



CVM RESOLUTION 215

TENDER OFFERS

DEMAREST

CVM RESOLUTION 215

PUBLIC HEARING CVM SDM
05/23

OBJECTIVES



Alignment with CVM Resolution 160 (Public Distribution Offerings)



Greater simplicity and agility



Turning precedent decisions of CVM's Board of Commissioners into regulation



Reduction of regulatory costs

MAIN AMENDMENTS



All tender offers are subject to registration (ordinary registration vs. automatic registration).



Differentiated quorum in certain delisting tender offers.



Amendment of the regime of the tender offer for increasing participation.



Proposal changed after the PUBLIC HEARING



The resolution now provides for:

- (i) minimum experience of the appraiser; and
- (ii) that the recipients of the offer who previously agree on the offer price are not assumed to be acting in the same interest as the offeror, unless there are other reasons for such a relationship.



Inclusion after the PUBLIC HEARING

Automatic waivers



Auction



In the case of low share dispersion;



When costs are disproportionately high in relation to the value of the tender offer.



Appraisal Report



In cases of adoption of alternative criteria which works as fair value reference.



In the case of unified delisting tender offer and takeover bid, aiming at a significant number of shares; and



In a tender offer that counts with the previous agreement of holders of more than 1/3 of the outstanding shares regarding the price.





Changes in the regime for hiring intermediaries, with the division of functions performed by them into: (i) activities of guaranteeing the settlement of the offer and (ii) other obligations.

CHANGES IN THE GENERAL REGIME OF TENDER OFFERS

GENERAL REGIME OF TENDERS OFFERS - REGISTRATION

Tender offer modalities | No material changes

Mandatory Tenders Offers (MTO)



-  Delisting tender offer/going private;
-  Tender offer due to increase of ownership; and
-  Tag Along tender offer.

ooo **Voluntary Tender Offers**



-  All non-mandatory tender offers (including takeover bids); and
-  Tender offers provided for in listing regulations are considered voluntary.

Types of registration

CVM Resolution 85

-  Mandatory;
-  Exempt, except in exchange tender offers.

CVM Resolution 215

-  Ordinary Registration Procedure for mandatory tender offers;
-  Automatic Registration Procedure for **voluntary** tender offers except in the case of exchange tender offers.

Requirements for the registration of voluntary tender offers



Payment of the registration fee.



Submission of the following documents:



Electronic application form for the tender offer filled out through the registration system available on the CVM website;



Appraisal report, when applicable;



Tender offer instrument;



Copy of the document proving the guarantee offered, if hiring of a guarantor financial institution is exempted



Copy of the intermediation contract;



In the case of a tender offer formulated by the target company itself, by the controlling shareholder or by persons related to it, **the nominal list of all shareholders of the target company**, updated up to 10 days before the registration request, with contact information, and number of shares, in the format provided by the CVM.

If the tender offer is carried out by other agents, the offeror must request the nominal list to the target company after the filing of offer with the CVM, but on the same date of such submission. The target company will have 2 business days to comply with the offeror's request.

RELATED PERSONS

ACTING IN THE SAME INTEREST

CVM Resolution 215 refers, several times throughout the text, to “related persons”, which would be the “natural or legal persons, funds or universality of rights that act together or **representing the same interest** of another person, group of persons, fund or universality of rights”. To clarify such concept, the rule lists situations where “the same interest of another person” is assumed:



I – spouse, partner, ascendant, descendant or collateral up to the 2nd degree;



II – direct or indirect controlling shareholder, or anyone controlled by them or subject to common control with them;



III – anyone who has acquired their control or that of the target company, even under a suspensive condition, or is a prospective buyer or holder of a stock option for the control of the target company, or an intermediary in a transaction for the transfer of such control;



IV – the asset manager in relation to the investment funds managed by it in which it exercises discretionary management of the portfolio; and



V – The executor, judicial administrator or equivalent, in relation to the universality

CVM Resolution 215 also provides for situations in which it is not assumed that they are acting in the same interest:

(i) The target company and its controlling shareholder; and

(ii) Recipients of the tender offer only because they have previously agreed to the price offered (anchoring).





