Latin America and the Caribbean
Technical Department
Regional Studies Program

Report No. 39h

PERU: MUTUAL FUND REGULATION

by

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October 1996

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FOREWORD

Paucity of savings has been recognized as an important constraint limiting the growth and employment opportunities in most Latin American economies. While shortcomings in macroeconomic management are a principal cause, the underdevelopment of financial markets, products, and intermediaries can also raise intermediation costs and deprive savers of appropriate vehicles for savings.

Mutual funds constitute an important savings product and class of financial intermediary. Mutual funds provide small savers opportunities for risk diversification, professional investment management, and access to wholesale transaction costs. They significantly expand the investment opportunities available to small investors who are otherwise restricted to bank products or undiversified stock investments. They can simultaneously offer investors liquidity and foster long term regular saving habit.

While mutual funds are an enormous industry in developed countries, particularly in the U.S.A., they are still an emerging industry in most of Latin America. Only Brazil, Mexico, and Chile have significant mutual fund activity within their borders. The purpose of this series of papers is to make available better information about mutual fund regulation and operations in several Latin American countries, with a view to facilitate a comparison and improvement in their regulation and management.

This paper is part of a series of eight papers. The series is edited by Hemant Shah, Laura Mecagni, and Mike Lubrano, all from Latin America and Caribbean Region of the World Bank. Papers are written by legal and mutual fund industry experts from Argentina (Steven Darch, Bernardo E. Duggan, Leonardo F. Fernández, and Andrew Powell), Brazil (Fernando J. Prado Ferreira), Chile (Santiago Edwards M., Alberto Eguiguren), Colombia (Rodrigo Puyo Vasco), Mexico (Teófilo G. Berdeja Prieto and Agustín Berdeja Prieto), and Peru (Fernando Bellido). Their time and contributions, and the cooperation of their respective institutions, are deeply appreciated.

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ABSTRACT

This paper is published as part of a series of papers on mutual fund regulations in six Latin American countries: Argentina, Brazil, Chile, Colombia, Mexico, and Peru. This paper gives an overview of the mutual fund regulations in Peru. It briefly covers the legal structures of the funds and sponsors. It then discusses the major regulations and requirements of fund organization, investments, pricing, and distribution. Finally, it covers shareholders’ rights and investor protection.
# CONTENTS

1. LEGAL FORM OF MUTUAL FUNDS ............................................. 1

2. LEGAL FORM OF THE SPONSOR ............................................. 1
   a) Eligible Fund Sponsors ..................................................... 1
   b) Regulations for Participants of a Managing Company .......... 2

3. SUBSTANTIVE REGULATION OF THE INDUSTRY ..................... 2
   a) Investment Policies According to Peruvian Law ............... 2
   b) Other Investment Restrictions ......................................... 3

4. INTERNAL REQUIREMENTS .................................................. 4
   a) Minimum Requirements for Funds’ Internal Statute .......... 4
   b) Participants’ Rights ...................................................... 4

5. PARTICIPATION CONTRACT .................................................. 5
   a) Contract Draft Inclusions ............................................... 5

6. PROSPECTUS ........................................................................ 5

7. INVESTOR PROTECTION ..................................................... 6
   a) Front Running and Self-Dealing ........................................ 6

8. REGULATION OF ADVERTISEMENT AND INFORMATION
   REQUIRED BY CONASEV ..................................................... 6
   a) Obligations of Open-End Fund Manager ......................... 6
   b) Obligations of Closed-End Fund Manager ...................... 6

9. REQUIREMENTS TO DISTRIBUTE INCOME OF MUTUAL FUNDS ........................................... 7
   a) Closed-End Funds .......................................................... 7
   b) Open-End Funds ............................................................ 7

10. PRICE QUOTATIONS AND METHOD OF SHARE CALCULATION ... 7
PERU: MUTUAL FUND REGULATION

by

Fernando Bellido*

1. LEGAL FORM OF MUTUAL FUNDS

Peruvian regulations recognize the two types of mutual funds also recognized by, other legislation. In this sense, Peru’s Securities Market Law (Decree Law No. 755) and the regulatory, disposition, CONASEV Resolution No. 543-92-EF/94 of December 14, 1992, provide for:

Open-end or variable capital funds: funds where their capital is susceptible to being continuously changed, by new contributions or redemption of the existing certificates of participation, subject to specific limitations; and

Closed or fixed capital funds: funds that have a specified amount of contributions and cannot change the amount of its contributions unless their internal statutes have been previously changed in accordance with internal legal procedures.

