



Newsletter

INVESTMENT FUNDS AND STRUCTURED FINANCE

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Our Investment Funds and Structured Finance newsletter brings together information on recent administrative acts, regulation, news and legal texts related to the investment funds and capital markets sector in Brazil. This newsletter is for informative purposes only and does not constitute a legal opinion for any specific operation or business. For more information and specific legal advice, please contact our team.

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INVESTMENT FUNDS AND CAPITAL MARKETS PRACTICES PARTNERS

[João Paulo Minetto](#), [Leticia Galdino Wanderley](#), [Thiago Giantomassi](#)

DEMAREST

Incidence and payment of bonds and securities market oversight fees

The Securities Registration Department (“SRE”) of the Brazilian Securities and Exchange Commission (“CVM”) published, on January 14, Circular CVM/SRE 1/2022, which advises securities issuers/offering companies and intermediaries regarding the incidence and payment of bonds and securities market oversight fees, provided for in Law 7,940 and Provisional Decree No. 1,072.

The Circular clarifies topics such as tax rates, tax bases, methods for payment of fees and course of action for primary and secondary offerings. The document also gathers information on: (i) Registered Offerings; (ii) Restricted Offerings; and (iii) Offerings not subject to Registration.

To find out more, access [official Letter CVM/SRE 1/2022](#).

Suspensive effect of the decision made by the CVM Board of Commissioners regarding the distribution of earnings for a real estate investment fund

On January 31, 2022, CVM’s Board of Commissioners received a claim for suspensive effect of its decision in regard to partial grant of appeal involving topics related to the distribution of earnings for a real estate investment fund.

The aforementioned claim, sought by the trustee of the Real Estate Investment Fund affected, was granted by the CVM Board of Commissioners. Therefore, the effects of the decision **are suspended**.

The request for reconsideration was filed on February 22.

To find out more, please access the [Board of Commissioners Meeting Minutes No. 51, on December 21, 2021](#).

Clarifications regarding the Board's decision of December 21, 2021, concerning the distribution of earnings by real estate investment funds

In the Board of Commissioners Meeting Minutes No. 51, on December 21, 2021, the CVM Board of Commissioners decided to grant partial appeal regarding topics related to the distribution of earnings for a real estate investment fund. The CVM clarified that, although the aforementioned decision had involved a specific case, the opinion stated could apply to other real estate investment funds.

Real estate investment funds are entitled to, at their own discretion, define the amounts to be distributed among the shareholders, based on the Board’s decision. Nevertheless, each fund’s financial statement must appropriately reflect the segregation of earnings and amortization of capital, regarding the amounts distributed.

CVM waives registration for non-resident natural individuals

On February 07, 2022, CVM publicized Resolution CVM No. 64, which the main objective was to exempt non-resident natural individuals who are investors in Brazil, and who hold interest in investing in the country's financial market and capitals market, from completing a specific registration with the Agency.

Resolution CVM No. 64 establishes that data from investors must be accessible only through an electronic system provided by CVM or another organized market administrative entity. Such measure aims at enabling non-resident natural individuals who are investors in Brazil to attain their own operational code (NRI code) and Individual Taxpayer Identification Number ("CPF").

Resolution CVM 64 will come into force on May 02, 2022.

To find out more, please access [Resolution CVM No. 64](#).

B3 opens the door to new categories of BDRs, ETFs and Listed Funds

As of January 31, 2022, B3 allowed the listing of eight new types of funds. Such funds diversify the local and international markets even further for Brazilian investors. The new fund listings include Currency Exchange Traded Funds ("ETFs"), Fixed Income Brazilian Depositary Receipts ("BDRs") of ETFs, and Variable-Income Multimarket Investment Funds ("FIM RV"). The full list also includes

Currency BDR of ETFs, International Fixed-Income ETFs, Fixed Income Investment Funds ("FI RF"), Fixed-Income Multimarket Investment Funds ("FIM RF") and Infrastructure Multimarket Investment Funds ("FIM INFRA").

New version of Code of Certification introduces changes to FIP and CGE Certification Rules

The Brazilian Association of Financial and Capital Market Entities ("ANBIMA") published on February 03, 2022, a new version of its [Certification Code](#), which was the subject of a public hearing this year. The updated version includes adjustments to the text to be in compliance with the amendments introduced through the inclusion of the Share Investment Fund (FIP) Annex to the [Third-Party Asset Management Code](#), which came into force on March 02, 2022.

