

NEWSLETTER No. 83

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SUMMARY

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**CVM HOLDS PUBLIC HEARING TO ALTER RULES APPLICABLE TO
INDEPENDENT INVESTMENT AGENTS**

3



CVM HOLDS PUBLIC HEARING TO ALTER RULES APPLICABLE TO INDEPENDENT INVESTMENT AGENTS

On August 12, 2021, the Superintendency of Market Development (SDM) of the Brazilian Securities Commission (CVM) announced Public Hearing SDM 05/2021 ("Announcement"), to elicit comments and suggestions about draft documents: (i) to substitute CVM Resolution 16/2021, which currently regulates the activities of independent investment agents ("Draft A"); and (ii) to alter CVM Resolution 35/2021, which establishes the rules and procedures that must be observed for intermediation of transactions with securities in regulated markets ("Draft B", and together with Draft A, "Drafts").

Among the alterations proposed by the CVM in Draft A, the following stand out:

- (i) Revocation of the obligation of exclusivity in contracts entered into between independent investment agents and brokers: the CVM intends to permit these agents to establish contractual relationships with more than one broker. At present, Art. 18, numeral I, of CVM Resolution 16/2021 forbids this practice, stipulating exclusivity as the rule in all contracts between brokers and independent investment agents;
- (ii) Type of legal entity and composition of the capital of independent investment agencies: Draft A involves modification of the rule according to which independent investment agencies must be established in the form of professional partnerships and composed only of individuals who are registered as independent investment agents (according to Art. 8, numeral II and § 2 of CVM Resolution 16/2021). On the other hand, the proposal maintains the current requirement that the stated business purpose of independent investment agencies shall be exclusively the provision of autonomous investment advice to clients;
- (iii) Rules applicable to independent investment agencies associated with more than one broker and/or that allow persons not registered as independent investment agents to have equity participation: The draft also proposes the application of specific obligations to independent investment agencies associated with more than one broker and/or that allow persons not registered as independent investment agents to participate in their capital. For example, of particular note are the determinations that such independent agencies (a) adopt the forma business enterprises; and (b) establish in writing internal rules, procedures and controls, to assure compliance with the Resolution to be issued based on Draft A; and

- (iv) Investment recommendations made by independent investment agents/agencies: Finally, the CVM intends to establish new requirements that must be observed by independent investment agents/agencies when making investment recommendations inherent to the commercial relationship with clients, namely: (a) always clearly identify their association with brokers; and (b) verify the adequacy of the recommended investment to the client's profile.

As indicated by the CVM at its website, the alterations proposed in Draft A have the aim of making it easier for independent investment agents/agencies: (i) to reach a larger number of potential clients; (ii) to offer a broader range of products; (iii) to contract professionals; and (iv) to raise funds.

Besides this, the CVM wants to obtain feedback from market participants regarding the suitability and opportunity of raising the educational requirement to work as an independent investment agent, increasing this from a high school diploma to a college degree.

Draft B suggests alterations to CVM Resolution 35/2021, specifically regarding the disclosure of information about the remuneration and potential conflicts of interest in intermediation of transactions with securities.

According to the Announcement, the proposed alterations seek to provide more transparency about the incentives of independent investment agents and brokers in carrying out transactions with securities.

The main obligations to disclose information proposed by Draft B are the following:

- (i) Qualitative information related to remuneration: The suggestion is that brokers maintain at their websites qualitative information regarding their remuneration from transactions with securities, such as the fees directly charged from investors, and rebates of fees paid by investors to administrators of investment funds, among others; and
- (ii) Quantitative information related to remuneration: Draft B specifies the disclosure of quantitative information related to the remuneration involved in transactions with securities, to allow investors to have access to material and objective data about the amounts they will be paying. Such information would have to be sent to investors by means of quarterly accounts statements.

Suggestions and comments regarding the Drafts must be sent in writing by September 17, 2021 to the SDM, e-mail address "audpublicaSDM0521@cvm.gov.br".

More information (in Portuguese) as well as the full content of the Announcement and Drafts can be found at the site of the Securities Commission (www.gov.br/cvm).

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