

_ Brazilian Securities and Exchange Commission's public hearing regarding the minimum percentage required for the proposition of lawsuits by shareholders

On October 10th, 2019, the Brazilian Securities and Exchange Commission (“CVM”) issued a **public hearing regarding a normative ruling’s minute that reduces the minimum percentage required for the proposition of lawsuits by shareholders** (“Proposal”).

The initiative came from suggestions presented by the Working Group created through the Joint Ordinance MF/CVM 92/2018, along with the Ministry of Economy, to study and propose the improvement of protection measures for minority shareholders.

Pursuant to article 291 of Law No. 6.404/76 (“Brazilian Corporation Law”), the Proposal sets a scale that reduces the minimum percentage of equity interest required for the proposal of lawsuits regarding manager’s liability provided for in article 159, paragraph 4 of the Brazilian Corporation Law, and the liability against controlling companies, in accordance to article 246, paragraph 1, item “a”, of the Brazilian Corporation Law.

According to the survey made by CVM’s Economic Analysis and Risk Management Counsel (“ASA”), the Proposal provides the minimum percentage according to the following division of companies based on the respective capital stock value:

CAPITAL STOCK RANGE	MINIMUM PERCENTAGE
R\$0,00 a R\$100.000.000,00	5%
R\$100.000.001,00 a R\$1.000.000.000,00	4%
R\$1.000.000.001,00 a R\$5.000.000.000,00	3%
R\$5.000.000.001,00 a R\$10.000.000.000,00	2%
acima de R\$10.000.000.000,00	1%

Comments and suggestions regarding the division above, as well as the **possibility of extension of the definition of scale to the following minimum percentages provided for in the Brazilian Corporation Law**, shall be sent to CVM until December 6th, 2019:

- i. the judicial requirement of exhibition of books, in accordance with article 105 of the Brazilian Corporation Law;
- ii. the convening of a shareholders whenever the officers do not comply with a justifiable request that a meeting be called, in accordance with article 123, sole paragraph, item “c” of the Brazilian Corporation Law;
- iii. the requirement to disclosure information regarding the negotiation of securities by managers and the terms and conditions of their management agreements, in accordance with §1° of article 157 of the Brazilian Corporation Law; e

iv. the requirement to disclosure information regarding subjects within the competence of the fiscal council, in accordance with §6° of article 163 of the Brazilian Corporation Law.

ADDITIONALLY, THE PUBLIC HEARING OPENS A SPACE TO DISCUSS THE CONVENIENCE OF THE REVISION THE SCALES FIXED IN CVM NORMATIVE RULINGS N° 165 AND 324, WHICH REFERS TO THE MINIMUM PERCENTAGE NECESSARY TO REQUIRE THE MULTIPLE VOTING PROCESS TO ELECT BOARD MEMBERS AND THE INSTALLATION OF THE FISCAL COUNCIL, RESPECTIVELY.

THE PROPOSAL CAN BE ACCESSED IN PORTUGUESE AT:

<http://www.cvm.gov.br/noticias/arquivos/2019/20191010-1.html>

_ Brazilian Securities and Exchange Commission decides on layering case for the first time

On October 1st, 2019, CVM's Board decided, for the first time, on a case of layering, which consists in the violation of item "I" and "II", "b", of CVM's Normative Ruling No. 8/1979 ("ICVM 8/79"). The Sanctioning Administrative Proceeding ("PAS") was filed against the defendant ("Defendant"), according to the Reporting Officer, President Marcelo Barbosa, in order to investigate alleged operations to create artificial layers of offers to purchase and sell various assets in the corporate book.

According to Barbosa, **the manipulation of assets' price occurred through the following steps:**

- i. creating false liquidity by inserting artificial offers on the opposite side of the corporate book from those that were actually intended, forming layers of offers without the real purpose of being executed, which changed the spread of the offering book, in order to attract investors to include or improve their offers;
- ii. register, by the investor, of the intended purchase or sale offer on one side of the book (before or after the creation of false liquidity);
- iii. execution of the intended offer under conditions provided by false liquidity; and
- iv. once the intended offer was complete, the artificial offers were canceled.

CVM's department of Market and Intermediary Relations ("SMI") noted this strategy pattern in other operations, in which the interference of the Defendant, other parties' reaction to the offers inserted by the Defendant, and, finally, the execution of a more advantageous offer to the Defendant than those prior to its performance was remarked.

Therefore, it was stated that the Defendant had been using such strategies between the years of 2013 and 2017, even after being notified about the existence of possible irregularities, reinforcing the characterization of a malicious conduct, according to the report, which, according to SMI, constitutes a violation of ICVM 8/79.

Finally, CVM's Board decided, by unanimous votes, to impose a fine of one and a half times the value of the economic advantage obtained with the noncompliance of ICVM 8/79, duly restated according to the IPCA rate since the date of the last operation questioned by the prosecution until CVM's Board decision. Besides, CVM also established the communication of this case to the Federal Public Prosecution Service of the State of São Paulo, considering the evidence of a public criminal action crime.

MORE INFORMATION REGARDING THE PAS CAN BE ACCESSED IN PORTUGUESE AT:

http://www.cvm.gov.br/noticias/arquivos/2019/20191001-2.html#PAS_CVM_SEI_n__19957.006019_2018-26

_ Carneiro de Oliveira Advogados law firm and its partner Gyedre Carneiro de Oliveira are highlights in the law yearbook “Anuário Análise Advocacia 500 I 2019”

The law firm **Carneiro de Oliveira Advogados** and its partner **Gyedre Palma Carneiro de Oliveira** were named by the magazine Análise Advocacia 500 among the most admired law firms and lawyers of 2019.

The yearbook Análise Advocacia 500 presents the most admired Brazilian law firms and lawyers in different fields of Law, according to the opinion of the heads of Legal Departments of the biggest Brazilian companies.