



## CVM publishes guidance opinion consolidating its understandings about crypto assets and explaining the scope of its regulation

The Brazilian Securities and Exchange Commission (“CVM”) published on October 11, 2022, Guidance Opinion No. 40 (“Opinion 40”), which unifies and synthesizes its understandings about the classification of crypto assets as securities. Opinion 40 aims to clarify CVM’s jurisdiction and to establish its powers to regulate, supervise and discipline activities of capital market members.

### Definition of crypto assets and tokens

CVM defines crypto assets as digitally represented assets, protected by cryptography, which can be subject to transactions executed and stored by Distributed Ledger Technologies – DLTs. Usually, crypto assets (or their ownership) are represented by tokens, which are intangible digital securities.

Opinion 40 presents three token classifications: 1) payment token, which aims to replicate currency functions; 2) utility token, used to purchase or access products and services; and 3) asset-backed token, which represents one or more assets, tangible or intangible, and can fall into one or more categories.

### On the classification of crypto assets as securities

Pursuant Opinion 40, crypto assets are considered as securities when it is possible to identify a digital representation of any securities exhaustively provided for in items I to VIII of article No. 2 of Law 6.385/76 and/or provided for as receivable certificates in general, according to Law 14.430/22; or when they fit into the open concept of securities provided for in item IX of article 2 of Law 6.385/76, as long as it is a collective investment contract.

### CVM’s scope of regulation

In Opinion 40, CVM emphasizes that tokenization on itself is not subject to any prior approval or registration towards it, but if securities are issued for the purpose of public distribution, both the public offering itself and issuers of crypto asset tokens, market agents and market intermediaries that act, directly or indirectly, in their offering will be subject to applicable regulations.

Crypto economy market scholars and entrepreneurs have pointed out their concern about Opinion 40 effective legal certainty, especially regarding criteria

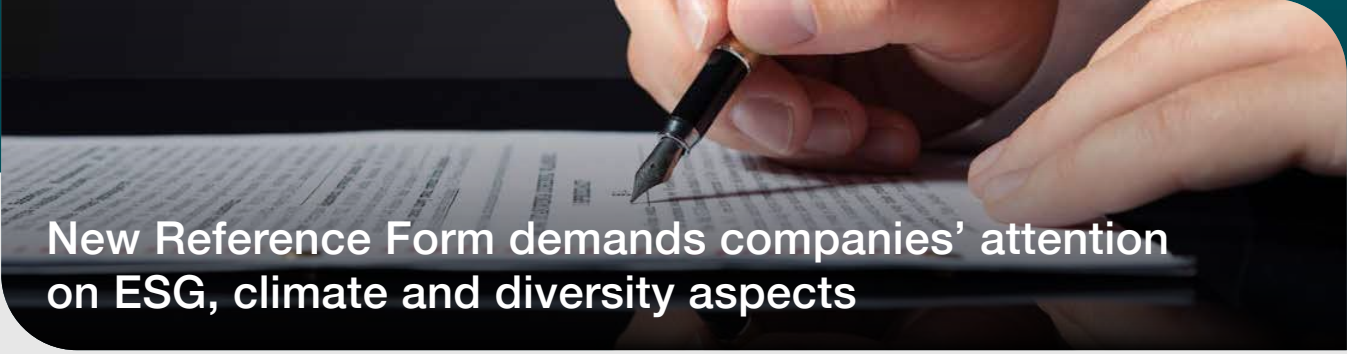


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used to disqualify a token as a security and about the omission of some issues, such as rules for investment funds. Despite this, Opinion 40 formalized previous CVM understandings, indicated future paths to be observed by legislators, and shows CVM's openness to discussions and consultations on the subject.

We contributed on this subject in an article published in the Legislação & Mercado section of Capital Aberto on November 02, 2022, which can be accessed in Portuguese through the link bellow:

<https://legislacaoemercados.capitalaberto.com.br/cvm-esclarece-atuacao-com-criptoativos/>



## New Reference Form demands companies' attention on ESG, climate and diversity aspects

On December 22, 2021, CVM published Resolution 59 (“[RCVM 59](#)”) to reframe the structure of the reference form (*Formulário de Referência*). The new reference form presented a substantial structure improvement, which is simpler and reduced the amount of information that must be disclosed by listed companies.

On the other hand, the new reference form requires the disclosure of information related to environmental, social and governance (ESG) aspects, social diversity in the company’s management team and comparative employee payment. It is worth mentioning that RCVM 59 adopted the “comply or explain” approach, already used in the Corporate Governance Report, for the disclosure of some information regarding ESG aspects.

The new reference form modifications follow global standards of information disclosure adopted by listed companies, reflect new interests of investors, and encourage initiatives implementation, in addition to reducing operational costs related to complying with regulatory obligations. The new simplified version of the reference form comes into force on January 2, 2023.

We contributed on this subject in an article published in the *Legislação & Mercado* section of *Capital Aberto* on November 09, 2022, which can be accessed in Portuguese through the link below:

<https://legislacaoemercados.capitalaberto.com.br/novo-formulario-de-referencia-demanda-atencao/>



## CVM softens rules for small sized companies

CVM Resolutions 166 and 168 brought more flexibility to publications required by law and to the composition of top management in small sized companies, whose definition is established in article 294-B of Law 6.404/76 (“Brazilian Corporate Law”) and applies to companies with gross revenues of less than 500 million Brazilian Reais in the last fiscal year.

Published on September 1st of this year, Resolution 166 allows small sized companies to make legal publications through the Empresas.NET or Fundos.NET systems, in order to reduce costs.

Resolution 168, published on September 20, was created to regulate changes made by Law No. 14.195/2021 to the Brazilian Corporate Law, which aimed, among other

goals, to make it easier to open a company and to reduce corporate bureaucracy. The resolution allows the same professional to accumulate the position of chairman of the board of directors and the position of chief executive officer (or main executive) of a company.

With the flexibility introduced by both resolutions, more companies are expected to list themselves.

We contributed on this subject in an article published in the Legislação & Mercado section of Capital Aberto on November 15, 2022, which can be accessed in Portuguese through the link bellow:

<https://legislacaoemercados.capitalaberto.com.br/companhias-de-menor-porte-contam-com-flexibilizacoes/>