



## Brazilian Securities and Exchange Commission study discusses the exemption from mandatory fiscal council in small and medium-sized companies

The technical area of the Brazilian Securities and Exchange Commission (“CVM”) conducted a study on the possible exemption from appointing a Fiscal Council for small publicly traded companies, i.e., companies with annual gross revenue of up to R\$ 500 million, in order to reduce their regulatory costs. The study took into account the costs and benefits of the Fiscal Council, as well as the representativeness of minority shareholders in the supervision of companies and the comparison with other forms of corporate governance.

Three main alternatives were analyzed: (i) maintaining the current rule on the mandatory appointment of the Fiscal Council through approval at a general meeting; (ii) waiving the mandatory appointment of the Fiscal Council through approval at a general meeting for all small publicly traded companies; and (iii) waiving the mandatory appointment of the Fiscal Council through approval at a general meeting for all small publicly traded companies, provided that minority shareholders have the right to elect at least one member of the Board of Directors.

Based on the results found, the recommendation of CVM's technical area is to apply the waiver of the obligation to appoint the Fiscal Council via general meeting for all small publicly traded companies, as long as the election of a representative of the minority shareholders on the Board of Directors is ensured.

It is important to note that the study indicates that the Fiscal Council can generate benefits in Brazilian companies, given its complementary role with other governance bodies.

Finally, CVM clarified that the suggestions and recommendations made in the study do not have a defined deadline to be implemented or debated through public consultation and further regulation.

The study can be accessed in full through the link below:

<https://www.gov.br/cvm/pt-br/centrais-de-conteudo/publicacoes/estudos/air-conselho-fiscal-2023.pdf>



## Brazilian Securities and Exchange Commission discloses its Sanctioning Activity Report for the first quarter of 2023

On July 7, 2023, CVM published the Sanctioning Activity Report for the first quarter of 2023, which aims at consolidating information on the agency's sanctioning activities arising from its supervision, investigation and inspection activities carried out in the prevention or reduction of infractions in the securities market ("Report").

Article 9 of Law No. 6.385/76 establishes in its items V and VI that CVM is responsible for "investigating, through administrative proceedings, illegal acts and unfair practices of managers, members of the fiscal council and shareholders of publicly traded companies, intermediaries and other market participants " and for the application of the penalties set forth in applicable law against those who committed said illegal acts.

Among the sanctioning information for the first quarter of 2023 provided by the Report, we highlight:

- Administrative sanctioning procedures: CVM decided on 7 administrative proceedings, which resulted in the acquittal of 3 persons and in the sanctioning of 25 others, 22 of whom were sanctioned with fines totaling approximately R\$6.50 million.
- Terms of Commitment: proposals for terms of commitment relating to 20 proceedings, involving 35 persons and indemnification for damages in the total amount of approximately R\$31.80 million, of which 11 were approved by VCM, representing indemnification for damages in the total amount of approximately R\$5.05 million.
- Alert orders: 79 alert orders were issued, with the purpose of informing CVM's regulated entities of irregularities that do not justify the opening of an administrative investigation or the offering of a term of accusation.

In addition, the Report highlights the enactment of CVM Resolutions 178 and 179, which establish a new regulatory framework for the investment advisory activity and the transparency in the remuneration practices in the securities intermediation sector.

More information on the Report can be accessed through the link below:

<https://bit.ly/3KcvY9h>