The new version of the Code of Certification also came into force as of March 02, 2022. In addition, two other documents were also updated: "[Rules and Procedures for Definition of Structured Funds](#)" and "[Rules and Procedures for Exemption from Certification Exam](#)". While the first includes the FIP in the list of self-regulated products in the Code of Certification, the latter advises institutions on how to file for exemption from taking the Managers Certification for Structured Funds ("CGE") exam, should they be able to corroborate their employees' expertise in managing FIP resources.

Information Reporting regime of investment funds regulated by Instruction CVM 555

On February 17, 2022, the CVM launched a study regarding the information reporting regime of investment funds regulated by Instruction CVM 555 (stock funds, fixed income, multimarket or foreign exchange funds).

The study aims to contribute to CVM's Economic Analysis and Risk Management Advisory Office ("ASA") in their studies on the topic abovementioned.

To find out more, please access the study [here](#) (available only in Portuguese)

Continuous sharing of information in order to prevent money laundering, terrorism financing and the proliferation of weapons of mass destruction (PLD/FTP)

On January 31, 2022, the CVM Superintendencies of Institutional Investor Relations ("SIN") and Market Relations and Intermediaries ("SMI") published Circular CVM/SIN/SMI 01/2022, which provides guidelines to be adopted by CVM regulators regarding the implementation policies, mechanisms and controls to prevent and combat corruption, money-laundering, terrorism financing and proliferation of weapons of mass destruction ("PLD/FTP").

As stipulated in the guidelines introduced in the Circular, technical departments highlight the absolute importance of sharing the data of the shareholders among investment fund service providers, aiming to avert the occurrence of illicit practices mentioned above.

To find out more, please access [Official Letter CVM/SIN/SMI 01/22](#).

Appeal against SIN decision in Procedure for Recurring Commnatory Fines¹

Appeals were filed by a Securities Distributor Company (“DTVM”) in the capacity of administrator for a variety of investment funds, against SIN’s decision to impose commnatory fines for late submission of periodic updates, established in art. 59, Item II, of CVM Instruction No. 555/2014, of the Portfolio Composition and Diversification Statement and the Monthly Report of Funds.

Based on a statement issued by the technical department, confirmed by Internal Circular No. 6/2022/CVM/SIN/GIFI, the Board issued a unanimous opinion against the appeal and for the consequent maintenance of the fines imposed.

To find out more, please access the [Technical Department Statement](#).

Petition to grant Supersedeas on Decision of the Board of Commissioners – Distribution of Earnings in Real Estate Investment Funds (“FII”)²

A petition for *supersedeas* (writ for stay of legal proceedings) sought prior to the filing of motion for rehearing by “Administrator” of a Real Estate Investment Fund, in light of the Board’s decision on December 21, 2021 to, by the majority of votes, grant parcial appeal to the Administrator, in accordance with the vote of Director Fernando Caio Galdi:

“(i) provided that the amounts to be distributed by the FII, computed in accordance with sole paragraph, art. 10, Law No. 8,668/1993 and Circular CVM/SIN/SNC/No. 1/2014, in conjunction with provisions of the Bylaws, exceed the amounts of the preceding fiscal year plus retained profit (and/or appropriated retained earnings) of the previous fiscal year, the amount distributed which exceeds the added value of the fiscal year’s profits to the retained profits (and/or appropriated retained earnings) of the previous fiscal year, must be processed as amortization of quotas or capital refund; and

On January 31, 2022, the Administrator filed a petition for *supersedeas*, in accordance with art. 61 of Law No. 9,784/99, claiming that: (i) the Board’s decision on December 21, 2021 could result in negative consequences for the fund shareholders; (ii) the aforementioned decision could result in legal uncertainty for the real estate investment fund market; (iii) implementing the opinion at issue would be impractical, given the regulatory obligations applicable to real estate investment funds; (iv) the Board’s decision on December 21, 2021 would generate risk of needing to retroactively reclassify the earnings that were already previously distributed each month; and (v) there would be no consequential damages arising from granting *supersedeas*, given that the market players would continue to act as they have thus far.