INTERMEDIARIES

FINANCIAL SETTLEMENT GUARANTEE

CVM Resolution 85


The offeror must hire A SINGLE ENTITY, brokerage firm or securities distributor or financial institution with an investment portfolio to:


-  Guarantee the financial settlement of the tender offer and payment of the purchase price, in the event of exercise of the put option, when applicable; and
-  Comply with other obligations involving the intermediation of the tender offer.




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The offeror must hire ONE or MORE entities to:


-  Guarantee the financial settlement of the tender offer and payment of the purchase price, when applicable:


 The entity must necessarily be a financial institution

-  Except in a takeover bid, the hiring of the guarantor may be waived if the offeror, before launching the tender offer:

 Arranges for a deposit in a linked account without its interference; and/or

 Contracts insurance guarantee; and/or

 Presents another solution to the CVM (SRE), which can grant exemption in specific cases.

-  Complies with other obligations involving the intermediation of the tender offer:

 The entity shall be a financial institution or coordinator of public offerings.



Attention

If the offeror chooses to hire only one entity, the entity shall meet all the requirements set out in the rule.

RESEARCH REPORTS

CVM Resolution 85

*"The intermediary of the tender offer and related persons are prohibited from trading securities issued by the target company, as well as **from carrying out research and public reports on the company and the transaction.**"*



Proposal

*The intermediary is prohibited from conducting research and public reports on the target company and the **offer unless the activities related to the tender offer are carried out by other departments of the intermediary and the segregation of activities in relation to the analysis department is ensured.**"*

CVM Resolution 215

Exclusion of the provision in the Resolution regarding research activities concerning tender offers and adjustment in CVM Resolution 20 to prohibit the securities analyst, as well as other professionals who effectively participate in the preparation of the analysis reports, from: (...) V – Participating, directly or indirectly, in any activity related to:



a) public offering for distribution of securities, including (i) efforts to sell a product or service within the scope of the securities market and (ii) efforts to attract new clients or work; and



b) public tender offer.



REQUIREMENTS FOR APPRAISER

CVM Resolution 85

Loss of independence | Currently, the appraiser declares:



Number of securities/derivatives issued by the target company:

- a) held by the appraiser and related persons or
- b) under their discretionary management; and
- c) information that may impact the appraisal report;
- d) that they do not have a conflict of interest that would reduce the independence necessary to perform their duties.



Inclusion after PUBLIC HEARING



Requirements regarding the appraiser's experience:

Preparation, in a professional manner, by the legal entity regularly constituted and registered with the National Register of Legal Entities (CNPJ) or by one of the professionals responsible for preparing the appraisal report, of at least 3 (three) appraisal reports of publicly-held companies opened in the 10 (ten) years prior to the filing of the tender offer with the CVM.

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Loss of independence



Additional list of business information:



consulting, appraisal, auditing services.



Example list of situations of loss of independence:



a) tender offer intermediaries;



b) advisors to the offeror or persons related to the tender offer;



c) persons related to the offeror; and



d) anyone with a financial interest in the outcome of the appraisal or the appraisal or the tender offer.

UPDATE OF THE APPRAISAL REPORT



CVM Resolution 85



Appraisal Update:

The CVM could require the offeror to inform whether the value has undergone significant changes and, if so, may request an update of the report.



Proposal



Update to the report:

The offeror shall, regardless of CVM's order:



i) request an update of the report;



ii) contract the preparation of the appraisal if it has been waived; or



iii) inform the CVM, with justification, that the price has been updated.

If the offeror remains inactive, the CVM may require:



i) that the appraiser update the report; or



ii) that the offeror contract for the preparation of an appraisal report, if one has been waived.



