

Investment Adviser Regulation in Brazil

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A. Overview of the Regulatory Structure

1. Applicable Laws and Regulations

1.1. Regulatory Structure

The Brazilian securities market is regulated by Law No. 6,385 of December 7, 1976 (“Law 6,385/76”). It is a federal law. According to the Brazilian Constitution, only the National Congress has the power to enact legislation with regard to the securities market. Law 6,385/76 created the Comissão de Valores Mobiliários (the “CVM”) — a federal agency similar to the U.S. Securities and Exchange Commission — and partially delegated to it the power to regulate the securities market and establish rules concerning the role of the various agents in this market. According to Law 6,385/76, the CVM has the authority to regulate the activities of the agents that perform investment advisory activities in connection to the Brazilian securities market. Law 6,385/76 and the Instruções issued by the CVM regulate investment managers (administradores de carteira de valores mobiliários) and investment consultants (consultores de valores mobiliários).

1.2. Role of the CVM

The CVM exercises its delegated power through the issuance of different types of regulations, the most important of which is the Instrução. Through this regulatory mechanism, the CVM details and complements the statutory provisions of Law 6,385/76. Once an Instrução of the CVM becomes effective, it becomes the rule applicable to the particular subject matter. Such rules are binding and enforceable regulations. Additionally, the CVM, through its Institutional Investors’ Relation Department (Superintendência de Relações com Investidores Institucionais (“SIN”)), is responsible for the administration of the Instruções in connection to investment advisory services. SIN reviews and processes applications for investment consultant or manager registration, and conducts examinations of registered investment consultants and managers to assess compliance with the applicable Instruções.

1.3. Self-Regulatory Organization

Certain professional associations have issued codes of ethics, guidelines and rules that, although do not have the binding quality of a law or regulation, must be followed by their members. The main professional association in the field of investment advisory services is Associação Brasileira de Entidades dos Mercados Financeiros e de Capitais (Brazilian Association of Entities of the Financial and Capital Markets or “ANBIMA”). ANBIMA has issued a Code for the Regulation and Best Practices in the Managing of Financial Assets, which is applicable to investment managers and investment consultants associated with ANBIMA, as well as those that, even though not associated, choose to be bound by the Code. The guidelines and directives of ANBIMA cover the following areas, among others:

- (i) the minimum requirements for rendering investment advisory services;
- (ii) the obligation to verify the allocation of the assets to the investor’s profile (suitability);
- (iii) the obligation of confidentiality; and
- (iv) the scope of the investment advisory services.

The ANBIMA Code establishes penalties for violations of the rules set forth therein. The Code is enforced by ANBIMA’s Board of Regulation and Better Practices (Conselho de Regulação e Melhores Práticas).

2. Registration Requirements

2.1. Activities or Actions Requiring Registration

2.1.1. Investment Managers

Investments managers are subject to Instrução CVM No. 306 of May 5, 1999, as amended (“Instrução 306/99”). Article 2 of Instrução 306/99 defines an “investment manager” as an individual or corporate entity, acting on a professional basis, to whom clients grant discretionary or non-discretionary powers for the purchase and sale of “securities” (as defined below). Instrução 306/99 does not distinguish between services rendered with or without compensation. Investment managers engage in the business of managing third parties’ securities portfolios. Since investment managers handle third-party funds, they are subject to more stringent regulation. Persons who do not engage in investment managing activities on a professional basis are not considered to be investment managers for purposes of Instrução 306/99.

Note that the CVM intends to issue a new Instrução regulating the activity of investment manager in replacement of the existing Instrução 306/99. In November of 2011 it divulged a preliminary draft of the new envisaged Instrução and since then has collected suggestions from interested parties on the text of the draft. The CVM has not yet issued the final text of the new Instrução nor indicated when such replacement will occur.

2.1.2. Investment Consultants

Investment consultants are regulated by Instrução CVM No. 43 of March 5, 1985 (“Instrução 43/85”). Instrução 43/85 does not provide a definition of the term “investment consultant.” However, an investment consultant may be broadly defined as an individual or corporate entity that, for compensation, provides to its clients investment recommendations on securities or on the formulation of investment policies related to securities. Investment consultants do not have discretionary powers.

