

## Brazilian Securities and Exchange Commission publishes Circular Letter with general orientations regarding the rules and procedures that must be observed by publicly held corporations

On February 26<sup>th</sup>, 2021, the Brazilian Securities and Exchange Commission (“CVM”) published the Circular Letter/CVM/SEP/Nº1/2021 (“Ofício CVM/2021”), which provided the Superintendence of Relations with Companies (*Superintendência de Relações com Empresas*) (“SEP”) general orientations regarding the rules and procedures that must be observed by publicly held corporations. Among this years’ news, we highlight:

- (i). Communications regarding lives on social media: the same rules set forth in the legal regulations that treats the disclosure of relevant information (Instruction CVM nº 358/02) and establish general rules about the content and way of the information that the issuers must observe (articles 14 to 19 of the Instruction CVM nº 480/09) are applied to lives on social media. In this sense, CVM recommends the disclosure, in advance, of a notice to the market informing the date, time and the internet address where the live is going to be transmitted, as well as the material presented in meetings with analysts, at the same day of the meeting or presentation. In addition, CVM recommends that companies include in their disclosure policy all the possible and necessary information to grant the market predictability on how the company handles disclosures in general.
- (ii). Electronic signature - Remote Voting Bulletin: companies should not require from shareholders who wish to vote remotely, the delivery of physical documents to ratify the electronic remittance of documents mentioned in the meeting’s call notice, when said documents are electronically signed using the ICP-Brasil certification.
- (iii). Management’s Compensation: CVM’s board decided (No. 19957.007457/2018-109) that the social contributions burden by the employer shall not integrate the amounts of the global compensation which is approved annually by the general shareholders’ meeting. Therefore, companies shall not disclose said amount in the charts of item 13 of the Reference Form (*Formulário de Referência*), but may do so, at their discretion, as “Other information deemed relevant”.
- (iv). Related Party Transactions: Although, as a rule, the negotiations of agreements with related parties is not a matter subject to the board of directors’ approval, it is not possible to dissociate it completely from the liabilities inherent to those agreements, notably due to the obligation of monitoring the officers, in order to ensure that such agreements comply with the corporate law.

OFICIO CVM/2021 MAY BE ACCESSED IN PORTUGUESE THROUGH THE LINK BELOW:

<http://conteudo.cvm.gov.br/legislacao/oficios-circulares/sep/oc-sep-0121.html>

## \_ Brazilian Securities and Exchange Commission refuses term of commitment with company's controlling shareholders and managers in proceeding regarding the approval of their own accounts and compensation

The Administrative Proceeding CVM SEI 19957.003922/2020-50, was initiated by SEP, in order to determine irregularities practiced by controlling shareholders of a publicly held company, which were also its CEO and VP, on voting and approving their own (i) management accounts and (ii) compensation as managers without considering the company's financial situation.

The accusation originated from a complaint of a shareholder regarding the transaction with the aforementioned CEO and VP, who would no longer receive compensation as managers and would be hired and consultants, which would generate savings in expenses. After the analysis, by SEP, of several documents released by the company, signs of irregularities were identified in matters involving the approval of the accounts and the compensation for the

officers, which could be considered abusive compared to the company's revenue, net loss and net worth.

The shareholders presented a proposal to execute a term of commitment through which they were willing to ensure the maintenance of the management's compensation in the average of the parameters determined by the Brazilian Institute of Corporate Governance (*Instituto Brasileiro de Governança Corporativa - IBGC*).

CVM's board, in line with the conclusion of the Term of Commitment Committee, rejected the term of commitment in this case, considering that (i) the defendants did not propose an indemnity for the company's losses and did not correct the practices considered irregular, and (ii) the importance of the matter to the capital market.

MORE INFORMATION ABOUT THE TERM OF COMMITMENT CAN BE ACCESSED IN PORTUGUESE THROUGH THE LINK BELOW:

<https://www.gov.br/cvm/pt-br/assuntos/noticias/cvm-rejeita-acordo-com-acionistas-de-companhia>