

_ Brazilian Securities and Exchange Commission (CVM) punishes managers for irregularities in the financial statements

In a recent decision, CVM condemned all members of the Board of Officers of a publicly held corporation for accounting violations in the financial statements.

The decision included the following accusations:

(i) registration of tax credits, which was classified as irregular, since the credits were contingent assets and should have not been registered in the financial statements, pursuant to the Technical Statement 25 issued by the Brazilian Accounting Statements Committee (Comitê de Pronunciamentos Contábeis – CPC);

(ii) receivable credits from an associated company originated from the execution of a loan agreement, which registration and calculation should have followed CPC Technical Statement 38, but did not. Pursuant to this technical statement, the company should evaluate at each financial statement date whether or not there is an objective evidence of loss in the recovery value of a financial asset, based on available data, which shall also include the significant financial difficulty of the issuer or liable party;

(iii) maintenance of the tax outstanding accounting balances registered at the Tax Recovery Program (Programa de Recuperação Fiscal – REFIS) from 1999 to 2011, a procedure which did not reflect the economic situation of

the Company, in violation of the CPC Technical Statement 25;

(iv) non-registration of the provision for losses related to the investments of the company in controlled companies with net capital deficiency, pursuant to CPC Technical Statement 18.

PURSUANT TO CVM, THE CORRECT PREPARATION OF THE FINANCIAL STATEMENTS IS ONE OF THE MOST IMPORTANT OBLIGATIONS OF A PUBLICLY HELD CORPORATION, SINCE THIS INFORMATION IS NEEDED NOT ONLY FOR DIVIDEND DISTRIBUTION PURPOSES, BUT ALSO FOR CREDITORS AND POTENTIAL INVESTORS KNOWING THE COMPANY'S SITUATION. BESIDES THIS INFORMATION ALSO ALLOWS SHAREHOLDERS TO MAKE INFORMED DECISIONS AT THE GENERAL SHAREHOLDERS' MEETINGS AND TO EFFECTIVELY SUPERVISE THE COMPANY.

In addition, since, in this case, the Company's Bylaws do not attribute to an specific manager the responsibility for preparing the financial statements, it was established that all members of the Board of Officers should be liable for the violation of CPC accounting rules approved by CVM in the preparation of the Company's financial statements, which resulted in a fine of R\$500 thousand for each of the officers.

CVM DECISION CAN BE ACCESSED AT:

http://www.cvm.gov.br/export/sites/cvm/sancionadores/sancionador/anexos/2016/20160513_PAS_RJ20136224.pdf

_ combat against Insider Trading

In the beginning of June, a working group called Grupo de Trabalho Interagentes – GT Interagentes, composed by influent entities of the Brazilian capital markets and monitored by the Brazilian National Bank for Economic and Social Development (Banco Nacional do Desenvolvimento - BNDES) and CVM, launched a campaign against Insider Trading in order to educate the market on the matter, with the simultaneous release of an educational guideline called “Guia Educativo de Prevenção ao Insider Trading” (Educational Guideline for the Prevention of Insider Trading Practices).

Also regarding this matter, CVM recently disclosed an educational publication regarding the matter, called CVM Notebook 11 – Improper Use of Insider Trading Information (Insider Trading) (“Caderno CVM nº 11 - Uso Indevido de Informação Privilegiada (Insider Trading)”) and, since 2014, has been clearly acting more actively to identify, search for evidences and assign responsibilities in insider trading claims with the approval of the Punitive Program II (Sistema Sancionador II), which contains a specific strategic program for this purpose.

The effects of this strategic program can be observed

in CVM recent rulings during 2015. Throughout 2015, nine claims of Insider Trading were decided (against an average of three claims per year in previous years), with the application of fines in the total amount of approximately R\$18 million.

According to a research by the Law School of Fundação Getúlio Vargas (Escola de Direito da Fundação Getúlio Vargas - FGV), CVM has been rejecting most settlement proposals (Propostas de Termo de Compromisso) regarding Insider Trading practices. Between years 2004 and 2014, only 31 proposals were accepted out of 94 that were filed.

IT IS IMPORTANT TO HIGHLIGHT THAT SINCE 2014 CVM HAS BEEN ANALYSING 100% OF THE TRANSACTIONS CARRIED OUT BY MANAGERS AND RELATED PERSONS DURING THE 15-DAY BLACKOUT PERIOD PRIOR TO THE DISCLOSURE OF THE QUARTERLY FINANCIAL STATEMENTS AND THE ANNUAL FINANCIAL STATEMENTS, WITH THE START OF 58 NEW INVESTIGATIVE CLAIMS IN 2015, WHICH, UNTIL NOW, RESULTED IN 4 GUIDELINE LETTERS (OFÍCIO DE ORIENTAÇÃO) AND 8 WARNING LETTERS (OFÍCIO DE ALERTA).

THE GUIA EDUCATIVO DE PREVENÇÃO AO INSIDER TRADING (EDUCATIONAL GUIDELINE FOR THE PREVENTION OF INSIDER TRADING PRACTICES) MAY BE ACCESSED AT:

http://www.ibri.com.br/Upload/Arquivos/novidades/3830_Guia-educativo-prevencao-insider-trading.pdf

CVM NOTEBOOK 11 - IMPROPER USE OF INSIDER TRADING INFORMATION CAN BE ACCESSED AT:

<http://www.portaldoinvestidor.gov.br/portaldoinvestidor/export/sites/portaldoinvestidor/menu/atividades/CampanhaNaoAoInsiderTrading/CVM-Caderno-11.pdf>

Information from CVM 2015 Annual Report, which can be accessed at:

http://www.cvm.gov.br/export/sites/cvm/publicacao/relatorio_anual/anexos/Relatorio_Anuar_2015.pdf

_ CVM Public Hearing – proposals of changes to CVM Instructions 358 and 400

CVM started public hearings regarding its proposal to amend CVM Instruction 358, related to the disclosure of relevant information and CVM Instruction 400, related to public offers for the distribution of securities.

The purpose of the first proposal is to improve CVM Instruction 358 and the supervision of insider trading activities. The suggested changes are part of CVM's project to educate the market on insider trading matters, as well as to monitor and punish this practice, as discussed previously in this newsletter.

The second proposal has the purpose of updating the rules set forth by CVM Instruction 400 with regard to the special program for distribution of securities by frequent issuers, which has not been satisfactorily used by the market, aiming at promoting its use as a device to enable the launching of public offers by these issuers.

SUGGESTIONS AND COMMENTS ON THE PROPOSED CHANGES TO CVM INSTRUCTIONS 358 AND 400 SHALL BE SENT TO CVM, AT THE ATTENTION OF THE SUPERINTENDENCE OF MARKET DEVELOPMENT (SUPERINTENDÊNCIA DE DESENVOLVIMENTO DE MERCADO), UNTIL JULY 8 AND JULY 30, 2016, RESPECTIVELY.

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CVM instruction 358 - http://www.cvm.gov.br/audiencias_publicas/ap_sdm/2016/sdm0516.html

CVM instruction 400 - http://www.cvm.gov.br/audiencias_publicas/ap_sdm/2016/sdm0416.html

This newsletter was prepared by Carneiro de Oliveira Advogados and shall not be interpreted as legal advice on the matters discussed herein.