Instrução 43/85 is not very comprehensive and only temporarily regulates the activities of investment consultants. The CVM has recently declared that it will soon issue a definitive and comprehensive regulation applicable to investment consultants.

2.1.3. Investment Analysts and Autonomous Investment Agents

The CVM also regulates the activities of investment analysts and the autonomous investment agents.

Investment analysts are regulated by Instrução CVM No. 483 of July 6, 2010 (“Instrução 483/10”). According to Article 1 of Instrução 483/10, an investment analyst is an individual who, on a professional basis, prepares studies or evaluation reports concerning securities that may assist or influence investors when making investment decisions and publishes, distributes or otherwise divulges such reports to third parties, even if only to clients. Public presentations, meetings, telephone conferences and other non-written manifestations dealing with the evaluation of securities are considered evaluation reports for purposes of Instrução 483/10. An analyst does not participate in the actual investment-making decision and is normally employed by financial institutions.

Autonomous investment agents are regulated by Instrução CVM No. 497 of June 3, 2011, which defines an “autonomous investment agent” as an individual hired by a financial institution to deal with its clients, issue and receive purchase and sale orders and to provide such clients with investment information on the products and services offered by the financial institution.

Although the roles of the investment analyst and the autonomous investment agent are to some extent related to investment advisory activities, they do not assist clients in choosing among different investment possibilities in exchange for remuneration paid by such clients. For this reason, this chapter focuses on investment consultants and investment managers.

2.2. Definition of Securities

Under Law 6,385/76, the term “securities” (valores mobiliários) is defined to include shares, debentures, subscription bonuses, certificates of deposit of securities, debentures certificates, quotas of mutual funds that invest in securities, quotas of investment clubs that invest in any type of asset, commercial papers, as well as futures, options and other derivatives agreements, whether the underlying assets consist of securities or not.

2.3. Registration of Associated Persons

2.3.1. Officer, Administrator or Managing Partner

A corporate entity applying for registration as an investment consultant or investment manager must appoint an officer, administrator or managing partner who shall be responsible for this activity. Such officer, administrator or managing partner must also be registered with the CVM and must not exercise any other activities in the market, whether within the same corporate entity or in another corporate entity. However, he or she may be responsible for investment managing activities in more than one corporate entity in the same group.

The CVM may, in exceptional cases, approve the registration of more than one person to be responsible for the investment management activities of a corporate entity, if such entity manages different types of portfolios. In this case, the different types of portfolios must be managed independently, especially with respect to the decision-making process, and there must be a rigid separation concerning the administration of these portfolios.

2.4. Registration of Non-Brazilian Managers or Consultants

A non-Brazilian investment manager or consultant may only act in the Brazilian market (i.e., incorporate or establish a physical presence in Brazil or provide advice in Brazil concerning securities negotiated in the Brazilian market to persons or entities domiciled in Brazil) if they are registered with the CVM. There is no regulatory definition of the concept of securities negotiated in the Brazilian market. However, it is generally understood that a security is negotiated in Brazil if it is negotiated in the stock market, or some other Brazilian regulated market, or even the over-

the-counter market. There are no special registration requirements for foreign investment managers or consultants. However, as set forth in Instrução 306/99, the CVM will only grant investment manager registration to an individual or corporate entity that is domiciled in Brazil. Investment consultants must also be domiciled in Brazil.

2.5. Exemption from Registration

According to the applicable Instruções, investment consultants and investment managers must be registered with the CVM in order to carry out their activities with respect to securities. Individuals or corporate entities that are engaged in investment advisory activities outside the securities market are not subject to registration with the CVM and are thus not under its jurisdiction. For instance, a consultant or manager that provides advice only with respect to real estate investments does not need to register with the CVM.

B. The Registration Process

1. How to Register with the CVM

As discussed below, there are different registration requirements for individuals or corporate entities. The actual registration granted to the applicant, however, is the same. If a corporate entity has one or more affiliates conducting investment consulting or investment managing activities, each affiliate must register separately. There are no differences in registration for investment consultants or investment managers of open-end funds, closed-end funds, hedge funds or private equity funds.

