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CVM PUBLISHES NEW RULE REGARDING DISCLOSURE OF INFORMATION ON MATERIAL ACT OR FACT AND SECURITIES TRADING

On August 23, 2021, CVM Resolution nº 44 was published in the Official Gazette of the Federal Executive, which provides for the disclosure of information on a material act or fact, the trading of securities pending the disclosure of a material act or fact and disclosure of information on the trading of securities. The Resolution will enter into force on September 1, 2021 and replaced CVM Instruction No. 358/2002 that previously regulated this matter.

In addition to formal adjustments that CVM promoted in the context of Decree nº 10.139 of November 28, 2019, the Resolution aligned the current regulation with CVM's jurisprudence concerning the analysis of cases involving accusations of misuse of privileged information (insider trading).

The rule introduced a 15-day period of autonomous prohibition (*vedação autônoma*) for trading of securities by direct and indirect controlling shareholders, officers, members of the Board of Directors and Audit Committee, prior to the disclosure of quarterly accounting information and annual financial statements, regardless of their knowledge of the content of such information and the assessment of the existence of relevant information pending disclosure or the intention of trading securities.

For clarification purposes, CVM instruction nº 358 previously provided a restriction period for trading securities prior to the disclosure of the company's quarterly and annual information by the individuals above referred , however, the rule was only addressed for those who were aware of any relevant act or fact.

Furthermore, the rule also loosened criteria for the celebration of individual investment plans which regulate the trading of securities issued by the company between the company and individuals potentially subject to the presumptions described in Article 13 of the Resolution (*i.e.* who have access to privileged information, regardless of the type of relationship or link established with the company) and also formalized the possibility of concluding disinvestment plans. Among the flexibilities, we can mention the reduction of the deadline for the plan, its amendments and cancellations to take effect, from 6 (six) to 3 (three) months and change in the wording of the caput of said Article to expand the concept of those who can enter into such plans.

With respect to that last change, the wording of that Article was previously limited to "direct or indirect controlling shareholders, officers, members of the board of directors, the audit committee and any bodies with technical or advisory functions created by statutory provision and persons who, because of their position, function or role in the company, its parent companies, subsidiaries or affiliates, have access to a relevant act or fact", as there was a tacit

presumption that such persons had access to inside information because of their corporate link with the company.

Now, the rule states that "anyone who has a relationship with a publicly-held company that makes it potentially subject to the presumptions referred to in Article 13, Paragraph 1" may celebrate such plans. The Article extends the possibility of celebrating investment and divestment plans to any person who has a commercial, professional or trust relationship with the company, such as service providers and suppliers in general.

Furthermore, the new wording of Article 13 formalizes certain presumptions that were already considered by CVM in the practical analysis of cases involving the use of privileged information, among them (i) that individuals who traded securities having knowledge of privileged information made use of such information at the time of trading; (ii) that controlling shareholders, direct or indirect, officers, members of the Board of Directors and Audit Committee and the company itself have access to all privileged information not yet disclosed; (iii) that individuals who had access to privileged information not yet disclosed know that it is privileged information; (iv) that officer and directors who terminate their relationship with the company with privileged information will make use of such information in any trade of securities within 3 (three) months after terminating their relationship with the company; and (v) that information regarding judicial reorganization requests and corporate reorganizations in general become relevant from the moment that studies or analysis related to the subject are initiated.

In relation to the information disclosure policy, a final paragraph was included in the Article that regulates the subject, in the sense that the rules on the adoption of disclosure policy only apply to publicly-held companies that, cumulatively: (i) are registered in category A, (ii) have been authorized by a market management entity to trade shares on the stock exchange, and (iii) with respect to those with shares publicly traded, considered the shares of the company, except for the shares of the controlling shareholder, the persons linked to it, the company's officers and those held in treasury.

The normative also brings new presumptions and exceptions related to investment funds in paragraphs 2 and 3 of Article 21

These changes will allow a better interpretation and application of the presumptions and prohibitions set forth in the rule in practical cases faced by CVM.

If you have any questions or need more information and clarifications, please contact us:

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