

10 ANOS carneiro de oliveira

EXCELÊNCIA QUE CONECTA PESSOAS,
NEGÓCIOS E RESULTADOS

October is a special month for us: Carneiro de Oliveira Advogados celebrates 10 years of history.

A journey that began with the courage and vision of our two founding partners, Gyedre Palma Carneiro de Oliveira and Érika Aguiar Carvalho Fleck, and was strengthened with the arrival of Gabriela Saad Kriech and our team, further enhancing our practice and expanding our horizons.

If today we celebrate a decade, it is because our team has built, with dedication, technical excellence, and close

relationships with our clients, a firm whose essence is trust, ethics, and the constant pursuit of innovative legal solutions.

Throughout this month, we will share more about our story, our achievements, and the bonds that have marked this journey. Because 10 years are not celebrated in a single day, but in every step, every partnership, and every challenge overcome.

Thank you to everyone who has been, and continues to be, part of this journey!



CVM Decision Overturned by Judiciary

In 2016, the Brazilian Securities and Exchange Commission (CVM) sanctioned two former board members of a listed company, imposing fines for insider trading. According to CVM, they allegedly sold company shares shortly before the disclosure of material facts that led to a sharp drop in the stock price. Both individuals paid the fines but, in addition to filing administrative appeals, brought a lawsuit before the Federal Regional Court of the 2nd Region (TRF2) seeking to overturn the decision.

The defense of the former board members focused on two main arguments: (i) whether they had indeed used information obtained through their positions to trade on the basis of material non-public information; and (ii) whether CVM's administrative enforcement proceeding had complied with all legal and evidentiary requirements, particularly in light of the claim that the alleged insider trading was secondary.

CVM, in turn, argued that the judicial action violated the principle of separation of powers, as it sought to review a technical decision rendered by

it. The judges, however, dismissed this argument, clarifying that the purpose was not to replace CVM's technical assessment, but rather examining the legality of the proceeding, the rationality of the reasoning, and the evidentiary support for the sanction.

In this regard, Federal Judge Fabricio Fernandes de Castro stated that even though the actions of regulatory agencies are technical in nature, they remain fully subject to the rule of law. Their acts, especially punitive ones, must comply with the principles of legality, due process, reasoned decision-making, and burden of proof. In such cases, judicial review legitimately extends to the rationality of CVM's board reasoning and the evidentiary coherence of its conclusions.

CVM often faces challenges in proving insider trading. In recent decisions, has sought to weigh both incriminating and exculpatory indicators to reconstruct the alleged conduct. In this particular case, the conviction was grounded on: (i) content of recorded phone conversations; (ii) the significant volume of trades carried out before the disclosure



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of the event; (iii) the economic gains achieved; (iv) the urgency in placing sell orders; and (v) the defendants' trading history, given that they were not frequent market participants.

The Court, however, found the evidence insufficient. It emphasized that the former board members were industry experts and, by selling only part of their holdings rather than liquidating their entire position, demonstrated uncertainty about the outcome of the ongoing operation.

Moreover, the recorded conversations suggested that the decision to sell stemmed from a perceived risk associated with the deal, rather than from privileged information. The conversations even referenced an intention to repurchase shares later on.

In light of the above, TRF2 annulled the CVM's sanction, concluding that insider trading was not substantiated.

It should be noted that CVM Resolution No. 44, of August 23, 2022, currently governs the matter. Article 13, paragraph 1, item IV, establishes a

presumption that securities trades carried out by former officers or directors within three months of leaving office are based on material non-public information.

The full opinion is available in Portuguese at the following link: https://eproc-consulta.trf2.jus.br/eproc/controlador.php?acao=acessar_documento_publico&doc=21755095666150417799914350767&evento=21755095666150417799914359214&key=1d8b-9c4ed96d43c435465892a8438a0bbdfcf7c6c-0717d4dbe15c230b82400d3&hash=f986eac4ea-4c35765da33fb004320762

The summary of the judgment (headnote) is available in Portuguese at the following link: https://eproc-consulta.trf2.jus.br/eproc/controlador.php?acao=acessar_documento_publico&doc=21755095666150417799914340535&evento=21755095666150417799914359214&key=-794736d0a92385add4fe393afdbbd638ecbb2a-66300d3bbfeb6e0cb5a27af000&hash=a187ba-409626790dea63bc3e700cadb9



Public Consultation on Proposed Amendments to Rules on Share Buybacks

On September 17, 2025, CVM launched a public consultation to discuss potential amendments to CVM Resolution No. 77, dated March 29, 2022 ("RCVM 77"), which governs share repurchases by publicly held companies.

This initiative is part of CVM's 2025 Regulatory Agenda and is based on the Regulatory Impact Analysis carried out in 2017, titled "Impacts of Share Buybacks on Long-Term Market Liquidity", in addition to benchmarking against international standards and feedback from a prior public hearing.

The proposed amendments of RCVM 77 aims to introduce the following improvements:

- **Rules to mitigate market distortions:** companies will be required to comply with specific criteria regarding price, volume, and timing whenever conducting daily share repurchases in organized markets;

- **Preservation of a minimum free float:** share buybacks that would result in less than 15% of each class or type of shares remaining in free float will be prohibited;
- **Limit on treasury shares:** the cap on the maintenance of treasury shares will be increased from 10% to 12% of the company's capital stock, in line with the revised definition of "free float" and in accordance with CVM Resolutions Nos. 80 and 215;
- **Alternative mechanism through a tender offer:** CVM proposes allowing the use of a tender offer as an alternative repurchase mechanism, in which case certain restrictions would not apply.

The public consultation period ends on November 17, 2025, and the official notice can be accessed in Portuguese through the following link: https://conteudo.cvm.gov.br/export/sites/cvm/audiencias_publicas/ap_sdm/anexos/2025/Edital_de_Consulta_Publica_SDM_04_2025.pdf