1.1. Investment Manager Registration

1.1.1. Individuals

According to Instrução 306/99, in order for an individual to be registered as an investment manager with the CVM, he or she must comply with the following requirements:

- (i) be domiciled in Brazil;
- (ii) have a graduate degree from a recognized institution, obtained either in Brazil or abroad;

- (iii) have professional experience of (a) at least three years in a specific activity directly related to the management of third-party funds in the financial market; or (b) at least five years in an activity in the capital market that evidences his or her aptitude for the management of third-party funds; and
- (v) be of good repute (reputação ilibada).

The CVM may, in its discretion, waive the requirement set forth in item (ii) above, provided that the applicant has the professional experience required in item (iii) for a minimum period of seven years. The CVM may also use its discretion to exempt the applicant from the requirement set forth in item (iii), provided that he or she has notable knowledge and high qualification in a field that allows him or her to exercise the activity of investment manager. The CVM shall not take into account, for the purposes of confirming the minimum period of experience above, the experience that the applicant may have in investing its own funds or managing funds of third parties for no compensation.

1.1.2. Corporate Entities

If the applicant is a corporate entity, pursuant to Instrução 306/99 it must comply with the following requirements:

- (i) be domiciled in Brazil;
- (ii) be duly incorporated and registered with the Brazilian Federal Taxpayers' Registry (the "CNPJ");
- (iii) be authorized by its by-laws or articles of association to conduct the activities of an investment manager;
- (iv) appoint an officer, administrator or managing partner who has previously been registered with the CVM to be responsible for managing the securities; and
- (v) create and maintain a specialized technical department dedicated to investment analysis.

For the purpose of complying with the requirement set forth in item (v), the corporate entity may, alternatively, contract investment analysis services from a third party. In this case, the applicant has to present to the CVM the contract entered into with such third party.

1.2. Investment Consultant Registration

As previously mentioned, Instrução 43/85 is not comprehensive and, as such, does not establish registration requirements for investment consultants. Within the CVM there has been some debate as to the requirements that must be met by applicants. This debate was finally settled by a decision issued by the Board of the CVM on August 19, 2008, which analyzed different situations involving the registration of investment consultants. Section 2.3 below summarizes the documentation that needs to be submitted by an applicant for registration as an investment consultant.

1.3. Registration Fee

There is no fee for requesting registration. However, registered individual investment managers and investment consultants must pay to the CVM a quarterly fee of BRL 165.74. The quarterly fee for corporate entities is BRL 331.48. The initial quarterly fee is due 30 days after the applicant has obtained registration with the CVM.

1.4. How Long Does the Registration Process Take?

The CVM must decide upon the registration application within a 30-day period after submission of the relevant documentation. If the CVM fails to decide upon the registration application within this period, the application is considered automatically approved, provided that the applicant meets all the requirements. The 30-day period may be interrupted once if the CVM requests the applicant to provide additional information. If so, a new 30-day period will start after the requested information has been submitted. Although this rule formally only applies to investment manager registration, it has also been applied to the registration of investment consultants.

1.5. Reciprocity

If required to register with the CVM, all applicants must do so even if they are already registered in another jurisdiction. There are no special registration provisions for applications submitted by foreign individuals or corporate entities. However, all applicants for registration with the CVM must be domiciled in Brazil. As a practical matter, a foreign entity would need to incorporate a subsidiary in Brazil to obtain a license from the CVM.

2. Information Required

2.1. Individual Investment Managers

If the applicant is an individual, the following documents listed in Instrução 306/99 must be filed with the CVM:

- (i) a request for registration duly signed by the applicant;
- (ii) a curriculum vitae, with information on the professional experience of the applicant, evidencing the minimum required years of experience, and duly signed by the applicant;
- (iii) a registration form duly filled out (the form constitutes Annex III of Instrução 306/99);
- (iv) a copy of the graduate diploma and also of the diplomas of the main courses referred to in the curriculum vitae;
- (v) a copy of the enrolment of the applicant with the Federal Individuals Taxpayers' Registry (the "CPF"), and the identity card;
- (vi) statements of the current and previous employer concerning the applicant's professional activities (if the applicant is unable to obtain such statements, he or she may alternatively submit a copy of his or her labor registration book that attests professional experience) or, as the case may be, a copy of the by-laws or articles of association of the company of which the applicant is or was a partner;
- (vii) a statement duly signed by the applicant stating if he or she (a) is already authorized to perform activities in financial institutions and other entities authorized by the CVM and the Brazilian Central Bank, such as insurance companies, pension funds and publicly held companies (b) was found guilty of certain enumerated financial crimes such as bribery, breach of fiduciary trust, extortion, insider trading, etc.; (c) is included in the List of Issuers of Bad Checks, maintained by the Brazilian Central Bank; (d) has failed to pay a debt on time and such failure was reported by the creditor to the Brazilian authorities; (e) has been sentenced as a result of his or her activities as officer or counselor to any entity subject to supervision by the CVM, the Brazilian Central Bank, the Social Welfare Department or the Private Insurance Department in the last five years; or (f) has had his or her assets seized as a result of a judicial or administrative decision.

If the applicant answers in the affirmative to (d) and (e) of item (vii) above, the CVM shall have discretionary powers to grant or deny the registration.

2.2. Corporate Investment Managers

If the applicant is a corporation, the following documents must be submitted to the CVM:

- (i) a request for registration duly signed by legal representative of the applicant;
- (ii) a copy of its corporate documents;
- (iii) a copy of the enrollment with CNPJ;
- (iv) corporate document evidencing the appointment of the officer, administrator or managing partner responsible for the investment managing activity, who must be duly registered as an investment manager with the CVM;
- (v) information on the specialized technical department of investment analysis, including the number of professionals, the nature of the activities performed, the available infrastructure, including a list of the equipment, software and services used in the activity, or, as the case may be, the contract with a third party authorized to perform the activities of investment analysis;
- (vi) information on the profile of investors to whom the corporate entity plans to provide services to; and
- (viii) a registration form duly filled out (such form constitutes Annex IV of Instrução 306/99).

2.3. Investment Consultants

2.3.1. Individuals

According to the CVM Board August 19, 2008 decision, in order to be registered as an investment consultant, an individual must submit to the CVM the following documents:

- (i) a request duly signed by the applicant summarizing the reasons why the applicant believes her or she to be qualified to exercise investment consultant activity;

- (ii) a copy of the curriculum vitae and of the diplomas of the main courses mentioned in the curriculum;
- (iii) proof of enrollment with the CPF and copy of the applicant's identity card;
- (iv) documents attesting the applicants experience that specify the nature of the activities exercised by him or her, evidencing a minimum professional experience of three years that enable him or her to exercise the activity of investment consultant (this requirement is waived for individuals that are already enlisted as investment analysts);
- (v) form of registration duly filled out;
- (vi) statement duly signed by the applicant informing if he or she (a) is already authorized for the exercise of activities in financial institutions and other entities authorized to function by the CVM and the Brazilian Central Bank, insurance companies, pension funds and publicly held companies; (b) was found guilty of certain enumerated financial crimes such as bribery, breach of fiduciary trust, extortion, insider trading, etc.; (c) is included in the List of Issuers of Bad Checks, maintained by the Brazilian Central Bank; (d) has failed to pay a debt on time and such failure was reported by the creditor to the Brazilian authorities; (e) has been sentenced as a result of his or her activities as officer or counselor to any entity subject to supervision of the CVM, the Brazilian Central Bank, the Social Welfare Department or the Private Insurance Department in the last five years; and (f) has had his or her assets seized as a result of a judicial or administrative decision.

2.3.2. Corporate Entities

The August 19, 2008 decision also lists the documents that must be presented by corporate entities:

- (i) a request for registration duly signed by legal representative of the applicant;
- (ii) a copy of its corporate documents;
- (iii) a copy of the enrollment with the CNPJ;

- (iii) information on the profile of investors to whom the corporate entity plans to provide services;
- (iv) corporate documents showing the appointment of the administrator, officer or managing partner who must be duly registered as an investment consultant with the CVM, responsible for the activity of investment consultancy;
- (vi) a registration form duly filled out.

