

CVM INSTRUCTION 89 OF NOVEMBER 8 1988,

AS AMENDED BY CVM INSTRUCTIONS 212/94 AND 261/97

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Provides for the authorization to provide services for the book-entry recording of shares, for the custody of securities, and as issuing agent of certificates.

The Brazilian Securities and Exchange Commission (CVM) announces that the Board, at a meeting held on this date, and in keeping with articles 8 and 24 of Law 6385 of December 7, 1976, and articles 27; 34, par. 2; 41; and 293 of Law 6404 of December 15, 1976, has decided to issue the following Instruction:

PROVISION SECURITIES MARKET SERVICES

Art. 1. - The provision of services for the book-entry recording of shares, for the custody of securities, and as issuing agent of certificates requires authorization from the Brazilian Securities and Exchange Commission (CVM).

Art. 2. - Commercial and investment banks, brokerage and dealer firms, and other equivalent entities and securities exchanges are eligible to provide the services as long as they prove they have the proper technical, operational, and financial capabilities.

OFFICER IN CHARGE

Art. 3. - The Board of Commissioners or, in its absence, the Executive Committee of the applicant institution shall appoint an officer in charge of the department that will carry out

the services dealt with in this Instruction.

AUTHORIZATION

Art. 4. - The authorization application shall be accompanied by the following documents and information:

general description of the system to be used to provide the service, in observance of the pertinent provisions of law and securities market rules and practices;

organizational chart of the department responsible for carrying out the services to be provided;

copy of the minutes of the meeting of the Board of Commissioners or Executive Committee that appointed the officer in charge;

list of the companies in which the financial institution holds an equity interest, including indirectly controlled or affiliated companies (sole paragraph of art. 293 of Law 6404/76);

statement from the institution on the implementation of an employee training program for providing the requested services, with the necessary specifications;

example of a standard service agreement;

description of the procedures to be followed for internal audits of the system;

appointment of the firm responsible for providing third-party services for auditing the system, as well as a statement by such firm that it is independent;

substantiated report by the independent auditor on the accuracy of the information to be produced, and the quality and security of the system.

Sole paragraph - The information provided by the applicant to the CVM will be kept confidential.

Art. 5. - Applicant institutions that provide services based on the use of information technology resources shall keep their operating manuals, file layouts and descriptions, flowcharts of routines, software documentation, quality controls, physical and logical security regulations, and periodic internal audit reports up to date so they may be inspected at any time by the CVM.

Sole paragraph - Use of the information technology resources through services accredited by the CVM shall be preceded by an opinion by the CVM, notwithstanding the provision in the introductory paragraph of this article.

Art. 6. - The authorization application will be considered automatically granted if not refused within thirty (30) days from application, against receipt.

Par. 1. - An incomplete application under article 4 will be preliminarily rejected, and the applicant will be informed of the decision.

Par. 2. - The period of thirty (30) days will be interrupted only once, if the CVM requests the institution to provide additional documents and information in relation to the authorization application, and a new period of thirty (30) days will begin upon fulfillment of the requirements.

Par. 3. - Any requirements must be met with sixty (60) days from applicant's receipt of the respective notice, on pain of rejection of the application.

Art. 7. - If the application is preliminarily rejected or subsequently denied, all accompanying documents will be made available to the institution for ninety (90) days from the date notice of the decision is served, and then destroyed.

AUDITS

Art. 8. - Annually, in the month of April, the authorized institution shall submit to the CVM a substantiated report on the quality and security of the system and the accuracy of the information produced, issued by an independent audit firm registered with the CVM that has the necessary technical qualifications to provide this type of auditing service.

Art. 9. - For purposes of this Instruction, audits shall not be carried out by firms whose members, officers, and specialists in charge have had, in the period to which the audit refers, or have, during its performance:

spousal ties, or a lineal or collateral relationship by consanguinity or by affinity, to the third degree, with officers, controlling shareholders, members, or managers of the audited institution or with those responsible for preparing and developing the audited system;

ties as an employee or manager of the audited institution;

ties as a partner or employer in relation to the legal entity or individual responsible for preparing or developing the audited system;

direct or indirect participation as a shareholder or member of the audited institution;

any other ties or de facto situation that could represent a conflict of interests and make it impossible to perform the activity independently.

