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AMENDMENT TO CVM INSTRUCTION 391/03 BY CVM IN ORDER TO FOSTER INVESTMENT IN SMALL-SIZED COMPANIES, by Guilherme B. Malouf eand João Guilherme Soggio G. de Oliveira

The Brazilian Securities Commission (CVM) disclosed, on November 27, CVM Instruction No. 540, amending some provisions of CVM Instruction No. 391, dated July 16, 2003, with respect to the operation of investment funds in equity (FIPs).

CORPORATE - Guilherme B. Malouf eand João Guilherme Soggio G. de Oliveira

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The Brazilian Securities Commission (CVM) disclosed, on November 27, CVM Instruction No. 540, amending some provisions of CVM Instruction No. 391, dated July 16, 2003, with respect to the operation of investment funds in equity (FIPs).

According to the previous wording of ICVM 391, FIP was required to participate in the decision-making process of investees and effectively influence the determination of the strategic policy and management thereof. Such participation would mainly occur through the appointment of members of the Board of Directors or, also, holding shares comprising the respective controlling block, through the execution of a shareholders' agreement or the adjustment to the corporate purpose. FIP investment in such companies should represent 90% of FIP's shareholders equity, subject to some exceptions.

Upon the issuance of ICVM 540, the rules requiring FIP to influence the determination of the strategic policy and management of investees may not be mandatory, provided that according to the following conditions:

(i) the investees must be listed in a securities special trading segment instituted by a stock exchange or organized over-the-counter market, directed to Access market and ensuring, through contractual bond, corporate governance standards more strict than those required by law; and

(ii) FIP investment, in such investees, shall be subject to the limit of 35% of FIP's shareholders' equity.

In practice, 35% percentage – calculated on FIP's shareholders equity – does not represent broad flexibility so that FIP

may invest in such companies without holding the required governance practice, especially in the beginning of the investment period (in other words, if FIP initially invests in an access market company, a portion close to 100% of FIP's shareholders' equity will be represented by such investment). Another situation to be looked at is the 35% limit that is calculated on FIP's subscribed capital stock.

Also note that the abovementioned limit may be increased to 100% during the funds' investment term, established up to six months counted from each event of the payment of quotas set forth in FIP's investment commitments. After FIP's quotas are paid up, the manager may allocate up to 100% of FIP's shareholder equity to access market companies; provided, however, that it must, within six months, for the reclassification of FIP: (i) provide for the divestiture in such companies and invest such fund in other companies ensuring the governance required pursuant to ICVM 391, or (ii) obtain the required governance in access market companies.

CVM 540 also provided for that, during the divestiture period in access market companies, FIP shall no longer be required to comply with the influence requirement for the definition of strategic policy and management of the respective company, which shall make the divestiture process easier. Such flexibility could have been applied to all companies comprising FIP's portfolio. However, CVM chose to leave such matter to be discussed in a broader reform though which ICVM 391 will undergo soon.

Finally, the new ICVM 540 sets forth that, is FIP is not in accordance with the abovementioned percentages, the manager must immediately inform CVM with the proper justification and provide the reclassification estimate, and it must later inform the reclassification of the fund's portfolio when it occurs.

CORPORATE – Daniela Ayres

The senate receives a project for a new Trading Code

The jurist commission responsible for the preparation of the preliminary draft of the new Trading Code submitted the final report to the Senate last November. The project will be forwarded to Senate's Board, after which the

procedure thereof shall commence.

The new Code, which was prepared based on draft law created by Deputy Vicente Cândido in order to regulate trading law autonomously, would place the space left by the former Code from 1850, revoked on 2002. Since then, the matter is treated by the Brazilian Civil Code and by sparse laws.

The draft Law sets forth rules for matters such as the accounting regime, bankruptcy, judicial recovery, companies' legalization and registration, corporate bonds, e-commerce, regulation of the activity of shopping malls. The code also aims at promoting changes to current corporate formats, the creation of new contractual formats and the institution of specialized courts in resolution of corporate litigations.

If approved, the new Code will be divided into tem Books: Trading Law, Businessman Person, Assets and Businessman Activities, Corporate Legal Events, Corporations, Businessman Obligations, Agribusiness, Sea Trading Law, Corporate Process and Final and Transitory Provisions.

The commission works were commenced on May 7, 2013, and the preliminary draft wording was submitted to public consultations from September and October 2013. The discussions about the project, however, must be extended to the Brazilian Congress: jurists and legislators have not reached a consensus about the convenience of instituting a new trading code and about the wording provided by the commission.

TAX – Patricia Araujo Nunes Dutra

Taxpayer´s mistake and the pursue of material accuracy

Currently, most taxes are subject to entry upon approval regime, which is based on the declaration of the liabilities, and the taxpayer is also attributed with compliance with several ancillary obligations, such as the delivery of DCTF which is an acknowledgment of indebtedness, as well as the Offsetting Declaration. Pursuant to article 147, paragraph 1, of the Brazilian Tax Code, the possibility to rectify the declaration by the taxpayer itself aiming at the reduction or exclusion of the tax is only allowed upon evidence of mistake and before the entry is notified.

However, although the taxpayer is not allowed to rectify its declaration after the entry is notified, this does not prevent such taxpayer to demand the cancellation thereof, otherwise tax authorities would be benefiting from a mistake made by the taxpayer.

In this regard, the Judiciary Branch has been acknowledging the possibility of the taxpayer to evidence, for example, through Motions to Stay Execution, that the declaration was delivered with a mistake and that the debts were mistakenly declared: one, due to the fact they do not exist; two, due to the fact that the triggering event of such tax has not occurred, or also, three, due to a mistake in the quantifying thereof. In addition, Brazilian Constitution, in article 5, XXXV, sets forth that the law shall not exempt the Judiciary Branch from the verification of harm to rights.

In addition, the pursue of material accuracy must always be privileged in connection the taxpayer's condition, provided that a potential filling mistake of the Declaration or Offsetting Request cannot, by itself, restrict the taxpayer's right, attributing to such taxpayer an inexistent debt.

Upon duly evidence of filling mistake of the declaration, the entry made by the tax authority and the active debt shall not prevail, under penalty of unjust enrichment of Tax Authorities.

However, at least at a first sight, the acknowledgment of inexistence of debt at Motions to Stay would not exempt the taxpayer from liens related to payment of fees, provided that a mistake by the taxpayer caused the registration of active debt and the respective filing of tax foreclosure.