

# NEWSLETTER No. 108

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# SUMMARY

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**CVM DISCLOSES OPINION ABOUT FINANCING OF FOOTBALL CORPORATIONS**

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## CVM DISCLOSES OPINION ABOUT FINANCING OF FOOTBALL CORPORATIONS

On August 21, 2023, the Brazilian Securities Commission (CVM) published Orientation Opinion 41, with the purpose of providing guidance to investors and other market participants about the use of instruments that enable access to the capital markets by so-called Football Corporations (*Sociedades Anônimas do Futebol* - SAFs) ("Opinion").

The corporate type called SAF was introduced in the Brazilian legal system by Law 14,193/2021 ("SAF Law"), which deals with the specific rules on constitution, governance, control, transparency and means of financing the sports activities of SAFs. Law 6,404/1976 ("Law of Corporations") is applied to SAFs in subsidiary character.

The Opinion reflects the interpretation of the CVM about how the SAF Law, Law of Corporations and the regulations already issued by the Commission can be applied harmoniously.

On this particular, the CVM reiterates in the Opinion that SAFs are only subject to the regulations and supervision of the CVM that (i) request registration as a regular corporation; and/or (ii) that want to access the capital market to finance their activities.

Among the main topics covered in the Opinion, the following stand out:

- (i) payment of capital stock in assets: if the payment of the capital stock of a SAF has been carried out by conveyance of assets (such as trademark rights, stadium use rights and economic rights involving professional athletes) and the company wants to access the capital market, the Commission recommends that it adopt the following measures: (a) observe the accounting rules applicable to the capital market as of the constitution of the SAF; and (b) hire independent auditors to evaluate the assets and liabilities transferred to the company;
- (ii) trading of shares issued by SAFs: the SAF Law determines that SAFs must issue only common class A shares, which will be subscribed exclusively by the club or the original legal entity from which it was constituted. This is an exception to the general rule of the Law of Corporations in the sense that that corporations may not issue more than one class of common shares (with the exception of the adoption of plural voting);

In this regard, the CVM clarifies in the Opinion that before (a) any public offering of securities or (b) the granting of registration as an issuer of securities by the CVM, the Commission will analyze the rights granted by the SAF to the common class A shares, and whenever a violation of legislation and/or regulatory rules is identified, the CVM will require amendment of the bylaws as a condition for realizing the public offering or granting the request for registration as an issuer of securities.

Additionally, the CVM clarified that in light of the rules of the SAF Law regarding ownership of class A common shares issued by SAFs, the Commission holds that such

shares may not be sold to third parties. Hence, they will not be admitted for trading on exchanges or over-the-counter markets.

- (iii) power of control and corporate governance: The SAF Law determines that the controlling shareholder of a SAF may not detain a direct or indirect holding in another SAF. In this respect, the CVM recommends that the safes registered with the Commission adopt specific measures and controls to guarantee compliance with that requirement, such as the establishment of periodic declarations of conformity by the shareholders.

According to the SAF Law, any shareholder that owns more than 10% of the voting shares issued by a determined SAF and at the same time owns shares in one or more other safes, will not have the right to speak or vote at the General Meetings of all the safes in which it is a shareholder, and may not participate in the respective administrations.

The CVM further states that despite the referred rule, shareholders will not be prevented from attending General Meetings to accompany the discussions and deliberations, as per art. 125 of the Law of Corporations.

- (iv) football bonds (*debêntures-fut*): The football bonds established by the SAF Law have specific features and may only be issued by SAFs. The CVM reiterated in the Opinion that the SAFs that want to offer football bonds in securities markets must observe the rules of the CVM regarding bonds in general.

In particular, the CVM clarified that as determined by the SAF Law, accelerated maturity of football bonds is not allowed by means of early redemption or advanced settlement, unless future regulations issued by the CVM authorize this.

With regard to repurchase of football bonds, the CVM stated that the rules on repurchase of bonds in general shall apply, as set forth in CVM Resolution 77/2022.

More information, as well as the full text of the Opinion, can be found at the site of the CVM ([www.gov.br/cvm](http://www.gov.br/cvm)).