Assumptions:

It is assumed that there has been a significant impact on the previously disclosed value of the target company when disclosing material facts and accounting information.



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Update to the appraisal report:

The offeror shall request an update of the report or its elaboration if it becomes aware of a fact subsequent to the disclosure of the tender offer price that has significantly affected the value of the target company.



Excluded assumptions.

The disclosure of material facts or accounting information are merely indicative elements of significant changes in the value of the company, and it is up to the offeror to update the value if such a change has occurred.



Inclusion of a time limit.

The obligation of updating begins with the submission of the appraisal report to the CVM, or with the application for the registration of the tender offer, if the submission of the appraisal report has been waived, and ends on the day before the date of the auction or the final date of the deadline for adhesion.

AUTOMATIC APPRAISAL REPORT EXEMPTIONS

Purchase or sale price of shares in a legal transaction

Carried out no more than 12 months prior, counting retroactively from the date of the request for registration of the tender offer (proposal placed in PUBLIC HEARING up to 6 months), **and** provided that:



entered into between parties that are not related parties;



involving > 20% of the company's share capital on the date of the transaction; and



not associated with another transaction as a result of which the parties to the transaction or related persons have obtained or will obtain other financial compensation.



This exemption cannot be used if the offeror has knowledge of a fact after the transaction has been completed that significantly affects the value of the target company (inclusion after PUBLIC HEARING).

or

Highest unit price during the 12 months

Highest unit price during the 12 months, counted retroactively, considering the date of request for registration of the tender offer, provided that:



the target company is in compliance with the disclosure of periodic and occasional information;



the shares subject to the tender offer have been traded in at least 95% of the trading sessions (in the proposal placed for PUBLIC HEARING in all trading sessions) of the period considered; and



Average Daily Traded Volume (ADTV) \geq BRL 10 million.

or

Exemptions from the report included after PUBLIC HEARING:

In the case of a delisting tender offer unified with a takeover bid...



If the offer is based on the price that the offeror of the tender offer is willing to pay and the number of shares whose acquisition is necessary for the success of the takeover bid is greater than 20% of the share capital.

If the offer price is based on the price at which shareholders holding more than 1/3 of the outstanding shares have committed to sell such shares in the takeover bid, provided that...



The commitment to sell is not associated with another legal transaction of which the parties involved, or persons related to them, have obtained or will obtain other financial compensation.



It does not rule out the possibility of questioning the appraisal report in cases of delisting!

AUTOMATIC AUCTION WAIVERS

EXEMPTION FROM AUCTION

Tender offer targeting <100 shareholders

Exemption is removed if:



there is buyer interference, communicated by a third party, which must be irrevocable and irreversible;



there is a competing tender offer.

Tender offer aimed at < 1000 shareholders and whose costs necessary to carry out the auction is $\geq 10\%$ of the total value of the tender offer

Interference in the tender offer:



the party interested in interfering in the auction shall notify the CVM (SRE), the offeror and the target company, 10 days in advance, of its intention to interfere in the auction;



As a rule, it is not obliged to interfere, **but is obliged to interfere if the tender offer benefited from the auction exemption.**

CHANGES IN TERMS INVOLVING AUCTIONS



Term for holding the auction

30 days \longrightarrow 20 days



Term for holding the auction in the event of modification of the tender offer

10 business days \longrightarrow 5 business days in the event of an increase in the price of the tender offer

20 business days \longrightarrow 10 business days in other cases



Filing with CVM of the confirmation of the results of the auction by the market managing entity

4 business days \longrightarrow 3 business days



Maximum term for settlement of the tender offer

It can be extended to up to 10 business days from the auction, provided that the reasons for this are described in the tender offer instrument.

