis:

- a) a summary statement, according to a form defined by CVM, on or before the fifth business day after the closing of the relevant month; and
- b) an interim balance sheet, a statement of portfolio composition and diversification, and a statement of changes in financial position, on or before fifteen (15) days after the closing of the relevant month;

III - on an yearly basis, within no more than sixty (60) days after the closing of the relevant year:

- a) the annual report for the fund;
- b) the opinion of the independent auditor on the financial statements;
- c) the list of disputes in and out of court with respect to defense of unitholder rights or between an unitholder and the fund's management, with an indication of the date of inception, current status and final resolution, if any.

**Section 44.** The fund's annual report will contain the following:

- I - financial statements, accompanied by the opinion of the independent auditor;
- II - a review of the fund's portfolio in light of the current strategy and the goals of the investment policy;
- III - a presentation of performance, to include the information in item XXIV of Section 39;
- IV - an explanation of any tracking error or profitability mismatch, in accordance with the terms of Section 35 hereof;
- V - the management fees in Brazilian currency and as a percentage of the fund's net asset value; and
- VI - other information that the manager may deem relevant.

## **Chapter IV**

### **Disclosure of information to the public**

**Section 45.** Any information furnished or any publicity material with respect to the fund may not be at variance with the contents of the fund's site on the World Wide Web, the bylaws or the annual report filed with CVM.

Sole Paragraph. In the event any publicity text contains inaccuracies or misstatements that might lead investors to an evaluation error, then CVM may require that any correction and clarification be disclosed, with equal prominence, through the medium used to disclose the original publicity text, with an express indication that the information is being republished at the direction of CVM.

**Section 46.** No publicity material may ensure or suggest any guaranteed future income or risk-free position for investors.

**Section 47.** All information, howsoever disclosed, will contain the address of the fund's site on the World Wide Web and will mention, in a prominent manner, that it is a part of the disclosure of official information on the fund.

**Section 48.** In the event the manager retains the services of a rating agency, then all publicity material must mention the rating assigned to the fund as well as an indication of how to obtain further information on such rating.

**Section 49.** All information, howsoever disclosed, that includes a reference to the fund's profitability must necessarily:

- I - mention the date on which the fund commenced operations;
- II - cover at least the most recent period of three (3) years or a period starting at the organization of the fund, if less than three (3) years;

III - appear together with the profitability of the reference index for the same period;

IV - appear together with the arithmetic average of the sum total of the fund's net asset value as determined on the last business day of each month, for the most recent period of three (3) years or since organization of the fund, if less than three (3) years; and

V - report, as the case may be, the assessment of any exit fee that might decrease the net asset value of each unit or the amount of units at the time of redemption, with a clear indication of the amount of such fee and the manner of its computation.

**Section 50.** Whenever any publicity material presents information on the profitability over the preceding years, a prominent warning must be included to the effect that:

I - the profitability earned in the past does not constitute a guarantee of any future earnings; and

II - any investment in the fund will not be guaranteed by the manager or any other insurance mechanism or by the credit insurance fund.

**Section 51.** In the event of disclosure of comparative information regarding other funds, the same text will indicate the periods involved, the source of the information used, the criteria followed and all other information that may be relevant for a proper assessment of the investment.

## ARTICLE IX

### FINANCIAL STATEMENTS

**Section 52.** The fund will keep its own accounting records, and the fund's accounts and financial statements will be separate from those of the manager.

**Section 53.** The financial year of the fund will run for a period of one year closing on March 31 of each year.

**Section 54.** The financial statements must be made available by the manager to any interested party that requests them within sixty (60) days after the closing of the fiscal year.

**Section 55.** The financial statements for the fund must comply with the rules generally applicable to securities investment funds, except with respect to the valuation of investments in variable income securities and derivatives thereof, for which closing quotations will be used, according to the methodology adopted for computation of the reference index.

**Section 56.** The financial statements of the fund must be audited each year by an independent auditor licensed by CVM, subject to the rules governing the conduct of such activity.