2. LEGAL FORM OF THE SPONSOR

a) Eligible Fund Sponsors

The funds are sponsored by a management company or manager. Under Peruvian Law the sponsor is the manager. According to law the following are the only institutions which can manage a fund:

i) A limited liability company or “sociedad anónima” whose only purpose is to manage funds, in which case its name has to include the following denomination: “sociedad administrativa de fondos mutuos de inversión”;
ii) by local banks;
iii) by local financing companies; and
iv) local brokers (“sociidades agentes de bolsa”).

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The sponsor and advisor is not distinguished under Peruvian law. Both roles are played by the manager or “Sociedad Administradora”. The manager should have an investment department of at least 3 persons, duly qualified in the securities market and in financial matters, who should meet at least once a week and should keep their decisions and information that they handle restricted from public access.

The manager's fees and expenses should be paid by the fund and are payable at the rate established in the internal statutes of the fund. The manager may charge a placement commission when he sells certificates of participation, a commission that should be charged to the participant. In open-end funds, the manager may also charge a redemption commission.

b) Regulations for Participants of a Managing Company

The following are the persons that, according to law, cannot be shareholders, board members or officers of a managing company or manager of funds:

i) persons sentenced for crimes against the patrimony, public faith, taxes, terrorism or during trafficking;
ii) persons declared bankrupt;
iii) persons that have incurred in various violations against the Securities Market Law, and those that have been responsible for mismanagement; and
iv) shareholders or board members of juridical persons that have received authorization from CONASEV to participate in the Securities Market and whose authorization has been revoked for infringing the law.

3. SUBSTANTIVE REGULATION OF THE INDUSTRY

a) Investment Policies According to Peruvian Law

i) Mutual funds can only invest in:

a) securities registered at the CONASEV Registry and traded during the floor session of the stock exchange;
b) deposits with banks and financial companies;
c) securities issued abroad, with the previous authorization from CONASEV;
d) mortgage drafts;
e) real estate properties located in Peru; and
f) other securities to be authorized by CONASEV.
ii) Minimum portfolio diversification regulations in Peru.

a) not more than 10% of the shares issued by one company;
b) not more than 10% of the obligations requested or guaranteed by one company;
c) not more than 10% of the total assets of a fund can be invested in securities issued or guaranteed by one entity, nor more than 20% of the said assets in securities issued or guaranteed by the same economic group;
d) not more than 20% of the net worth of a fund can be invested in securities issued or guaranteed by companies dedicated to the same economic activity; and
e) at least 50% of the fund resources should be invested in stock exchange transactions or in deposits or securities issued or guaranteed by the State or by banks or financial companies.

b) Other Investment Restrictions

i) Mutual fund managing companies, as well as their board members and officers are prohibited to invest in:

a) mutual funds that they manage;
b) other mutual funds managing companies;
c) securities issued or guaranteed by a company that directly or indirectly controls 20% of the shares of the mutual funds managing company; and
d) securities issued or guaranteed by companies that are owned by one economic group that controls at least 20% of the shares of the mutual funds managing company.

ii) Fund managing companies as well as their board members are not allowed to:

a) issue obligations;
b) receive cash in deposits;
c) perform active credit transactions, except over securities issued by the Peruvian State or issued or availed by banks or financing companies;
d) grant guarantees;
e) obtain loans or credits, unless for those received from banks or financing companies to cover temporary liquidity requirements;
f) pledge securities, unless to guarantee credits or referred in the to invest in securities issued by other funds or in securities guaranteed by a managing company;
g) to take cash from the funds as a loan;
h) perform transactions with securities among the different funds under its management; and
i) any change in the internal statute of a fund requires the prior approval of CONASEV, even in those cases where funds have an Assembly of participants.

iii) In closed-end funds, the internal statute can only be changed in relation to:

a) the issuance of new certificates of participation or redemption of the existing ones;
b) fees to be paid to the manager or the way to calculate them;
c) term of the fund;
d) investment policy, without being allowed to change the fund objectives; and
e) distribution of net profits.

4. INTERNAL REQUIREMENTS

a) Minimum Requirements for Funds’ Internal Statute

i) Name, indicating if it is an open-end or a close fund;
ii) The objectives, according to the characteristics of the investments and the find of rent;
iii) The basis to diversity the assets and the policies to follow for the selection and purchase of securities.
iv) The plans to promote the sale of the certificates of participation to be issued, having to specify the type of placement.
v) The fees and operating costs to be recognized to the manager, the basis for its calculation and the maximum amount they can reach.
vi) The technical procedure to be used for the valuation of the Funds net worth.
vii) The media to be used to inform about the value of the certificates of participation.

b) Participants’ Rights

The statute should also establish, for open-end funds, provisions to regulate the rights of the participants for the redemption of its certificates of participation, specifying the procedure, term, limit and redemption price.