CHANGES TO THE GENERAL REGIME OF TENDER OFFERS - PUT OPTIONS

NEW RULES

One-time period of 30 days, presenting changes in the triggering of such obligation, to match the adjustments related to the Tender Offer due to increase of ownership and inclusion of the tag-along tender offer:



Tender offer launched by a controlling shareholder, related person or company, after which less than 15% of shares remain;



Takeover Bid targeting all shares with voting rights:



a) If the takeover bid is successful; or



b) If the takeover bid is not successful but the offeror wishes to acquire the shares through the tender offer.

Delisting tender offer:



if the success quorum is reached, regardless of the percentage of remaining shares, extending to all remaining shares (regardless of type and class of shares).

ADVERTISING MATERIAL

MATCHING WITH THE RULES OF CVM RESOLUTION 160

Alignment with CVM Resolution 160



As of the launch of the tender offer, the use of advertising material is permitted to promote the offer;



Communications do not require prior approval by the SRE, but advertising materials must be sent to the CVM within 1 business day after their use.

REQUEST FOR CONFIDENTIALITY



The request for confidential treatment of information shall include justification, including, under the terms of the Access to Information Law ("LAI"), the reasons why its disclosure may represent a competitive advantage to other economic agents.

At the request of the requesting party, the SRE can treat inquiries regarding tender offers confidentially:



The request shall also contain the justification under the terms of the LAI;



If the target company is not aware of the inquiry and the information escapes control, the requesting party shall notify such company, with a copy to the CVM (SRE and SEP); and



If there is a loss of control, the CVM will treat the inquiry publicly, and it is possible to request the confidentiality of the documents that support it.

ADVERTISING MATERIAL



The confidential treatment shall last for up to 6 months after the CVM's final statement. In the original proposal, placed in PUBLIC HEARING, the suggested period was 3 months.

DELISTING TENDER OFFER/GOING PRIVATE

Tender offer success for delisting / going private



Fair price, based on appraisal report, updated by the Special System for Settlement and Custody (SELIC), except when combined with a takeover bid.



2/3 adhesion: for the delisting tender offer to be successful, the adhesion of 2/3 of the "eligible shares" is required, with exceptions.



If less than 2/3 of the eligible shares adhere (i.e., the successful quorum for delisting has not been reached), the offeror may acquire all shares, without limits, provided that it guarantees that 15% or more of the same class of shares will remain outstanding, with proration if necessary. If it does not guarantee these 15% of outstanding shares, it will have to grant a 30-day put for the same class of outstanding shares.

If qualification does not occur, the quorum is considered met.

Possibility of quorum reduction:



The acceptance quorum is reduced to a simple majority if the free float of the target company is < 5%

Takeover bid unified with the delisting tender offer



It will be possible to combine a takeover bid with a delisting tender offer, provided that such delisting is conditioned on the success of the takeover bid.



Inclusion after PUBLIC HEARING: if there is a controlling shareholder before the tender offers are held, the shares divested by this shareholder in the takeover bid cannot be counted towards the quorum for success of the delisting tender offer.



The put will be for 30 days and is only applicable if the quorum for success of the tender offer is reached. It is applicable to all shares, regardless of class.

SPECIFIC REGIMES FOR TENDER OFFERS

DELISTING TENDER OFFER

What is the fair price in cases with exempted appraisal report?

It depends on the case that allows the use of the report to be exempted:



Price based on legal transaction carried out no more than 12 months prior the filing of the tender offer (observing the requirements of CVM Resolution 215 for such transaction): fair price = the transaction price updated by the SELIC rate;



Price based on the share price: fair price = highest unit price used as a price reference, updated by Selic rate;



Price based on the anchoring of the offer: Fair price = price at which shareholders have committed to divesting shares in the tender offer.

While in CVM Resolution 85 there is no mention of a limitation period for investors to claim squeeze-out amounts (after less than 5% of the share capital remains outstanding).



...with CVM Resolution 215, the deadline for investors to receive/claim the squeeze-out amount is clear: 10 years.

