

_ CVM punishes former managers for insider trading

CVM recently decided on Administrative Proceeding No. RJ2014/3225, regarding the liability of former managers of a publicly-held company for the use of insider information for trading shares of the company prior to the disclosure of relevant facts related to the absence of oil and gas in an offshore well.

CVM verified that the former managers sold a significant number of shares before the disclosure of the aforementioned relevant facts. The accused had been managers of the company at the same time and were colleagues of other managers who were still working at the company, which could have eased their access to insider information. Due to the coincidence in the time of the sale and the transcription of conversations between some of the accused and operators of brokerage firms, CVM technical area understood the trading of shares was held with the use of insider information, which is prohibited by Article 155, §4th of Law 6.404/76, combined with Article 13, §1st of CVM Instruction 358.

For the Reporting Director, Roberto Tadeu, only the certainty of the results with the exploration of the wells, as well as its effects in the share price in the market, could have motivated the accused to sell a

relevant number of shares on the eve of the disclosure of the relevant fact and, at the same time, express in advance, to the operator of the brokerage firm, his intention to buy the shares in the following week.

ACCORDING TO THE REPORTING DIRECTOR, THE BEHAVIOR AFOREMENTIONED IS TYPICAL OF INSIDER TRADING, DUE TO THE PERFECT TIMING OF THE TRADE, AS WELL AS THE LACK OF REGULARITY IN TRADING THE ASSET.

The main proof of the practice of insider trading in this case was the transcription of phone conversations between the accused and the operator of the brokerage firm, who intermediated the sale of shares.

In this context, CVM applied the following penalties: (i) to the former manager who traded shares twice with the use of insider information, fine in the amount of R\$456,560.00; and (ii) to the former manager who traded shares once with the use of insider information, fine in the amount of R\$338,500.00. The amount of the fines corresponds to twice the amount of the avoided loss.

BM&FBovespa discloses the comments received to the proposed changes in the special trading segments of *Nível 2* and *Novo Mercado*

BM&FBovespa Stock Exchange disclosed the comments received in the public hearing regarding its proposal to amend the rules applicable to New Market (Novo Mercado) and Level 2 (Nível 2) special trading segments. 39 comments were received containing suggestions, criticism and compliments to the proposed changes, which will be used for the final proposal in the closed hearing (i.e. hearing limited to the companies listed in the New Market and Level 2 special trading segments), starting in November, 2016.

Among the recurrent comments, we highlight the following:

advisory committees of the board of directors: there was a lot of discussion regarding the cost of this requirement for the companies. The suggestion is to make the proposed structures flexible, allowing the companies to include the committees proposed assignments in their own structure.

adoption of internal policies: a recurrent concern regarding this matter was that the internal policies shall comply with the Brazilian Code of Corporate Governance (Código Brasileiro de Governança Corporativa), which is still under discussion, in order to unify the rules.

disclosure of management body compensation: the disclosure of the maximum, average and minimum compensation of each management body and of the audit board (Conselho Fiscal) was a controversial topic

in the comments. While some entities were in favor, suggesting a gradual implementation, others suggested its removal or a different approach in the disclosure of this information (for example, the disclosure of the average compensation, median and standard deviation, in order to attend the market's concern regarding abuse and distortions in the compensation of the management, but without exposing directly the highest compensation).

transfer of control – premium fee: most of the comments were against the buyer's obligation to provide the minority shareholders of the company with the option to remain as shareholders of the company with the payment of a premium fee, arguing that there is no relevant reason to include this rule. One of the few entities in favor of this rule was the Instituto Brasileiro de Governança Corporativa (IBGC), which understood this is an additional mechanism to tag along, allowing shareholders to choose between leaving or remaining in the company receiving a premium fee either way.

tender offer due to acquisition of relevant corporate interest: there were lots of comments regarding the obligation to launch a tender offer in case of voluntary acquisition of corporate interest higher than 30% of the share capital. Some comments suggested the removal of the rule, others understood the 30% percentage may not be appropriate to all companies (for companies with wide shareholder dispersion the percentage would be high and for companies with limited shareholder dispersion, low), suggesting turning it flexible.

THE COMMENTS ARE AVAILABLE IN PORTUGUESE AT:

http://www.bmfbovespa.com.br/pt_br/listagem/acoes/segmentos-de-listagem/sobre-segmentos-de-listagem/evolucao-dos-segmentos-especiais/

_ Supreme Court decision affects the purchase of rural property in São Paulo by Brazilian companies with foreign control

Brazilian Law 5.709/71 limits the purchase of rural property by foreign companies and by Brazilian companies with foreign control, without distinguishing them.

In 2010, THE FEDERAL ATTORNEY GENERAL'S OFFICE ISSUED LA-01 LEGAL OPINION ("AGU LEGAL OPINION") WHEREBY IT MAKES PUBLIC ITS UNDERSTANDING THAT THE AFOREMENTIONED LIMITATION FOR BRAZILIAN COMPANIES WITH FOREIGN SHAREHOLDERS IS ALLOWED BY THE 1988 BRAZILIAN CONSTITUTION, SO THAT THE PURCHASE OF RURAL PROPERTY BY SUCH COMPANIES IS SUBJECT TO THE SAME RESTRICTIONS IMPOSED TO THE PURCHASE THEREOF BY FOREIGNERS, PURSUANT TO LAW 5.709/71.

On December 11, 2012, the Magistrate's Office of the State of São Paulo (Corregedoria Geral da Justiça do Estado de São Paulo) issued a legal opinion contrary

to the AGU Legal Opinion, enabling the purchase of rural property in the State of São Paulo by Brazilian legal entities with foreign corporate interest, without applying the aforementioned restrictions.

In 2014 the National Institute of Colonization and Agricultural Reform (INCRA) and the Federal Government filed a claim before the Brazilian Supreme Court (Supremo Tribunal Federal – STF) with the purposes of having the aforementioned legal opinion by the Magistrate's Office of the State of São Paulo declared void.

On September 01, 2016, STF granted an injunction to suspend the effects of the Magistrate's Office of the State of São Paulo legal opinion until the final decision on this matter is granted by the court. Therefore, since the granting of this injunction, the Real Property Registries and the Notary Offices of the State of São Paulo shall comply with the AGU Legal Opinion. Until this moment, the Supreme Court has not yet granted a final decision on this matter.

THE INJUNCTION DECISION IS AVAILABLE IN PORTUGUESE AT:

<http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?numero=2463&classe=ACO&origem=AP&recurso=0&tipoJulgamento=M>