Sole Paragraph. Audited financial statements are required only for funds in operation for more than ninety (90) days.

**Section 57.** In the event of liquidation of the fund, the independent auditor will issue an opinion on the statement of changes in net asset value, covering the period from the date of the most recent audited financial statements to the date of actual liquidation of the fund, and will pass on the changes occurring during such period.

Sole Paragraph. The auditor will certify in his opinion whether redemptions were carried out in a fair manner and in accordance with applicable regulations, and whether there are any debts, credits, assets or liabilities off the books.

## ARTICLE X

### PORTFOLIO

**Section 58.** The fund will maintain at least ninety-five percent (95%) of its resources invested in securities or other variable income assets authorized by CVM, in the same proportion in which they appear in the reference index, or in positions purchased in the reference index futures market, so as to reflect the variations and profitability of such index, subject to the provision in Section 35 hereof.

Paragraph 1. During the period from official disclosure of the first preview of a new composition of the reference index and one (1) month after the actual change of such composition, the manager of the fund will

be permitted, as stated in the bylaws, to adjust the composition of the fund's portfolio, and during this period the manager will act so as to ensure that the profitability of the fund will not deviate from the variation of the reference index.

Paragraph 2. With respect to distribution of income deriving from the securities underlying the fund's portfolio, the manager will, whenever possible, follow the same policy used for determination of the reference index, provided that the manager, as the case may be, will be permitted to redistribute such income or pay income directly to unitholders.

Paragraph 3. In order to achieve the purpose described in Paragraph 2, a fund whose investment policy is associated with a stock index that gives effect to reinvestment of income as of declaration of such income may trade credits related to any income declared but not yet actually paid.

Paragraph 4. Exceptional cases of mismatching of the fund's portfolio must be justified in writing to CVM within no more than five (5) business days from occurrence thereof.

Paragraph 5. The total margin guarantees required of the fund in transactions involving derivatives may not exceed twenty percent (20%) of the fund's net asset value.

Paragraph 6. The fund may enter into swap agreements with third parties containing a mark-to-market settlement provision, covering the difference in profitability between the fund and the reference index.

Paragraph 7. The agreements mentioned in the preceding paragraph and any amendments agreed upon during the term thereof must be approved in advance by CVM, must be posted in full to the fund's site on the World Wide Web, as per item V of Section 39 hereof, and must be filed with the stock exchange, commodities and futures exchange or over-the-counter market entity.

Paragraph 8. Expiry of the term of any agreement referred to in Paragraph 6 must be disclosed at least thirty (30) days in advance, and such expiry will be deemed a relevant event for the purpose of the provision in Section 40 hereof.

**Section 59.** Funds in excess of the minimum investment specified in the preceding section may be invested in:

I - governmental securities issued by the Brazilian Treasury or the Central Bank of Brazil;

II - fixed-income securities issued by financial institutions;

III - units of a financial investment fund (FIF);

IV - repurchase transactions, in accordance with the regulations issued by the National Monetary Council; and

V - derivatives transactions, other than the transaction mentioned in Section 58 hereof, made on a stock exchange, commodities and futures exchange or organized over-the-counter market solely to manage the risks incidental to the fund's portfolio or the securities therein, subject to the limit set forth in Section 58, Paragraph 5.

**Section 60.** The fund may engage in stock lending transactions, in accordance with the regulations enacted by CVM and with observance of the limitations and terms set forth in these bylaws.

Paragraph 1. The aforesaid stock lending transactions will contemplate a stated period within which the assets must be returned.

Paragraph 2. The manager must honor any redemption payment and must comply with any request for stock loans made under Paragraph 3 of Section 12, where the amount of securities available is not sufficient by virtue of the fact that securities have been loaned or posted as security by the fund and it is not possible to recover them in a timely fashion.

