

LEGAL OPINION CVM # 33, DATED SEPTEMBER 30, 2005

***Intermediation of operations
and the offering of securities
issued and admitted to trading
in other jurisdictions.***

The objective of the present legal opinion is to clarify the understanding of the Securities and Exchange Commission of Brazil with regard to the interpretation of (i) articles 19 and 21 of Law # 6.385/76 and of article 4th, § 1st and §2nd of Law # 6.404/76 for the characterization of a securities public offering in Brazil, when the issuer of the securities is based in another jurisdiction, bearing in mind, especially, the need for registration on the part of the issuer and of the offering with this Commission; and (ii) of article 16 of Law # 6.385/76, regarding the need for registration with this Commission of the agents that intend to perform the intermediation, in Brazil, of operations with securities issued and traded in other jurisdictions, to investors residing in Brazil.

The discussion regarding the need for registration of the agents that intend to perform the intermediation of operations with securities issued and traded in other jurisdictions has gained significant importance with the popularization of the Internet and especially when the rendered services due to its use include the intermediation of operations in the securities market (*home broker*). In this context, the necessary measures have been created for residents in different countries to be easily able to access markets based in different jurisdictions.

It is possible, however, that operations and offerings with securities issued and admitted to trading in other jurisdictions may be accomplished without the use of the Internet. For this reason, this Commission has decided to issue another specific legal opinion for questions brought up by the Internet (Legal Opinion # 32, also issued on this date). Thus, the present legal opinion specifically deals with the offering of securities and the performing of activities subject to the authorization of the Securities and Exchange Commission of Brazil on the part of foreign issuers and intermediaries to investors residing in Brazil.

However, these two legal opinions shall be read jointly, always when it is intended to comprehend the understanding of the Securities and Exchange Commission of Brazil regarding the offering of securities and the performing of activities subject to the authorization of the Securities and Exchange Commission of Brazil itself, when the Internet is used as a media (i) between an intermediary based

abroad and investors, either resident, domiciled or incorporated in Brazil (in this legal opinion the investors shall be simply referred to as "investors residing in Brazil") or (ii) to the offering of securities issued abroad to investors residing in Brazil.

1. Intermediation of Operations with Securities Carried out in Other Jurisdictions and the Authorization of the Securities and Exchange Commission of Brazil.

Brazilian law states that only companies that are part of the distribution system (art. 15 of Law # 6.385/76) duly registered with the CVM (art. 16 of Law # 6.385/76) are authorized to offer either the intermediation services of operations with securities in Brazil or the performing of an intermediation activity in Brazil. Among the conditions imposed for registration as part of the Brazilian distribution system are: (i) the need of domicile or head office in Brazil, or (ii) a specific authorization for the performing of activity in Brazil by a legal entity incorporated abroad.

Thus, authorization for the provision of the intermediation services of operations with securities, issued by a foreign regulating body or because of applicable legislation in another jurisdiction, does not assure the right to intermediate a negotiation with securities in the Brazilian market.

However, intermediation of operations with securities issued and offered exclusively abroad, carried out for investors resident in Brazil through intermediaries incorporated abroad, does not constitute an irregularity if (i) the activity of soliciting investors was effected abroad and (ii) the operation to be intermediated is not characterized as a public offering in Brazil (see item 2 of this Legal Opinion).

In case, however, the intermediaries incorporated abroad intend to offer securities issued abroad to Brazilian residents by means of soliciting investors in this country, they shall (a) register themselves with the Securities and Exchange Commission of Brazil as a member of the Brazilian distribution system, or (b) hire an institution that is a member of the Brazilian distribution system to perform the intermediation in Brazil. Additionally, the intermediaries should note if the issuer of the offered security or its offering are subject to registration with the CVM, as set forth in the next item of this legal opinion.

2. Securities Public Offering.

Brazilian law determines that a securities issuer that intends to issue securities publicly on the Brazilian market should, previously to the

distribution of these securities, register with this Commission (art. 4th, §1st, of Law # 6.404/76 and art. 21 of Law # 6.385/76).