Sole paragraph - The provisions in this article extend to relations between the members, officers, and specialists in charge at the auditing firm and the subsidiaries, affiliates, parent corporations, or sister corporations of the authorized institution.

Art. 10. - The audit shall be carried out diligently, and the report shall be issued in observance of the rules of the profession and of the CVM, and measures appropriate to the circumstances in each case will be carried out to the extent necessary.

Sole paragraph - Notwithstanding the provision in Article 18, the audit firm will be liable for the truthfulness of the information contained in the substantiated report, set forth in this Instruction, that it issues.

Art. 11. - If the auditing services are interrupted, the authorized institution will immediately notify the CVM of such fact in substantiated writing and send a copy to the auditing firm.

Sole paragraph - If the auditing firm disagrees with the notice to the CVM in relation to the interruption of its services it shall sent the CVM the reasons for its disagreement.

ADJUSTMENT

Art. 12. - The institution authorized to provide services as issuing agent or custodian of book-entry shares shall keep the CVM informed of each new contract executed with a publicly held corporation, to provide the referenced services, within thirty (30) after such execution.

OBLIGATIONS OF THE SERVICE PROVIDER

Art. 13. - The institutions providing the book-entry share recording and custody services will provide the shareholder with a statement of the respective deposit or custody account:

whenever requested;

at the end of each month, whenever there is activity; and

once per year, at least, if there is no activity or request.

Art. 14. - The issuing agent shall endeavor to issue and substitute certificates and make transfers and annotations in the books as quickly as possible, not to exceed sixty (60) days:

from the date the capital increase was approved, in cases of subscription for securities;

from the date the pertinent documents were received, in other cases.

Sole paragraph - The times stipulated in this article also apply to issuing corporations that have not hired an issuing agent.

CIVIL LIABILITY OF THE AGENT

Art. 15. - The corporation is directly liable to the securities holders and to interested third parties for errors or irregularities in the provision of services as the issuing agent of certificates and book-entry shares, according to arts. 104 and art. 34, par. 3, of Law 6404/76.

Par. 1. - The corporation shall have the right of recourse against the institution providing services in cases to which this article refers.

Par. 2. - Securities holders and interested third parties may, if they so desire, directly sue the service provider institution, in the same cases, under art. 159 of the Civil Code.

Art. 16. - Institutions authorized to hold custody of fungible property are directly liable to shareholders and interested third parties for errors or irregularities in the provision of the service.

SERIOUS VIOLATIONS

Art. 17. - The provision of services set forth in this Instruction without prior authorization from the CVM and in disagreement with art. 8 shall constitute a serious violation for purposes of art. 11, par. 3, of Law 6385/76.

GENERAL PROVISIONS

Art. 18. - The managers of the applicant institution are liable, under penalty of law, for the truthfulness of the information contained in the documents forwarded to the CVM when authorization is applied for.

Art. 19. - In the event services are interrupted according to art. 1 of this Instruction, the authorized institution shall notify the CVM in detailed writing, notwithstanding the submission of the substantiated report from the audit firm regarding the interruption of the services.

Art. 20. - The CVM may charge a fee for the authorizations dealt with in this Instruction, in accordance with provisions of law and regulations.

Art. 21. - The provisions set forth in this Instruction apply, inasmuch as possible, to the provision of services for book-entry securities and ownership units in investment funds regulated and inspected by the CVM.

- *Article amended by CVM Instruction 261 of April 25, 1997.*

Art. 22. - The institutions already authorized to provide these services shall adhere to this Instruction by 31 December 1989.

TERM

Art. 23. - This Instruction will take effect on the date it is published.

ARNOLD WALD

CHAIRMAN