CAPITAL MARKETS

CLIENT ALERT

FEBRUARY/2020

CVM ACCEPTS EMPIRICUS' AND INVERSA'S TERM OF COMMITMENT IN CASE INVOLVING THE ACTIVITY OF SECURITIES ANALYSIS, WHICH IS REGULATED UNDER CVM INSTRUCTION NO. 598/2018

On February 11, 2020, the Brazilian Securities and Exchange Commission ("CVM") accepted the execution, by Empiricus Research Publications Ltda.'s ("Empiricus") and Inversa Publications Ltda.'s ("Inversa"), of a Term of Commitment (*Termo de Compromisso*) in connection to CVM Administrative Proceedings (*Processos Administrativos*) No. 19957.009590/2018-1 and No. 19957.000861/2019-35 ("Proceedings").

The Term of Commitment imposes a total payment of R$ 4.2 million by the involved parties and gains relevance in light of the current stock market scenario in Brazil. In recent years, the number of individuals that invest in the Brazilian stock exchange (B3) increased dramatically, reaching the 1.8 million mark in January 2020 (a 110.5% increase over the previous year). This remarkable growth was backed by a reduction of the Brazilian interest rate and is accompanied by a strong demand for information on investment topics, which is often met through online channels and social networks, as is the case of Empiricus, which already has more than 350 thousand subscribers.

The Proceedings had been initiated after a complaint by the *Associação dos Analistas e Profissionais de Investimento do Mercado de Capitais* ("APIMEC"), an entity that accredits the activity of securities analysis, under the claim that Empiricus and Inversa, through their websites, were distributing securities analysis reports, on a professional basis, without complying with the obligations set forth under CVM Instruction No. 598/18 ("ICVM 598").

ICVM 598 provides that the activity of securities analysis is exclusive to securities analysts (individuals or legal entities) accredited by an entity authorized by the CVM. Under the terms of this instruction, any texts, follow-up reports, studies or analyses on specific securities or on specific securities issuers which may assist or influence investors in the investment decision-making process are considered "analysis reports" for the purposes of the regulation.

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According to CVM's Superintendence of Institutional Investor Relations ("SIN"), Empiricus and Inversa carried out activities that went beyond the mere editorial nature. As an example, SIN mentioned content made available on Empiricus' website in which the analysis of the shares of a certain public company was made and which concluded that "*under this scenario the fair value for the company's shares grew. Now, it revolves around R$ 48. The room for the shares to continue to increase in value during the year is given!*". Based on the analysis of the websites' content, SIN concluded that there were strong indications that Empiricus' and Inversa's publications were, in fact, recommendations for the purchase and sale of securities and, therefore, should be considered "analysis report" under ICVM 598.

The Term of Commitment accepted by the CVM sets forth the following measures:

(i) Payment by Empiricus to the CVM of R$3,000,000.00, in four monthly installments of R$750,000.00;

(ii) Payment by Inversa to the CVM in the amount of R$500,000.00, divided into two installments;

(iii) Payment of R$50,000.00 by fifteen individuals responsible for the alleged analysis reports in question, totaling R$750,000.00;

(iv) The accreditation of all those involved (legal entities and individuals) for the activity of securities analysis before APIMEC (entity authorized by the CVM for the purposes of ICVM 598) within 60 days;

(v) Filing by Empiricus of a petition waiving the claim presented in court, under which the competence of the CVM to regulate Empiricus was challenged; and

(vi) Filing by Empiricus of a petition with the Public Prosecutor's Office (MPF) requesting the dismissal of a complaint on behalf of Empiricus against APIMEC, which supposedly was presented to the MPF without Empiricus' knowledge.

The CVM's superior body (*colegiado*) agreed to the CVM's Committee on Terms of Commitment's understanding that the execution of this agreement with Empiricus, Inversa and the involved individuals would be enough to discourage similar conducts in the future.

This is a precedent that fosters the debate on the possible irregularity of the securities analysis activity, as well as on the scope of the "analysis reports" concept under ICVM 598. The case serves as a warning to any person who publishes content on specific securities or securities issuers that may influence investors in the decision-making process.

However, despite the relevance of the decision, the CVM has not presented a definitive distinction between a publication of mere editorial nature and one that can be considered an "analysis report" as provided for in ICVM 598. Thus, given CVM's and APIMEC's attention to the matter, any companies or individuals not accredited in accordance with ICVM 598 and that intend to disclose content that could be considered an "analysis report" should consult specialists in the subject before publication.

Veirano Advogados' Capital Markets team is available for any clarifications on the matter.

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