In addition to this registration, it is also necessary to register the securities public offering itself (art. 4th, § 2nd, of Law # 6.404/76 and art. 19 of Law # 6.385/76), except in circumstances in which the regulations of the CVM, based on §5th, I, of the above-mentioned art. 19, do not require this registration.

In the face of growing internationalization of the markets, but adhering to the legal precepts with regard to registration of issuers and public offerings, the Securities and Exchange Commission of Brazil, as well as other competent public bodies, has published rules regulating the issuance of securities in Brazil representing securities issued by publicly-held companies or similar incorporated in other jurisdictions (*Depositary Receipts* or BDRs).

The regulation requires that the issuing company (or similar) also be registered with the CVM, except for BDR's levels I and II. In the same way, it is required that an eventual public offering of these securities be registered.

On the other hand, the Securities and Exchange Commission of Brazil has published Instruction 400/03 that, in its art. 4th, IV, and arts. 5th, 57 and 58, creates procedures for the harmonization of the applicable rules to securities public offerings that are simultaneously performed in Brazil and in another jurisdiction.

Art. 19, §5th, subparagraph I of Law # 6.385/76 allows the Securities and Exchange Commission of Brazil to publish rules creating exceptions to the requirement of previous registration of securities public offerings. However, until this date no rule has been issued by this Commission, in which the registration of a securities public offering, by issuers incorporated in other jurisdictions, is not generically required.

Thus, an eventual securities public offering issued by these companies, soliciting investors in Brazil that reside in this country, that does not fit under the circumstances for the waiver of the applicable registration for public offerings in general already set forth in the regulation in force, must be previously registered with this Commission.

However, for a securities public offering issued abroad be considered public in Brazil it is necessary that one of the media set forth in art. 19, §3rd of Law # 6.385/76 be used, in accordance with the details contained in art. 3rd of Instruction 400/03, and that the offering (or

the offering entity) not fit under any of the exceptions existing in the regulations of this Commission.

It is important to note that the use of a media listed in the above-mentioned disposition is not enough, but that this media must be utilized with the purpose of reaching the general public resident in Brazil. The definition of "general public" used here is the same as in art. 3rd, §1st of Instruction 400/03 (i. e., a class, category or group of people, even if individualized in this qualification, exceptions made for those that have maintained a previous close or habitual commercial, credit, corporate or labor relationship with the issuer).

Even when there is no intention of reaching the general public residing in Brazil, a public offering may also be characterized by the use of any media, as long as it is able to reach the public and the caution for that not happen were not taken into account.

Regarding the securities public offerings issued abroad made through the Internet, in order for them not to be characterized as directed to the public residing in Brazil and, consequently, subject to regulation, inspection and registration by the Securities and Exchange Commission of Brazil, in addition to the general factors established in the Legal Opinion # 32 of the same date, what follows below is to be observed:

(a) the existence of a warning, exposed clearly and with easy access, that the distribution of securities is destined only for the countries in which the information provider (or an entity that has the distribution of its securities disclosed on this page) is authorized to offer its securities (the list of countries should be included in the ad itself);

(b) effective measures taken by the information provider of the Internet page to hinder investors residing in Brazil from having access to the page content;

(c) direct or indirect indication, if sufficiently clear, that the page was not created for investors residing in Brazil (the disclosure of economic forecasts in Brazilian currency or the inclusion of Brazil among the listed countries on any form or, furthermore, the comparison between the issuer of securities and

Brazilian issuers are all considered an indication that the page is also directed to investors residing in Brazil);

(d) lack of existence, even in foreign language, of any text to attract investors residing in Brazil.

Although it may not have the same importance as the facts mentioned in the above paragraph, in order to assess if the offering was directed to investors residing in Brazil the Securities and Exchange Commission of Brazil will also consider the use of Portuguese and the physical localization of the provider.

Approved by the Board in a meeting dated September 28, 2005.

MARCELO FERNANDEZ TRINDADE

Chairman of the Board