## **ARTICLE XI**

### **CHARGES ON THE FUND**

**Section 61.** The charges on the fund are as follows:

I - the management fee, as defined in the bylaws;

II - federal, state or local taxes, charges and fees assessed now or hereafter on the assets, rights and

obligations of the fund;

III - the cost of filing documentation with public registries, printing, delivery and publication of reports, forms and periodicals, as contemplated in this Instruction or in applicable regulations;

IV - the cost of correspondence of interest to the fund;

V - the fees and costs of the independent auditor;

VI - the fees and commissions payable for the operation of the fund;

VII - attorneys' fees and related costs and expenses incurred for the defense of the fund's interests, in court or otherwise, including the amount of any court award rendered against the fund;

VIII - the annual fee payable to the stock exchange or organized over-the-counter market entity on which fund units have been listed for trading;

IX - the costs with respect to custody and settlement of securities trades;

X - the costs in connection with foreign exchange contracts required for permitted transactions or in connection with securities deposit certificates or receipts, where such assets form a part of the reference index; and

XI - the royalties payable for the use of the reference index, provided such royalties are charged under an agreement made between the manager and the institution holding the rights thereto.

**Section 62.** The fund bylaws may provide that the costs described in items I and XI of the preceding section may be charged to a separate account and paid only out of income earned by the fund from stock lending transactions or other extraordinary receipts.

Sole Paragraph. Where the course of action permitted under Section 62 is adopted, the income and receipts mentioned therein may be applied, at the discretion of the manager, towards payment of other charges on the fund, as well as towards correction of any tracking errors between the fund's portfolio and the underlying market index.

**Section 63.** Any costs not contemplated as charges on the fund will be borne by the manager.

## ARTICLE XII

### MERGER, CONSOLIDATION, SPIN-OFF, CONVERSION, LIQUIDATION AND TERMINATION OF FUND

#### Chapter I

##### Merger, consolidation, spin-off and conversion

**Section 64.** Merger and consolidation transactions involving market index investment funds will only be permitted where such funds adopt the same reference index as part of their investment policy.

**Section 65.** A fund may only be converted into a securities investment fund upon compliance with the regulations applicable to the latter.

**Section 66.** A spin-off will only be permitted if the transaction contemplates the creation of index funds that follow new reference indices composed solely of a portion of the securities associated with the original reference index.

**Section 67.** The financial statements of funds undergoing spin-off, merger or consolidation, as prepared on the date of the relevant transaction, will be audited by an independent auditor licensed by CVM, such auditor to indicate in its opinion the criteria used for determination of the ratio for replacement of units of the funds involved.

**Section 68.** In the event of spin-off, merger, consolidation or conversion, there shall be delivered to CVM within no more than ten (10) days from the date on which the relevant general unitholders' meetings are held:

I - a clipping of the notice published for the general unitholders' meeting;

II - the minutes of the general unitholders' meeting;

III - a balance sheet and a statement of calculation of exchange ratios;

IV - the new bylaws of the fund; and

V - any publicity material to be made available to the market or unitholders.

Sole Paragraph. The fund manager will submit to CVM within sixty (60) days from the date on which the documentation mentioned in this section is delivered the auditors' opinion on the spin-off, merger or consolidation statement.

## **Chapter II**

### **Liquidation and Termination of Fund**

**Section 69.** In the event of liquidation of the fund by a decision of the general unitholders' meeting, the manager will see to the apportionment of the fund's assets among the unitholders, ratably to their unit ownership, within no more than thirty (30) days from the date on which the general unitholders' meeting is held.

**Section 70.** After the fund's assets have been apportioned among the unitholders, the manager will see to the termination of the fund and will deliver to CVM, within ten (10) days from the date on which the proceeds or securities arising from liquidation are made available to unitholders the following documentation:

I - minutes of the general unitholders' meeting that has taken action on the liquidation of the fund; and

II - evidence that an application for deregistration of the fund has been filed with federal tax authorities (CNPJ).

Sole Paragraph. The manager will submit to CVM within ninety (90) days from the date on which the documentation mentioned in this section is delivered the auditors' opinion on the liquidation statement for the fund.

**Section 71.** After all fund units have been redeemed, the manager on its own initiative will see to the termination of the fund and will deliver to CVM the auditors' report on the liquidation statement for the fund together with evidence of submission of an application for deregistration of the fund from CNPJ.

