

CVM acquits defendants accused of fraud in transaction to acquire control of a publicly held company

The Brazilian Securities and Exchange Commission (“CVM”) unanimously decided to acquit shareholders of a publicly held company (“Company”) from charges related to alleged fraudulent practices arising from a transaction that guaranteed control of the Company to one of the shareholders.

The shareholders were accused of colluding to transfer control of the Company to one of its shareholders, through buying and selling ordinary shares directly on the stock exchange, in order to appear that an original acquisition of control had occurred. This was done to avoid triggering protective measures and the obligation to carry out a public tender offer (“Tender Offer”), as stipulated in the Bylaws of the Company. To this end, the accusation was based on the premise that part of the shareholders held control.


CVM concluded that there was not enough evidence to prove that part of the shareholders accused of holding control could have fraudulently alienated it. In summary, CVM relied on four main reasons to support this understanding.

Firstly, one of the shareholders did not have the majority of votes in shareholders’ meetings, nor the power to elect the majority of the managers, in addition to evidence of lack of alignment among such shareholders.

Secondly, both the information on the sale of shares held by one of the relevant shareholders and the notifications of the shareholders acquiring stake in the Company informing about their interest in participating in its management, were public.

Thirdly, the buying and selling of shares were conducted on the stock exchange and, therefore, subject to the interference of third parties.

And **fourthly**, within the context of increasing the Company’s share capital, the acquiring shareholder chose to subscribe to a large number of shares issued by the Company, while the other shareholders chose not to subscribe to new shares.



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In this context, CVM dismissed the need to hold a mandatory Tender Offer, since the acquisition of control in question did not result from a transfer of control by other shareholders, as required by the Brazilian Corporate Law (Law 6.404/76) and suggested by the accusation.

CVM Sanctioning Administrative Proceeding No. 19957.011669/2017-11, and more information can be accessed in Portuguese through the link below:

https://www.gov.br/cvm/pt-br/assuntos/noticias/anexos/2023/20230919_pas_cvm_19957_011669_2017_11_diretor_otto_lobo_voto.pdf



Google Trends helps identify errors or fraud in financial statements of Publicly Traded Companies

Google developed the Google Trends platform as a free research tool capable of identifying the popularity of a search term on Google itself and also monitoring in real-time consumers' online searches for retail products.

Thus, based on the analysis of data collected by Google Trends, researchers from the UCLA Anderson School of Management conducted a study in which they examined the relationship between data on the presence of 1,900 publicly traded companies on Google Trends and the revenues reported in their respective financial reports.

For this purpose, the study analyzed year-over-year variations in the quarterly search volume of products from the analyzed companies and the increase in their sales. Companies categorized as "Low Search-High Revenue Companies" (MUP Companies) were identified as having a 165% higher likelihood of subsequently correcting their sales data. Thus, the study concluded that discrepancies between these metrics could indicate inaccuracies in the accounting data or even fraudulent practices by the companies.


In this sense, the research presented examples of retailers with financial difficulties, whose decrease in searches on Google Trends did not match the increases in revenues disclosed in the financial statements, indicating possible irregularities.

The research was also covered by the Wall Street Journal, which highlighted the utility of the metrics used by Google Trends for day traders and other investors to determine how much they should trust the financial reports of the companies. Furthermore, the Journal emphasized that the MUP metric, in particular, could even assist the United States Securities and Exchange Commission (SEC), auditors, and other interested parties in identifying fraudulent reports and data.

More information can be accessed through the link below:

<https://capitalaberto.com.br/temas/companhias-abertas-temas/google-trends-ajuda-a-identificar-erros-ou-fraudes-em-balancos/>

<https://anderson-review.ucla.edu/wp-content/uploads/2023/11/Teoh-Google-RevMngmt.pdf>



Request for Suspension of Public Tender Offer for Acquisition of Shares due to alleged inconsistencies in the Appraisal Report is denied by CVM

An asset manager requested the Brazilian Securities and Exchange Commission (“CVM”), on behalf of the funds under its management, to halt a public tender offer for the acquisition of shares (“OPA”) due to an increase in stake made by a company in which the managed funds were shareholders.

The request was based, in essence, on the allegation that the appraisal report presented in the context of the OPA did not reflect the fair value of the company, as it was produced based on “*assumptions and projections provided by the Company that are blatantly contradictory and inconsistent, leading to a substantial devaluation of the evaluated entity*”.

In response to the request, the Technical Area (SRE) concluded, in summary, that it did not identify technical or material errors in the appraisal report that should lead to the requested suspension of the OPA, as it was not within the CVM’s purview to judge the selection of assumptions

used in an appraisal report. Shareholders who disagree with the assumptions used in an evaluation of the company subject to the OPA, if they hold more than 10% of the company’s issued shares, should submit a request to the administrators of that company, including evidence that, in their view, demonstrates a flaw or inaccuracy in the appraisal report of that company, requesting that the said administrators convene the special assembly provided for in article 4-A of the Brazilian Corporations Law.

The asset manager appealed to the Collegiate Body of the CVM, which unanimously followed the technical area’s understanding and deliberated against granting the appeal, confirming the understanding that the OPA, whose auction was already scheduled, should not be suspended.

More information about the process can be accessed through the link below:

[PROC. 19957.004081/2023-41 \(cvm.gov.br\)](https://www.cvm.gov.br/proc/19957.004081/2023-41)



CVM releases new regulation on the disclosure of information related to diversity and inclusion support practices by publicly traded companies

On February 1, 2024, the Brazilian Securities and Exchange Commission (“CVM”) published Resolution CVM No. 198 (“Resolution CVM 198”), which makes specific adjustments to Resolution CVM No. 80 of March 29, 2022 (“Resolution CVM 80”), to add a section dedicated to disclosing information about the contingent of persons with disabilities (“PwD”) in the Reference Forms (“RF”) of publicly traded companies. This measure aims to expand the set of information provided about diversity in management bodies and human resources departments of publicly traded companies, aligning with CVM’s commitment to promoting an increasingly diverse and inclusive environment in the Brazilian capital market.

Companies can start providing this information immediately, if they wish, however, the detailing about PwD will only be mandatory as of January 2, 2025, to allow for the necessary operational adjustments for the inclusion of this information in the RFs for 2024.

In addition to this specific change, Resolution CVM 198 introduces modifications to the footnotes of the RF that will be effective as of March 1, 2024. These modifications aim to simplify the provision of information by companies applying for registration with the CVM, provided they are not simultaneously conducting a public offering of securities. As a result, companies will be able to present information regarding the last three fiscal years ended and the financial statements of the last fiscal year, without the need to provide information about the current fiscal year and about the accounting information disclosed after the end of the fiscal year..

To access the full text of CVM Resolution No. 198, dated January 31, 2024, simply follow the link below: <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/resolucoes/anexos/100/resol198.pdf>