



CVM Alert

Unregistered Activities by Foreign Firm in Brazil

The Brazilian Securities and Exchange Commission (CVM) has initiated an **enforcement action against a Belize-based brokerage firm** for allegedly offering Brazilian investors unregistered access to the U.S. and European financial markets.

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In 2022, the same brokerage was served with a stop order (CVM Declaratory Act No. 20,886, dated May 19, 2023) requiring it to **immediately cease any public offering of securities investment opportunities to Brazilian residents, under penalty of a daily fine for noncompliance.**

The CVM noted evidence indicating that the firm, through its website, **was soliciting Brazilian clients to trade securities abroad without the Commission's authorization.**

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At the time, the CVM also reminded market participants and the public that the firm **was not part of Brazil's securities distribution system and was not authorized, under local law, to solicit Brazilian residents.**

This case illustrates a type of cross-border intermediation structure that may fail to meet Brazilian regulatory requirements, **potentially exposing foreign companies and their executives to legal sanctions in Brazil, as well as significant reputational risk.**

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Under Brazilian law (**Federal Law No. 4,595/1964**), the definition of financial institution encompasses any legal entity whose principal or ancillary activity is to collect, intermediate, or invest financial resources, whether its own or third parties, in Brazilian or foreign currency, or to hold assets on behalf of third parties. Such institutions, whether operating on a permanent or occasional basis, may conduct business in Brazil **only with prior authorization from the Central Bank of Brazil**.

Accordingly, securities distribution services may be offered or provided in Brazil **only if all applicable legal requirements are satisfied**.

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Further, under **Federal Law No. 6,385/1976**, **no public offering of securities may be distributed in the Brazilian market without prior registration with the CVM.** As a general rule, any offering of securities targeting investors who are residents, domiciled, or incorporated in Brazil must be registered or qualify for an exemption under CVM regulations. Any exception to this rule must be assessed carefully to ensure full compliance.

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In **Guidance Opinion No. 33**, as the CVM set out its position on:

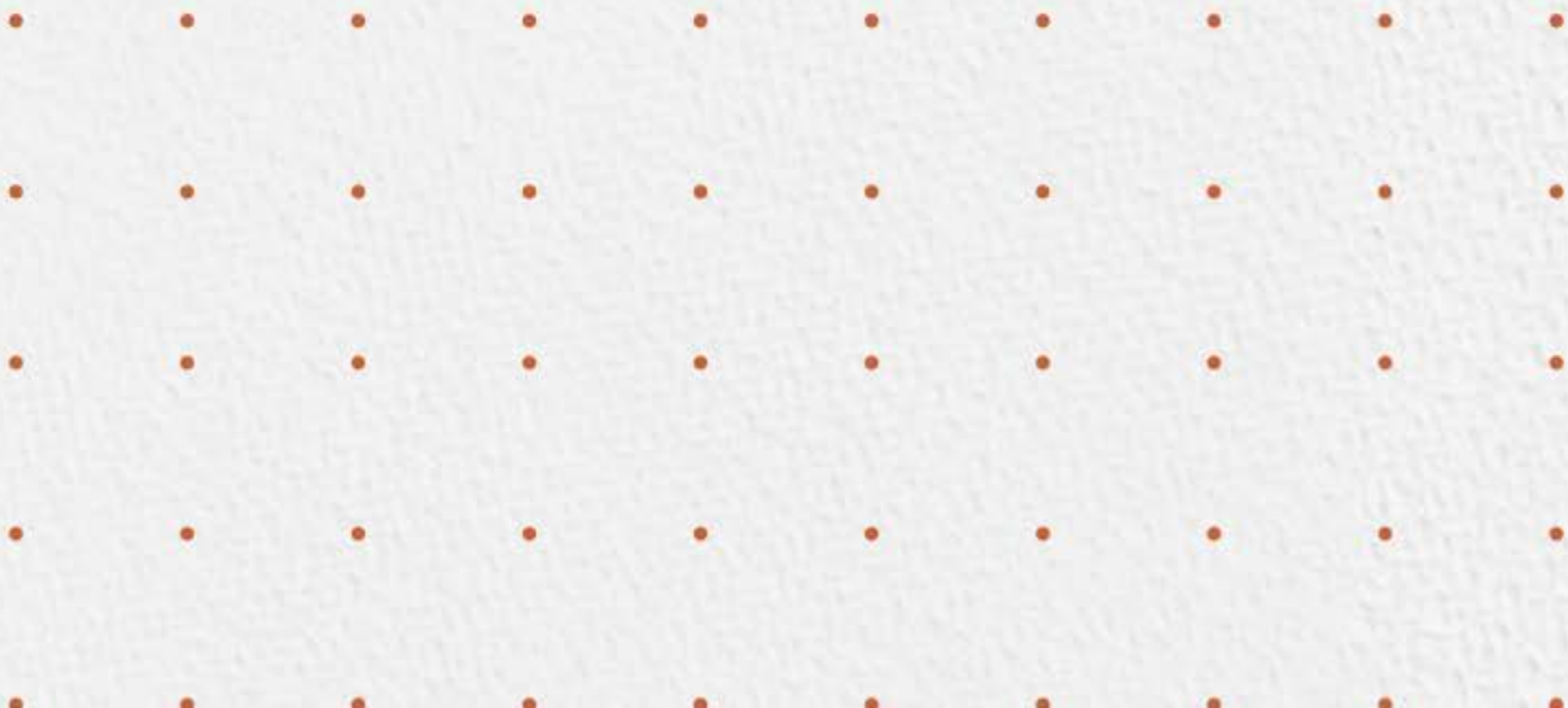
(i) what constitutes a public offering of securities by a foreign issuer; and

(ii) the requirement for agents to register with the CVM if they intend to intermediate, in Brazil, transactions involving securities issued and traded abroad for Brazilian residents.

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In **Guidance Opinion No. 32**, the CVM reaffirmed that using the internet to publicize a securities offering triggers the requirement for prior CVM registration. The opinion also notes that certain preventive measures may help avoid being characterized as public such as:

- (a) restricting website access to prevent unrestricted public entry;
- (b) refraining from promoting the website through any public communications; and
- (c) clearly stating the site is not intended for the general public.



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The CVM's guidance should always be read in conjunction with Brazil's broader regulatory framework, which is subject to change on a daily basis.

Thus, each case requires a careful and fact-specific analysis.

Our team of lawyers closely monitors this and other cross-border matters affecting Brazil's financial and capital markets.



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