3. Substantive Requirements

3.1. Capital or other Financial Requirements

Instrução 306/99 and Instrução 43/85 (as well as the CVM Board August 19, 2008 decision) do not impose any minimum capital, net worth or other financial requirements on applicants.

3.2. Jurisdiction of Organization

The CVM will only grant registration to an investment manager or investment consultant organized under Brazilian law or domiciled in Brazil. There are no further special requirements concerning the type of legal entity. An investment manager or consultant may be domiciled in any city within the Brazilian territory and may be organized according to any of the vehicles admitted by Brazilian law (e.g., as a corporation or limited liability company).

3.3. Nationals Serving as Officers, Directors or Employees

According to the Brazilian Labor Consolidated Law (Decree-Law No. 5,452 of May 1, 1943), at least two-thirds of the employees of corporate entities organized in Brazil must be Brazilian citizens (Articles 352 and 354). This rule also applies to investment managers and consultants that are corporate entities.

4. Withdrawal from Registration

A registered investment manager or investment consultant may at any time request the cancellation of its registration. With regard to an investment consultant, there is no specific form for such purpose, nor any specific procedures or requirements to be followed. As regards investment managers, Instrução 306/99 establishes that the request for cancellation must be accompanied by a statement that, at the time of the request, the individual or corporate entity no longer performs the activities of investment manager.

5. Grounds for Denial of Registration

The request for registration as an investment manager or investment consultant will be denied if the applicant does not meet all of the respective requirements previously mentioned.

After a registration has been granted, it may be revoked by the CVM's SIN Department without any prior administrative process if (a) the documents or declarations submitted by the investment manager to obtain the registration are found to be false; (b) due to new facts, it is evidenced that the investment manager no longer meets the requirements established in Instrução 306/99; or (c) the investment manager fails for two consecutive years to meet its disclosure requirements vis-à-vis the CVM (see section C.4 below). The decision of the SIN Department is subject to appeal to the Board of the CVM. In case of item (a) above, the CVM must inform the federal law enforcement authorities (the Office of the District Attorney).

As discussed in section E below, an investment manager may also be deregistered as a result of an administrative process in case of violation of law or regulation.

C. Overview of Substantive Regulation

Instrução 306/99 contains several provisions regulating investment managing activities. There are no similar provisions in 43/85 applicable to investment consultants.

1. Anti-fraud Provisions

An investment manager is prohibited from implementing transactions using securities belonging to clients for the purpose of generating brokerage fees for itself or third parties, or for the purpose of avoiding taxes or violating other legal provisions. It should further refrain from taking any action that may breach the fiduciary duty that it owes to its clients. If it obtains any benefit or advantage due to the position of investment manager, it must transfer such benefit or advantage to the portfolios under its administration.

The investment manager is also prohibited from engaging in transaction with clients (e.g. principal transactions), unless:

- (i) in the case of management of an individual portfolio, the investment manager has been previously authorized to do so by the client; or

- (ii) the investment manager has no discretionary investment powers over the clients' portfolio and had no previous knowledge of the transaction.

2. Insider Trading and Privileged Information

There are no specific insider trading rules applicable to investment managers or consultants. However, they are bound by the general rule set forth in Article 13 and its sole paragraph of Instrução CVM No. 358 of January 3, 2002, which applies to all market participants. Article 13 prohibits the negotiation of securities by any person who by virtue of its position has privileged information regarding an important fact that may affect the value of such securities and that is publicly known.

Instrução 306/99 further establishes that investment managers must adopt internal procedures for their administrators, collaborators and employees requiring them to keep information confidential, and prohibiting the conveyance of such confidential information to persons that are not duly qualified or that may use it for improper purposes. Investment managers are also required to implement and maintain a training program for administrators, collaborators and employees that have access to confidential information or that participate in investment decision making. Access to the files concerning the clients' portfolios must be restricted and the investment manager must adopt mechanisms that allow it to identify those who have access to such confidential information.

