

CVM REVISES ONCE AGAIN THE CONCEPT OF REAL ESTATE CREDIT

07 FEBRUARY 2018

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On January 16, the Board of the Brazilian Securities and Exchange Commission (CVM) admitted, via a decision of a majority of its members (3x2), that "Private Loan Agreements with a Fiduciary Sale of Real Property as Collateral" may back up issuances of Certificates of Real Estate Receivables (CRI).

This decision was a result of an appeal against the demands made by the technical area of the authority in the process of registration of a public offering of distribution of CRIs of the 62nd and 63rd series of the first issuance of Barigui Securitizadora S.A., in which it sought to use financing agreements with real property as collateral (home equity) backing the CRIs.

Diverging from the technical area, directors Pablo Renteria, Henrique Machado, and Gustavo Gonzalez admitted that "loans to an individual with combined fiduciary sale of real property constitutes a real estate credit at its origin, since the owners take economic advantage of their property through the granting of the real property as collateral in order to obtain funds at reduced costs."

Although it was not decisive for the directors to classify the respective credit as a real estate credit in nature, the fact that the originator of the credit was a mortgage company, and therefore a member of the Real Estate Finance System, corroborated the understanding.

In the minority votes, the chairman of the CVM, Marcelo Barbosa, and director Gustavo Borba were against the understanding of the majority and stressed that the extension intended should only be made if allowed by regulations, on which occasion all aspects involved could be weighed more systematically.

Considering that Law No. 9,514/1997 did not define the concept of a real estate credit, it is up to the CVM, through its regulations and administrative decisions, and to market agents, in seeking guidance from the authorities, to jointly construct the parameters that will confer more and more certainty and security to the definition of this type of credit.

This decision, coupled with other recent decisions by the CVM, which even modified until then more restrictive understandings, will certainly act as catalysts for new issuances of CRIs and for the consequent development of the real estate securitization market in 2018.

