CAPITAL MARKETS

CLIENT ALERT

MARCH/2020

CVM ISSUES RULES ON THE ACQUISITION OF DEBENTURES

On March 17, 2020, the Brazilian Securities and Exchange Commission ("CVM") issued CVM Instruction 620, which provides for the acquisition of debentures of a company´s own issuance, pursuant to article 55, paragraphs 2 and 3 of Law No. 6404 of December 15, 1976, as amended ("Brazilian Corporate Law" and "ICVM 620"), based on the draft published in CVM´s Public Hearing Notice SDM No. 06/19 of September 4, 2019.

ICVM 620 has the purpose of fostering the development of the secondary debenture market, creating a more propitious environment for new and frequent issuances as well as providing issuers more flexibility to take advantage of market opportunities. Therefore, such a rule was already widely expected by the market, especially due to the current scenario of reduced interest rates compared to recent years.

In addition, it is important to note that ICVM 620 allows, under sole paragraph of its article 1, that the debenture indenture prohibit the self acquisition of the issuer´s debentures.

After the legislative reform occurred in 2011, article 55 of the Brazilian Corporate Law provides that debenture issuers must comply with the rules established by the CVM, with respect to acquisitions and redemptions of debentures of their own issuance. Hence, the main aspect addressed by ICVM 620 is the procedure to be followed by issuers in the following circumstances **(i)** when acquiring debentures of their own issuance in the organized securities market, if the debentures are listed at a price lower than the par value; and **(ii)** when exercising the right to acquire or redeem debentures of their own issuance at a price higher than the par value.

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If the acquisition or redemption price of the debentures is higher than the adjusted par value, the issuer is obliged to follow the procedure set forth in "Section II - Procedure for Acquisition" of ICVM 620. In this regard, the issuer shall submit a notice of its intention to acquire or redeem the debentures to the fiduciary agent and debenture holders, containing:

- the intended date of acquisition;
- the issuance and the series of debentures that will be acquired, if applicable;
- the quantity of debentures intended to be acquired, which can be indicated as a determined, minimum or maximum quantity, and if the quantity indicated as the object of the acquisition corresponds:

  a) to the entirety or a given quantity of debentures of a determined issuance or series, the notice shall provide whether the offer of acquisition will remain valid if the quantity of debentures indicated in the debenture holders manifestations received is less than that indicated as the object of the acquisition; or

  b) to a certain quantity of debentures of a certain issuance or series, the notice shall provide for the treatment to be given if the quantity of debentures indicated in the debenture holders manifestations received is greater than that indicated as the object of the acquisition.

- the settlement date of the acquisition and any conditions to which the settlement is subject;
- the destination of the debentures that may be acquired;
- the maximum price at which the debentures will be acquired, in particular:

  c) the part of the price that refers to the par value;

  d) the part of the price relating to inflation adjustment, if any, and the accrued remuneration up to the settlement date of the acquisition; and

  e) the part related to the acquisition premium, which in such case, can be subject to a bookbuilding process.

- period for debenture holders to express an interest in selling the debentures to the issuing company, which may not be less than 15 (fifteen) days from the date of the notice; and
- other information that the issuing company deems relevant for the decision to sell the debentures.

In the event that the acquisition price is equal to or lower than the adjusted par value or partial redemption by drawing lots, the issuer may choose to follow the same procedure or to acquire the debentures through transactions in the securities market in which it they are admitted to trading. These procedures were already authorized, as provided for by article 55 of the Brazilian Corporate law itself.

The major innovation introduced by ICVM 620 is the possibility for companies to repurchase or redeem debentures of their issuance at a price higher than the adjusted par value, being able to keep the debentures in the company´s treasury or definitively cancel them.

Therefore, ICVM 620 determines that the acquisition, by the issuing company, of debentures of its own issuance must be carried out in a regulated securities market environment and its financial settlement must occur through a specific clearing and settlement system approved by the Central Bank of Brazil.

Another interesting innovation brought by ICVM 620 was the possibility for debenture holders, who have an interest in selling their debentures, to have the possibility of expressing such desire and sending information to the issuer through an electronic system developed by organized market management entities, in the case of debentures deposited and centralized securities deposit accounts.

Furthermore, the bookbuilding procedure was also introduced as a procedure to be carried out when the issuer intends to acquire its debentures.

ICVM 620 will only be effective as of January 2, 2021.

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