3. Contractual Relationship with Clients

The contractual relationship between the investment manager and the client must be in writing. At least the following matters must be covered by the contract:

- (i) the investment policy to be adopted, which must consider the personal characteristics and objectives of the client;
- (ii) the compensation of the investment manager;
- (iii) the disclosure of other activities carried out by the investment manager in the market and the potential conflicts of interest that may exist between such activities and the management of the portfolio;
- (iv) a warning as to the inherent risks involved in the various types of market operations;

- (v) when applicable, an authorization for the investment manager to enter into transactions related to the client's portfolio; and
- (vi) reporting of the investment manager to the client.

According to Instrução 306/99, the investment manager must perform its activities in a manner that meets the objectives of the client. For such purpose, the investment manager must perform its activities using all the care and diligence that an active and honest person uses when managing its own business. Instrução 306/99 sets forth that this standard of care has to be followed by all investment managers; the client cannot approve a lower standard.

The investment manager may not modify the services rendered to a client, unless it is previously authorized in writing to do so by the client.

Instrução 306/99 does not establish if an advisory contract can be assigned by the investment manager to a third party. Such assignment is generally possible if expressly authorized in the contract executed between the client and the investment manager or otherwise authorized by the client.

4. Disclosure Requirements

Instrução 306/99 does not prescribe a certain level of disclosure that an investment manager must provide to its clients. It only requires that the advisory contract contains such disclosure, establishing the contents of the disclosure and when it shall be made. Nevertheless, investment managers are obliged to inform clients about their portfolio when so requested.

4.1. Reports to the CVM

Investment managers must provide to the CVM, by May 31 of each year, information on the portfolios under their administration, as of March 31 of the same year, as well as updated information on its registration status, such as its current address, telephone number, etc. (the Informe Cadastral de Administrador de Carteira – ICAC). Such information shall include the number of portfolios managed by the investment manager, their respective values, as well as a breakdown of such values by type of asset (shares, debentures, other securities, quotas of funds, etc.). An investment manager must also communicate any change of its registration status to the CVM within 15 days.

If the investment manager does not submit to the CVM the information referred to above or does not keep its registration status updated, it will be subject to a periodic penalty payment of BRL 100 for each day of delay.

5. Personal Securities Trading

Instrução 306/99 does not establish any personal securities trading prohibitions applicable to investment managers. It states, however, that the investment manager must adopt an internal policy to be followed by its administrators, officers and employees concerning personal securities transactions. It is up to the investment manager to regulate the content of such internal policy.

6. Performance-Based Fees

Instrução 306/99 does not impose any restriction on the ability of the investment manager to charge performance-based fees. As previously noted, Instrução 43/85, which is applicable to investment consultant, does not contain any specific rule regulating the activities of the investment consultant, nor the fees that it may charge.

7. Advertising Restrictions

The investment manager cannot advertise its services assuring levels of profitability based on the prior performance of the portfolios managed by it or on financial market indices. The investment managers also cannot promise quantified future earnings for the portfolio. Brazilian law prohibits abusive and misleading advertising, which includes any and all advertising information or communications that are partially or totally false or may, by any means, including omission, mislead a consumer regarding the nature, characteristics, quantity, properties, origin, price or any other relevant aspect of the service being advertised (Articles 36 and 37 of the Consumer's Defense Code — Law No. 8,078 of September 11, 1990).

Any person that suffers damages as a result of an abusive or misleading advertisement may file a suit for reparation. Certain authorities, public entities and associations may also file a suit to enforce collective rights relating to consumer protection (e.g., to prohibit the display, broadcast or publication of such advertisements).

Whenever the investment manager publicly discloses the historical results of the portfolios under its administration, it must add a disclaimer stating that the past results do not guarantee future performance. The publicity material on past results must necessarily contain information on all of the portfolios under the investment manager's responsibility, rather than information on only a few selected portfolios, and must contain information as to the performance during the prior six months.

8. Electronic Media; Use of Internet

There are no specific provisions of Instrução 306/99 intended to regulate the use of electronic media or the Internet by investment managers.

9. Client Solicitors

Instrução 306/99 does not establish any specific regulation to persons or firms that solicit or identify potential clients for investment managers.

10. Books and Records

Investment managers are required to keep and make available to their clients all of the documentation related to the transactions with securities of the portfolio under its administration. The CVM does not prescribe specific books and records required to be kept.

