

NEWSLETTER

jul 2017

_ New CVM Instruction 586 changes corporate governance rules for publicly-held companies

On June 9th, 2017, CVM issued the new Instruction 586, which changes and adds new provisions and rules to CVM Instruction 480, providing a new framework for the registration of securities issuers admitted to negotiate in regulated markets.

THE MAIN CHANGE IS INCLUSION OF THE DUTY TO DISCLOSE INFORMATION CONCERNING THE APPLICATION OF THE CORPORATE GOVERNANCE PRACTICES PROVIDED IN THE BRAZILIAN CORPORATE GOVERNANCE CODE FOR COMPANIES REGISTERED IN CATEGORY A.

The Brazilian Corporate Governance Code adopts the “apply or explain” approach, under which the best corporate governance practices are recommended by GT Interagentes (a group which comprises 11 of the most important agents of the Brazilian capital markets) on relevant topics such as ownership structure, management board composition and internal controls. According to its rules, the companies will have to disclose if they are compliant with the regulations and explain the reasons that justify any non-compliance with the practices suggested by the Code.

The corporate governance practices will be submitted by the companies to CVM as an electronic report on the adherence of listed companies to the recommendations of the Brazilian Corporate Governance Code (Informe sobre o Código Brasileiro de Governança Corporativa) and will be disclosed on an annual basis, **within the first 7 months after the end of each fiscal years.**

According to the CVM’s President, “the Brazilian Corporate Governance Code incorporation into

CVM Instruction 480 provides the companies’ duty to clarify and explain to the investors the level of adherence to the practices, in a complete, truthful, and consistent manner, and without leading them to error. It will be up to the investors to assess whether or not the governance structure is adequate, based on such information”.

The Brazilian Corporate Governance Code rules will come into force on January 1st, 2018 for companies which were listed in IBrX-100 or IBOVESPA on the publication date of CVM Instruction 586.

Besides the incorporation of the Brazilian Corporate Governance Code, we highlight the following news brought by CVM Instruction 586:

_ Mandatory updating of the Reference Form in the event of changes to members of statutory committee or specific committee such as audit, risk, finance or compensation committees, even if they are not statutory, provided that such committee participates in the decision-making process of the management board or in the company’s management as consultants or supervisors.

_ Inclusion of new information in the Reference Form for corporate governance of companies, such as information on integrity program, disclosure of internal policies and regulations, management evaluation and compensation methodology.

_ Clarification on which directors should sign the statements regarding the review, discussion and agreement with the financial statements and with the opinions expressed in the independent auditor’s report, as well as including the mandatory inclusion of such statements in ITR.

_ Approval of Novo Mercado Regulation Amendment

On June 23, 2017, it was approved the proposal for the amendment to the Novo Mercado's Regulation, a B3 special corporate governance segment, which consolidates the main changes proposed by the stock exchange, including rules regarding the free float, dispersed capital on tender offers, independent board members, delisting, inspection and control and transparency of listed corporations.

Besides the Regulation, it was approved a specific rule regarding the management assessment, which will now enforce a mandatory disclosure of the performance evaluation of the board of directors, its committees and executive board.

Other specific rules such as the compulsory tender offer for acquisition of significant share interest, disclosure of socio-environmental reporting and increasing the quorum to 50% of shareholders to approve a delisting tender offer were rejected.

IT IS IMPORTANT TO NOTE THAT THE NEW REGULATION WILL BE SUBMITTED FOR APPROVAL BY THE SECURITIES AND EXCHANGE COMMISSION OF BRAZIL (CVM). FOLLOWING THE APPROVAL BY THE CVM, THE COMPANIES WILL BE NOTIFIED OF THE FINAL VERSION OF THE REGULATION AND THE TIMEFRAME FOR ADAPTING TO THE NEW RULES.

In addition, the companies at Level 2 corporate governance rejected all changes to its Regulation proposed.

The approved Regulation of the Novo Mercado and the voting result can be accessed at the link below:

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

_ Provisional Measure increases enforcement powers of Brazilian Securities and Exchange Commission and the Central Bank of Brazil

On July 08, 2017, Provisional Measure No. 784 ("MP 784/2017") was published, which changes, among other matters, the rules regarding the enforcement procedure applicable to measures undertaken by the Brazilian Securities and Exchange Commission ("CVM") and the Central Bank of Brazil ("BACEN").

According to CVM, the MP 784/2014 aims to ensure greater effectiveness and agility in the administrative proceedings under the supervision of BACEN and CVM.

ONE OF THE HIGHLIGHTS OF THE CHANGES WAS THE SIGNIFICANT INCREASE OF THE PENALTIES IMPOSED BY THE CVM AND BACEN WHICH CAN BE APPLIED CUMULATIVELY.

CVM can impose fines up to the higher amount among the followings:

- (i) R\$ 500 million, a thousand times higher than previously stipulated in the Law 6,385/1976;
- (ii) twice the amount involved in the transaction deemed as irregular;
- (iii) three times the amount equivalent to the economic benefits or avoided losses due to illicit act; or
- (iv) in the case of legal entities, 20% of the revenues (verified in the previous fiscal year) of such entity (or economic group). In the event of recurrence, it remains authorized the application of a fine up to three times the size of the defined amount.

Besides the increase of the administrative penalties, the MP 787/2017 grants power to BACEN and CVM to enter into leniency agreements with individuals and corporations that confess violation to legal or regulatory provisions under the legal mandate of BACEN or CVM, respectively. It is important to mention that in both cases, in return for their cooperation in prosecuting a case, the applicant benefit from a fine reduction or can be even excused from administrative penalties.

The MP 787/2017 also establishes a Securities Market Development Fund (Fundo de Desenvolvimento do Mercado de Valores Mobiliários) that will be managed by CVM and constituted by resources collected by CVM originating from the execution of settlement agreements.

The Provisional Measure No. 784/2017 can be accessed in Portuguese at the link below:

<http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=08/06/2017&jornal=1&pagina=1&totalArquivos=144>