1. PROC. SEI 19957.008129/2021-28
2. PROC. SEI 19957.006102/2020-10

“(ii) there is the possibility, In accordance to the Board’s decision on December 21, 2021, that, if the amount to be distributed by FFIs’ exceed the profit amounts of the preceding fiscal year plus retained profit (and/or appropriated retained earnings) of the previous fiscal year, an assembly can vote for a distribution inferior to the amount calculated in accordance to the sole paragraph, art. 10, Law No. 8,668/1993 and Circular CVM/SIN/SNC/No. 1/2014, combined with the Bylaws regulations.”

Regarding the principal motion, that is, the motion for reconsideration of the Board’s Decision on December 21, 2021, the Administrator claims to have identified obscurity, contradiction and omission, and reports that it will file, within the regulatory deadline, the aforementioned motion together with its reasons in greater detail.

The CVM’s opinion was that immediate compliance with the aforementioned decision may result in operational barriers that would be difficult to surmount in the limited span of time available for the Administrator to fulfill its obligations with the shareholders, and that need to be understood more fully.

The Board also observed that, despite the fact that the decision in question concerns only one investment fund, the number of shareholders part of such fund is high, and there is the potential for repercussions on other real estate investment funds that are in a similar position.

As a result, the President and Directors reached the understanding that the Appellant succeeded in demonstrating that there were grounds for the granting of *supersedeas*.

Lastly, the Board noted that the *supersedeas* granted will cease should the motion for reconsideration fail to be filed within the submission term, as well as if the Board denies the motion for reconsideration and upholds the judgment.

Consideration of Term of Commitment Proposal³

The Board considered a Term of Commitment proposal by the Asset Manager of a Receivable Investment Fund (FIDC), regarding the violation of art. 1, §1, of Brazilian Securities Commission (CVM) Rule No. 444/2006, due to a possible breach of due of diligence, in the terms of art. 92, caput, I, of CVM Rule No. 555/2014, applicable to non-standardized receivable investment funds by virtue of its art. 1, and by virtue of the acceptance, in the Fund's portfolio, of an asset that, in theory, could not be part of it.

By unanimous vote, the Board held to accept the proposed Term of Commitment presented, heeding the opinion of the Term of Commitment Committee.

Appeal against Superintendency of Institutional Investor Relations (“SIN”) ruling - denial of request for accreditation as portfolio manager⁴

This involves an appeal against the ruling of the SIN, which denied the request for accreditation of a company as a securities portfolio manager, based on art. 3, item III, of CVM Resolution 21/2021.

In order to prove compliance with the certification requirement, the Appellant submitted the CGE Certification certificate of the Brazilian Financial and Capital Markets Association (ANBIMA) - the ANBIMA Manager Certificate for Structured Funds-, but did not submit any of the certifications listed in Annex A of CVM Resolution 21/2021, as required in

its article 3, item III. Therefore, the request was denied by the technical area.

In an analysis contained in Internal Letter No. 1/2022/CVM/SIN/GAIN, SIN pointed out that CVM Resolution No. 21/2021 requires, in order to grant accreditation to portfolio managers who are natural persons, that the provisions of art. 3, item III, be complied with as such: "have passed the certification examination referred to in Annex A, whose methodology and content have been previously approved by the CVM". It also added that ANBIMA's CGE certification is not included in the list of examinations accepted by the CVM for purposes of obtaining registration as a securities portfolio manager and that, even though ANBIMA has developed this new examination and now requires this certification from its member institutions, such case cannot be confused with the requirements set forth in CVM Resolution 21/2021 for obtaining the aforementioned registration.

Unanimously, following the technical area's statement issuance, the Board decided not to grant the appeal.

3. PROC. SEI 19957.009826/2019-81

4. PROC. SEI 19957.009952/2021-51

SÃO PAULO

Av. Pedroso de Moraes, 1201
+55 11 3356 1800

RIO DE JANEIRO

Praia do Flamengo, 200 – 15º andar
+55 21 3723 9800

BRASÍLIA

Edifício General Alencastro
SEPS EQ, 702/902 4º andar Bloco B
+55 61 3243 1150

NEW YORK

375 Park Avenue, 36th Floor
+1 212 371 9191



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