11. Custody Regulations

The investment manager must keep the securities belonging to a client under the custody of a financial institution duly authorized by the CVM to carry out custodial services. The investment manager must also take all necessary measures to protect its clients' interests in relation thereto. For example, if the financial institution performing custodial services transfers client assets without the consent of the client or the client's investment manager, the investment manager must take measures against the financial institution to regain the client assets.

12. Soft Dollars

Soft dollar arrangements are not specifically regulated in Brazil. However, such an arrangement may be considered a breach of the fiduciary duty that an investment adviser owes to its clients.

As an agent, an investment manager may not utilize brokerage commissions paid by the client to obtain personal benefits from the broker, even though such benefits may also benefit the client. This conclusion would vary only if the investment manager could prove that:

- (i) the services obtained from the broker are for the sole benefit of the client paying the relevant commissions; and
- (ii) the client has expressly authorized such practice.

13. Regulatory Inspections

The CVM, through its SIN Department, may conduct inspections of investment managers and consultants in order to verify compliance with the applicable regulations. The CVM has the power to conduct routine inspections. In practice, however, the CVM, due to lack of personnel, only conducts inspections in reaction to complaints.

There is no pre-defined process for such inspections. The CVM may inspect premises or request documents and other information from the investment manager or consultant.

14. Loans

Investment managers are prohibited from granting loans using the funds under its administration, except for lending shares for the implementation of transactions in the markets authorized by the CVM and provided that it is authorized to do so by the client.

15. General Responsibility

The investment manager shall adopt internal mechanisms of control necessary for the observance of the applicable statutory and regulatory provisions and the standards of ethical and professional conduct. The investment manager shall be directly liable for all damages and losses resulting from its willful misconduct or negligence, as well from acts that violate statutory and regulatory provisions.

16. Other Activities

If the investment manager performs other activities in the market, it shall keep those other activities physically segregated from its investment managing activities or shall adopt practices that ensure the proper use of the common physical installations, equipment and files.

D. Anti-money Laundering, Data Protection and Consumer Privacy

1. Anti-money Laundering

Law 9,613 of March 3, 1998, as amended (“Law 9,613/98”), which deals with money laundering crimes, imposes certain obligations upon investment managers and other agents. As regards investment managers, Law 9,631/98 has been complemented by Instrução CVM 301 of April 16, 1999, as amended (“Instrução 301/99”). If the investment manager is a corporate entity, the obligations set forth in Law 9,613/98 and Instrução 301/99 also apply to its administrators.

According to Law 9,613/98, investment managers have to identify their clients and maintain an updated file on each of them (the “know your customer” rule). If the client is an individual, the file shall include, among other information, the complete name of the client, his or her date of birth, nationality, marital status, name of parents, name of spouse, identity card number, CPF number, address, professional occupation and information on his or her income and assets. If the client is corporate entity, the file shall include the corporate name of the entity, its CNPJ number, complete address, corporate purpose, information on its income and assets, as well as information on its affiliates.

In addition, investment managers shall keep records of all transactions of its clients involving securities, independently of the value of such transactions.

Such files and records shall be kept by the investment manager for a minimum period of five years, counted from the date of the last transaction. This minimum period may be extended by the CVM if it starts to conduct an investigation.

Law 9,613/98 further requires investment managers to carefully monitor all transactions that, according to the regulations issued by public authorities, may constitute money laundering. Pursuant to Instrução 301/99, investment managers should in particular monitor transactions that significantly vary in terms of volumes or frequency, transactions aiming at generating a gain or loss to which there is no economic substance, private transfer of funds and securities without apparent motivation, among others. If an investment manager comes across a potential or effective transaction that may constitute money laundering, it must inform the CVM within 24 hours without informing the client. The investment manager also has to comply with the information requests from the Council of Control of Financial Activity (Conselho de Controle de Atividades Financeiras — COAF).

Investment managers have to develop and implement a control manual with procedures ensuring compliance with the rules set forth in Law 9,613/68 and Instrução 301/99. They must also train their employees with respect to the procedures of control and prevention of money laundering.