In closed-end fund, the internal statute should additionally state:

a) net worth to be authorized;
b) policies for the application of net profits;
c) term of the fund, if it is the case; and
d) the possibility to issue new participation, indicating under what condition they would be issued.

The rules for the operation of the assembly of participants should also be provided for in the internal statute of a fund.

5. PARTICIPATION CONTRACT

a) Contract Draft Inclusions

The draft of the contract prepared by the manager, filed, and approved by the CONASEV, should necessarily include the following:

i) The specific services to be rendered by the manager.
ii) The basis for calculating and paying the fees to the manager and the placement commission, if any.
iii) The detailed indication of the expenses that will be charged to the fund, including the fees and expenses to be reimbursed to the manager and to the other persons that will be granting services to the fund.

According to Peruvian law, the management company (manager) is not required to have minimum reserves to protect the participants. However, the managers or management companies are required to have a minimum capital of Soles 500,000 to be maintained at the constant value and thus adjusted annually at the rate of Peruvian internal inflation (the retail price index for Lima should be taken as of March 1991). This minimum capital cannot be less than 2% of the net worth of the funds under administration. 25% of the paid-in capital should be in liquid assets.

Additionally, a bank guarantee should be obtained by the manager in favor of CONASEV, for an amount not less than 5% of the net worth of the funds under administration. This bank guarantee should be not less than 10% of the fund’s net worth in the cases where local bank financing companies or brokers act as managers.

6. PROSPECTUS

The placement prospectus should at least contain complete information regarding the internal statute and the form of agreement, the information on the registration of the mutual funds at CONASEV, as well as the legal basis and other terms of the issuance.

The prospectus should be signed by an authorized representative of the mutual funds. The managing company should distribute it free or at cost.
7. INVESTOR PROTECTION

a) Front Running and Self-Dealing

Front running is not specifically prohibited within the provisions dealing with mutual funds. Self-dealing is prohibited in the following type of transactions:

i) Investing in securities on its own behalf with funds given to the manager for its administration.
ii) Taking cash from the funds as personal credits.
iii) Dealing the same securities among the different funds administered by the same manager.

The penalty given to the manager can go from a fine or suspension of its operating license. If the manager commits additional acts of self-dealing, his license can be revoked by CONASEV. Insider trading has been expressly prohibited in CONASEV’s regulations.

8. REGULATION OF ADVERTISEMENT AND INFORMATION REQUIRED BY CONASEV

Depending on the type of fund (open-end or closed), the requirements vary. Below is a summary of said disclosures:

a) Obligations of Open-End Fund Manager

i) Publish daily the valuation of the certificates of participation, in a visible sight within its locality.
ii) Publish monthly the investment portfolio in a newspaper of high circulation.
iii) Send daily to the Registry the investment portfolio structure and the valuation of the certificates of participation.
iv) Send weekly to the Registry the investment portfolio statement and the participant list up to date.
v) Send quarterly to the Registry the financial statements not audited of each Fund.
vi) Send annually to the Registry the audited financial statements of each Fund.
vii) Send to the Registry a copy of each advertisement made by the manager relating to the managed funds, the next day of its publication.
viii) Send monthly to the Registry a cash flow statement.

b) Obligations of Closed-End Fund Manager

i) Send daily to the Registry the investment portfolio structure.
ii) Publish monthly the investment portfolio and the valuation of the certificates of participation in a newspaper of high circulation.

iii) Send monthly to the Registry the information referred in the previous article, the participants list and cash flow statement

iv) Send quarterly the unaudited financial statement of each fund.
v) Send annually to the Registry the audited financial statements of each fund

vi) Send to the Registry copy of each advertisement made by the manager relating to the managed funds, the next day of its publication.

9. REQUIREMENTS TO DISTRIBUTE INCOME OF MUTUAL FUNDS

The requirements change according to the type of fund.

a) Closed-End Funds

Closed-end funds should distribute at least 80% of net profits received during the fiscal year. This distribution should be made during the four months following the end of the year. This 80% can be reduced to 60% during the first two years of the mutual fund.

b) Open-End Funds

Open-end funds can distribute net profits only according to what has been established in the internal statute, also during the four months following the end of the fiscal year.

10. PRICE QUOTATIONS AND METHOD OF SHARE CALCULATION

The certificates of participation are valued daily (in open-end funds) and weekly (in closed-end funds). The value or price is obtained by dividing the value of the fund’s net worth, at a certain date, by the number of certificates of participation issued and circulating. To obtain the fund’s net worth, the assets and liabilities of the fund have to be valued at the end of a specific date, as well as the number of certificates of participation issued. The assets should be valued at the market rate, following certain regulations according to the type of security (fixed or variable rent). Real estate property should be valued at commercial value by specialists in real estate.
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