Innovations from CVM Resolution 215: if the same offeror has carried out a takeover bid less than 6 months before the request for registration of the delisting tender offer, the adhesions to the takeover bid may be computed to verify the quorum for success of the delisting tender offer if:



a) The previous tender offer is less than 6 months before the request for registration of the delisting tender offer;



b) The previous tender offer had adhesion of 2/3 of the outstanding shares at the time; and



c) The new tender offer is carried out at the same price adjusted by the SELIC rate.

The calculation of adhesion in tender offers abroad was proposed in the PUBLIC HEARING.



Not included in the final resolution.

TENDER OFFER DUE TO INCREASE OF OWNERSHIP

FINAL RULE

Incidence

When, after acquisition by the controlling shareholder or related person, less than **15%** of shares of the same type and class remain outstanding.



The obligation also applies when new acquisitions by the controlling shareholder occur in a scenario in which outstanding shares were already below 15%.



The obligation does not apply if:



i) the acquisitions are made through tender offers; or



ii) the acquisitions are made directly by the company, e.g., subscription of shares, conversion of securities.

When, after acquisition by the controlling shareholder or related person, less than 15% of shares of the same type and class remain outstanding, an alternative mechanism to the tender offer may be used, namely, the sale of excess participation, which shall occur within 3 months of the acquisition.



Important: after the PUBLIC HEARING, the case of the incidence of the tender offer due to an increase of ownership provided for in the draft was excluded: the case of acquisition by the controlling shareholder or related person, in a fiscal year, of more than 1/6 of the total shares of the same type and class (using the outstanding shares disclosed on the Reference Form 'FRE' of December 31 as a parameter).

Who should carry out the tender offer in the case of a controlling group?

If control is shared by a group of shareholders, the tender offer must be launched by the shareholder who made the acquisition that led to the reduction of the total number of outstanding shares of the same type and class to less than 15%, or, in the scenario in which the percentage of outstanding shares was already below 15%, by the shareholder who made the acquisition of the shares.



TENDER OFFER DUE TO INCREASE OF OWNERSHIP

What is the price of the Tender Offer due to increase of ownership?



1. If an appraisal report has been prepared, the value of the takeover shall be the price indicated in the report updated by SELIC.



2. If the report has been exempted:



a) due to a transaction entered into in the previous 12 months, the value of the tender offer will be the price of the transaction updated by the SELIC rate;



b) due to the use of the quotation as a price reference, the takeover bid price will be the highest unit quotation used as a price reference, updated by the Selic rate;