2. Data Protection and Consumer Privacy

Although the Brazilian Federal Constitution guarantees the right to privacy, there is no specific law in Brazil that addresses data protection and consumer privacy. The Ministry of Justice has prepared a draft of a bill concerning this matter, which is expected to be submitted to the Brazilian National Congress soon.

Accordingly, there are no specific data protection or consumer privacy regulations that must be complied with by investment managers and investment consultants. Instrução 306/99 generally requires administrators, collaborators and employees of the investment manager to maintain confidentiality concerning their clients. Although this obligation is not prescribed in Instrução 43/85, it is understood that it also applies to investment consultants. Many investment management/consulting contracts contain confidentiality provisions, requiring the investment manager/consultant to keep the information received from the client confidential. Of course, information requests from public authorities, in line with applicable law, must be complied with.

E. Enforcement Proceedings

The CVM is responsible for the inspection of investment managers and consultants that participate in the Brazilian securities market. The CVM is also responsible for enforcing the applicable regulatory provisions and for conducting investigations.

1. Administrative Proceedings

If the results of an investigation indicate violations of Law 6,385/76 or the regulations issued by the CVM, an administrative proceeding shall be carried out in compliance with the principles of due process of law. The trial and decision of the case by the Board of the CVM shall follow.

Under the terms of Instrução 306/99, a summary proceeding shall be carried out upon notification for defense, without prior investigation, in case of violation of the following investment manager's duties:

- (i) maintaining a specialized technical department dedicated to investment analysis or contract a third party to render such service;
- (ii) complying with the agreement entered into with client and including in such contract the basic characteristics of the services to be provided;
- (iii) avoiding actions that may violate the fiduciary relationships maintained with the clients;
- (iv) keeping in custody of an entity duly authorized to perform such services the securities belonging to the portfolios under its management;

- (v) transferring to the portfolio any benefit or advantage that it obtains as a result of managing such portfolio;
- (vi) observing the physical segregation of the different activities performed;
- (vii) keeping client information confidential;
- (viii) implementing and maintaining a training program for its administrators, collaborators and employees;
- (ix) restricting access to the files in its custody; and
- (x) establishing policies related to the purchase and sale of securities by its employees, officers and administrators.

Decisions of the Board of the CVM are subject to appeal to the Council of Appeals of the National Financial System (Conselho de Recursos do Sistema Financeiro Nacional). Final decisions from such Council are subject to judicial review.

2. Penalties

Depending on the violation, the CVM may administratively apply the following penalties:

- (i) public reproach (i.e. censure);
- (ii) a fine, which shall not exceed the highest of the following: (a) BRL 500,000, (b) 50% of the value of the violative transaction, or (c) three times the economic gain obtained by the agent as a result of the violation committed (if the agent has already been previously convicted, the fine may be in an amount corresponding to up to three times such values);
- (iii) temporary or definitive prohibition on acting as a director, officer or counselor of a publicly held company or any of the companies that participate in the distribution of securities; and/or
- (iv) suspension or cancellation of the registration of the investment manager or consultant.

If an investigation made by the CVM reveals evidence of a crime, the CVM must communicate this fact to the federal law enforcement authorities (the Office of the District Attorney) for appropriate action.

An investment manager shall also be subject to the penalties set forth in Law 9,613/98, if it does not comply with the anti-money laundering rules set forth therein. In this case, the following penalties apply:

- (i) public reproach;
- (ii) fine, for a value corresponding to (a) 1% to 200% of the value of the transaction; (b) up to 200% of the profits obtained or which would presumably be obtained; or (c) BRL 200,000; and/or
- (iii) temporary or definitive prohibition on carrying out certain activities.

3. Private Rights of Action

A client can sue an investment manager or consultant to enforce statutory or regulatory provisions, to the extent that the non-observance of such provisions causes damages to the client.

F. Extraterritorial application

Brazilian law has no extraterritorial application. If investment managers or consultants are registered in Brazil, the actions they perform in another country will be regulated by the laws of such country. Even if investment managers or consultants have only foreign clients, but render their services in or from Brazil, they will be subject to Brazilian law and the regulations issued by the CVM.