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Circular Letter No. 3/2018-CVM/SMI/SIN

Rio de Janeiro, November 28, 2018.

To  
Responsible directors for the enforcement of the rules established by the CVM Instruction No. 505/11 (Current CVM Resolution 35/2021), and  
To  
Responsible directors for the enforcement of the rules established by the CVM Instruction No. 301/99 (Current CVM Resolution 50/2021)

**Subject: Customer record of non-resident investors.  
Status of nonperformance of the agreement with the foreign broker.**

Dear Sirs and Madams,

1. This Circular Letter aims to guide the Brazilian broker, in case of adoption of the customer record of non-resident investors, a prerogative under article 9 *et seqs.* of CVM Instruction No. 505/11 (ICVM 505), in the situation where the required information to the comprehensive know your customer of the non-resident investor has not been provided by the foreign broker.
2. As emphasized in art. 9 of ICVM 505, among other points, the agreement executed by and between the Brazilian broker and foreign broker shall provide the obligation of the foreign broker to show the registered information duly updated to the Brazilian broker, able to provide the requirements present in the regulation of CVM that provides on the enrollment of customer in the scope of the securities market, especially, the CVM Instruction No. 301/99 (ICVM 301).

3. Notwithstanding, and without prejudice to future normative improvements to be made in this tool when the conclusion of the review proceeding of ICVM 301 (see Open Court Notice No. 09/16), the "Known your Customer Policy", which is one of the milestones of the anti-money laundering and terrorism financing — AML/CFT, must be comprehended, in practice, as the minimum adoption of four (4) distinct steps, namely:

3.1 The identification of the customer, at the time when minimally exists the certainty that the same had, in fact, an identity number (RG) or respective enrollment before CNPJ (in case of non-resident investors, regardless of the use of customer record, such information shall provide the CVM code number);

3.2 The collection of all customer record information, a subject currently ruled by Annex I of ICVM 301;

3.3 In accordance with item I of art. 3-A of ICVM 301, the continuous conduction of due diligences aiming (i) verify the accuracy of the collected information, (ii) collect complementary information (where applicable), as well as (iii) keep them updated if the detection of a new fact justifies the advance of the term of twenty-four (24) months under paragraph 2 of art. 3 of ICVM 301.

3.4 Following said due diligences, show efforts for the identification of the final beneficiary, where applicable. For the purposes of this Circular Letter, beneficial owner means the natural person or group of natural persons that effectively, direct, or indirectly, have the control or significantly influence an individual, legal entity, or other legal structure customer on behalf of it a transaction is being made or taking the advantage of it. Also, a significative influence is assumed when a natural person has more than twenty-five percent (25%) in cases according to items II and III of the Annex I of ICVM 301.

3.4.1 As a first step for the suitable conduction of these diligences, the Brazilian broker shall be liable for initially identify which item of paragraph 1, art. 1 of Annex 1, of ICVM 560/15 such foreign customer is classified.

3.4.2 After that, the diligences must identify the situations in which it is possible to individualize a natural person or a group of natural persons as effective beneficial owner, as well as show the efforts to identify them.

4. If, on the one hand, the adoption of the customer records for non-resident investors effectively allows to the Brazilian broker the reduced possession of customer records information, on the other hand, it does not exempt it to conduct routines provided for items 3.1, 3.3, and 3.4, previously emphasized. Especially regarding the item 3.3, it is emphasized the relevance

to gather information for better understanding of the income or revenue, as well as non-resident investor's equity, in situations where this is applicable.

5. These diligences shall be permanently conducted during the business relationship between the Brazilian broker and non-resident investor, and they are regardless of previous demand from the CVM or self-regulatory organization to be implemented.

6. Even the foreign broker could be considered as the principal source of information to be collected, there is no restriction to complementary inputs be gathered from third parties if the requested data by the CVM rules actually are not available to the Brazilian broker. Therefore, occasionally, other information can be collected from independent sources, as well as effectively used, since they are useful and reliable as substitutes or good proxies to the process of "Know your Customer".

7. In this context, if the foreign broker does not provide the required information, or even the information cannot be gathered from reliable third parties, and such gap precludes the full knowledge of the customer classified as non-resident investor, the Brazilian broker shall adopt the necessary measures, after analysis of the concrete situation, and considering all situations under items of art. 6 of ICVM 301, to assess the relevance and opportunity of reporting to COAF, under art. 7 of the same Instruction, without prejudice to the adoption of other measures, such as the evaluation of the high administration about the maintenance of the business relationship with that non-resident investor, if applicable.

8. If the analysis of the fact culminates in a report of a suspect transaction to the CVM Sector at COAF, we reiterate the terms of the **Circular Letters 5/2015-CVM/SMI** and **5/2015-CVM/SIN**, namely:

*In this line, each report shall be individually worked and based in the best detailed way as possible, and it shall have the following information, whenever applicable:*

- ◆ *Effective date of the relationship of the customer with the institution;*
- ◆ *Date of the last customer record update;*
- ◆ *Stated amount by the customer of the income and equity in the date of its last customer record update.*
- ◆ *Operational modalities performed by the customer giving cause to the identification of the atypical event, where applicable;*
- ◆ *Value of the operational limit in the period where performed the transactions under report;*

- *In the scope of the policy "Know your Customer," eventual complementary information obtained under the item I of art. 3-A of the CVM Instruction 301/99;*
- *Data that allow to identify the origin and destination of the funds which were matter of the customer's businesses informed, and its counterpart, where applicable;*
- *Additional information that could better explain the identified suspicious situation (without prejudice of the description of item of the art. 6 of the CVM Instruction 301/99 that has connection with the detected atypical event), that is, the reason that the event was considered atypical by the institution.*

9. For these reasons, it is fundamental the understanding that the ground truth of the impossibility of identification of the beneficial owner of a customer, foreigner or not, shall always be based on evidence that, in the limit of the attributions of the broker, were conducted the due diligences aiming this purpose.

10. And that the unknown of the beneficial owner of the foreign customer is not, by itself, a sufficient element to forward suspicious report to COAF. The analysis that will guide the decision to forward or not the report to COAF also shall contemplate the terms of the **Circular Letters 5/2015-CVM/SMI** and **5/2015-CVM/SIN**, as well as other situations provided in items of art. 6 of ICVM 301.

11. We emphasize that most clarifications related to the terms of this Circular Letter could be obtained in contact with the Office of Market Surveillance — SMI, and Office of Institutional Investor Relations — SIN, including through electronic addresses [smi@cvm.gov.br](mailto:smi@cvm.gov.br) or [sin@cvm.gov.br](mailto:sin@cvm.gov.br).

Sincerely yours,



Document electronic signed by **Francisco José Bastos Santos**, Director, on 11/28/2018, at 12:48 p.m., according to art. 6, paragraph 1, of Decree No. 8,539, of October 8, 2015.



Document electronic signed by **Daniel Walter Maeda Bernardo**, Director on 11/28/2018, at 04:50 p.m., according to art. 6, paragraph 1, of Decree No. 8,539, of October 8, 2015.

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