**Section 72.** A unitholder owning units with a value below the round lot defined in Section 18 may demand redemption in cash in the event of liquidation of the fund.

## **ARTICLE XIII**

### **TIME PERIODS TO GRANT PERMISSION**

**Section 73.** A permission for a fund to operate will be presumed to have been granted after expiry of a period of thirty (30) days from the filing of the relevant application with CVM, provided that the application is supported by the documentation described in Section 8 hereof.

Paragraph 1. CVM may at any time request additional documentation or information or changes in the documentation submitted, as well request correction of any procedures that are at variance with prevailing regulations.

Paragraph 2. In the event any requirements are made before permission for the fund to operate has been granted, the time period mentioned in Section 73 hereof will be tolled, and the provisions in Section 74, Paragraphs 2 and 3 will be observed.

Paragraph 3. A manager that fails to satisfy the requirements referred to in this section within thirty (30) days from receipt of the relevant correspondence will be liable for the daily penalty mentioned in Section 77 hereof, provided further that in such event the fund's permission to operate may be terminated and the fund's managers may be held accountable.

Paragraph 4. In the event permission for the fund to operate is terminated, the manager will immediately call a general unitholders' meeting to take action on the liquidation of the fund.

**Section 74.** The remaining permissions mentioned in this Instruction will be presumed to have been granted after expiry of a period of thirty (30) days from date of filing of the relevant application with CVM, provided that



the application is supported by the requisite documentation.

Paragraph 1. Such thirty (30) day period may be tolled only once, in the event CVM requests additional documentation or information necessary to review the application for permission or makes permission contingent on changes to be made in the relevant documentation.

Paragraph 2. A period not in excess of sixty (60) days from receipt of the relevant correspondence by the applicant will be allowed for satisfaction of any requirement, failing which the application will be denied.

Paragraph 3. CVM will have a period of ten (10) business days within which to produce a final statement in the event the unexpired portion of the original time period is shorter than ten (10) business days, provided that any denial of an application for permission will be communicated to an interested party in writing.

## **ARTICLE XIV**

### **PENALTIES**

**Section 75.** A violation of the rules in Sections 6; 10; 11, Paragraph 1; 12, Paragraph 3; 14; 28; 40; 52; 56 and 63 hereof will be considered a serious violation for the purpose of the provisions of Section 11, Paragraph 3 of Law No. 6,385/76.

**Section 76.** A failure to comply with the provisions in Sections 9,; 12, Paragraph 1; 13; 15; 18; 20; 24; 25 Sole Paragraph; 26; 32; 33; 35; 37, Sole Paragraph; 38; 39; 41; 42; 43; 45 to 51; 54 to 60; 63 to 71 will be considered a strict violation, punishable according to summary administrative proceedings.

**Section 77.** Without prejudice to the provision in Section 11 of Law No. 6,385/76, the manager will be required to pay a daily penalty of two hundred Reals (R\$ 200.00), applicable as of the first business day next following expiry of the relevant time limit, in the event of noncompliance with the time limits set forth in this Instruction.

**Section 78.** CVM may hold accountable other officers, employees and agents of the manager of the fund or manager of the fund's portfolio where it is determined that they are responsible for any failure to comply with the provisions of this Instruction.

## **ARTICLE XV**

### **FINAL PROVISIONS**

**Section 79.** CVM may direct that the information required to be delivered to CVM from time to time or on occasion under this Instruction be submitted through an electronic medium or to the address of CVM's site on World Wide Web, according to a database structure or software supplied by CVM.

Sole Paragraph. CVM will be at liberty to develop, change, add to or eliminate any such software.

**Section 80.** There will be deemed a potential increase in the equity interest of a controlling shareholder the purchase by such shareholder of units in an index fund that owns shares in a company controlled by such shareholder.

**Section 81.** This Instruction will become effective on the date of its publication in the Federal Official Gazette.

*Original executed by*

JOSÉ LUIZ OSORIO DE ALMEIDA FILHO

President

**Fale com a CVM**