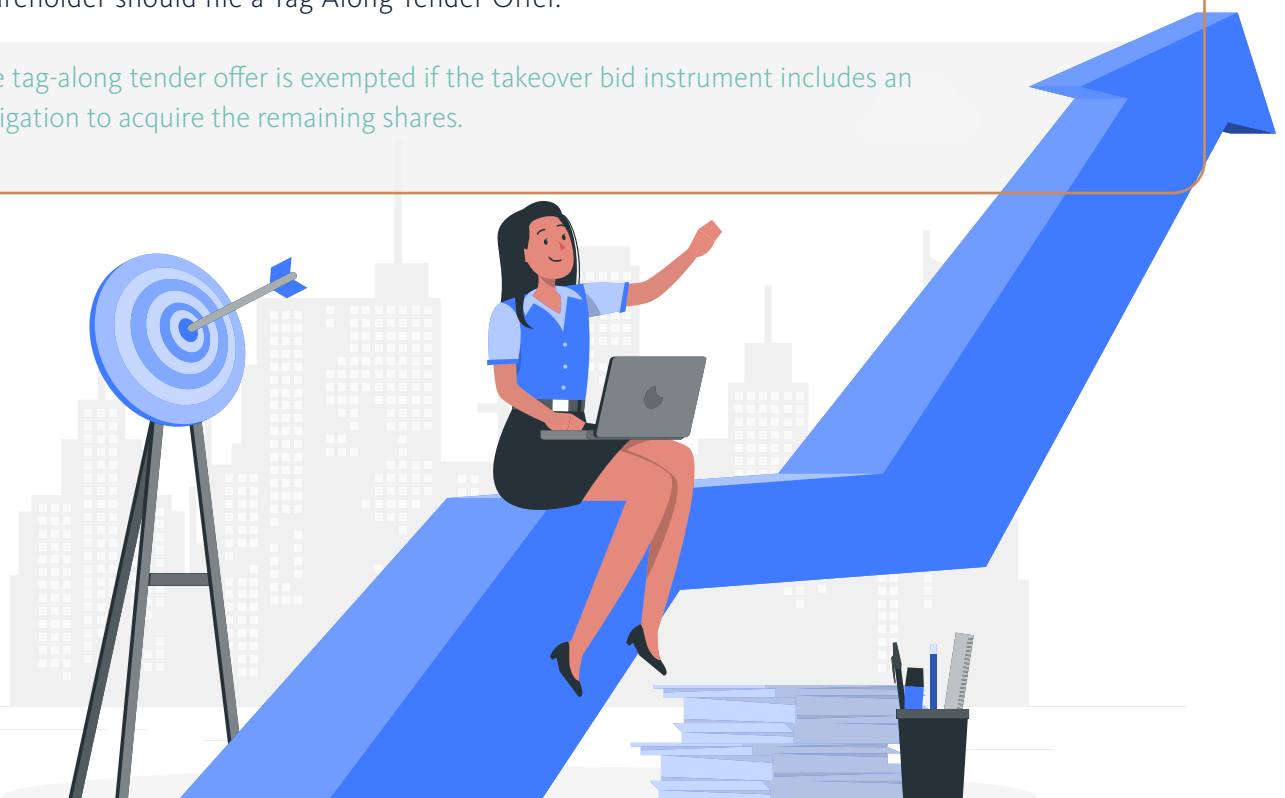
c) due to the commitment of shareholders to sell their shares in the tender offer, the price will be that at which such shareholders have committed to sell their shares in the tender offer.

TAKEOVER BID

Status

In takeover bids, in the case that there is a controlling shareholder before the tender offer and this shareholder sells shares in the takeover bid to give rise to the sale of control, the new controlling shareholder should file a Tag Along Tender Offer.

The tag-along tender offer is exempted if the takeover bid instrument includes an obligation to acquire the remaining shares.



TAKEOVER BIDS

DISCLOSURE OF INFORMATION IN A TAKEOVER BID

CVM RESOLUTION 85



During the takeover bid period for the acquisition of control, any person or group of persons acting together or representing the same interest who **have participation greater than 2.5%** shall report **any increase or reduction in their stake by more than 1%.**

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During the period of the takeover bid, any person or group of persons acting together or representing the same interest shall report any increase or reduction in their stake that leads to it **exceeding 5%, 6%, 7%, etc.**

TAG-ALONG TENDER OFFER

CVM RESOLUTION 85



Registration of the tag-along tender offer implies authorization for the sale of control, provided that the takeover is carried out under the approved terms and regulatory deadlines.

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Rejection of the tender offer implies non-authorization for the sale of control of the shares.



If the tender offer is rejected, the Company shall take the necessary steps regarding the ownership of shares, political rights to exercise control, etc.



The dates of payments to the selling controlling shareholder shall comply with the dates on which he received such amounts.



Inclusion of the obligation to transcribe the clauses of the purchase and sale agreement for control that refer to the price and form of payment, including future and uncertain installments.

Extra!

The PUBLIC HEARING Notice proposed the inclusion, in the tender offer instrument, of information on the tax treatment of the sale of shares by the shareholder in the tender offer. The information should include: applicable taxes, the applicable rate, the calculation basis, the legal basis for collection and any exemptions.

This proposal was not included in the final Resolution.

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