



CVM publishes guidelines regarding crypto assets considered securities

On October 11, 2022, the Brazilian Securities and Exchange Commission (“CVM”) published Guidance Opinion No. 40 (“Opinion 40”) consolidating its understandings on crypto assets classified as securities. Although technologies involved in crypto assets aren’t subject to CVM regulation and supervision, their issuance and trading as securities, including intermediation services, bookkeeping, custody, centralized deposit, registration, clearing and settlement of transactions, shall comply with its applicable rules.

The Opinion 40 defines crypto assets as digitally represented assets protected by cryptography, which are generally represented by intangible digital securities (tokens). A token will be classified as a security when:

- it is a digital representation of any security provided for in items I to VIII of article No. 2 of Law No. 6.385/1976 (“Capital Markets Law”), or of a receivable certificate, according to Law No. 14.430/2022 (“Securitization Framework”); and/or
- it is a security or collective investment agreement, with public offering, that generates participation, partnership, or remuneration rights, including those resulting from rendering services, whose income comes from efforts of entrepreneurs or third parties, as provided for in item IX of art. 2 of the Capital Markets Law.

To classify tokens and consequently reveal their legal status, CVM adopted a functional criteria, according to which there are three categories:

- 1) Cryptocurrency or Payment token: seeks to replicate functions of currency, notably as a unit of account, means of exchange and store of value;
- 2) Utility token: used to acquire or access certain products or services;
- 3) Asset-backed token: represents one or more assets, tangible or not.

Market players should carefully examine the classification of these types of assets, since the divisions are neither exclusive nor restraining, which means a crypto asset may simultaneously belong to more than one of these categories.

CVM points out that there is still no specific legislation in Brazil on this matter, and, for this reason, Opinion 40 criteria are subject to future amendments, such as those proposed by Bill No. 4.401/2021, whose content involves transactions regarding crypto assets and is currently being analyzed by Brazil’s House of Representatives (Câmara dos Deputados).



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Opinion 40's goal is to enhance transparency regarding crypto assets classified as securities and its disclosure regime. In addition, according to CVM's president, João Pedro Nascimento, Opinion 40 is a recommendation and a guide to the market, whose aim is to ensure greater certainty and security for all, as well as to contribute towards protecting investors and savings of the general public, and to promote a favorable environment for developing crypto economy, with integrity and adherence to relevant constitutional and legal principles.

Opinion No. 40 can be accessed in Portuguese through the link bellow:

<https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/pareceres-orientacao/anexos/Pare040.pdf>



Research shows that values of settlement agreements closed with CVM have increased


According to an article published by the Brazilian newspaper Valor Econômico on October 17, 2022, settlement agreements closed into in administrative sanctioning proceedings by CVM are more expensive since the edition of Law No. 13.506/2017, which provides for the administrative sanctioning proceedings (“PAS”) within the scope of CVM, and amended the Capital Markets Law and CVM Resolution No. 45, 2021 (“RCVM 45”).

The new legislation increased CVM's economic punitive power, whose absolute maximum sum of fines grew from R\$ 500 thousand to R\$ 50 million. As an example of the new sums imposed by CVM, the newspaper points out settlement agreements originated from violations related to disclosure of information. Previously, these agreements costed proponents R\$200 thousand; if adjusted by IPCA (consumer prices index), the sum would be around R\$240 thousand. Currently, however, the cost has been, on average, R\$350 thousand.

The article also found that the execution of terms of commitment is now also more frequent, a practice that is in line with CVM's aim for RCVM 45, which encourages and privileges alternative instruments for resolving irregularities.

The article published by Valor Econômico can be accessed in Portuguese through the link below:

<https://valor.globo.com/financas/noticia/2022/10/17/acordo-com-cvm-fica-mais-carro-diz-levantamento.ghtml>



B3 launches tool to monitor illegal practices of employees or related people who have access to inside information

B3 has added to its services portfolio a tool that allows to investigate and monitor investments of employees and related people who have access to inside information, with the purpose to help listed companies to restrain the practice of criminal use of nonpublic information in the financial market, such as front running and insider trading.

Called “Monitora PIP”, the software provides a broad view of the employee’s investments in B3’ environment, as it checks, on a daily basis, besides the initial and final position of listed company investors, data on day trades and operations with options and derivatives.

The tool is targeted to listed companies, as well as law firms, banks, and consulting firms.

To obtain these data, Monitora PIP uses the employee’s CPF (Brazilian Individual Taxpayer Identification Number), who should be advised on the company’s monitoring system. To avoid undue monitoring of individuals who are not on the list of employees or who are not related people, B3 clarifies that there are regular audits to curb the practice and that the software identifies when a CPF is monitored by more than one company at the same time.