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Share Buybacks in Brazil: Proposed Changes to CVM Resolution 77

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The Brazilian Securities and Exchange Commission (CVM – *Comissão de Valores Mobiliários*) recently launched a public consultation on proposed amendments to Resolution 77 (CVMR 77), which governs the trading in a company's own shares by publicly listed companies in Brazil's regulated markets.

In addition to ensuring that definition of "outstanding shares" (*ações em circulação*) matches the definition in CVM Resolutions 80 and 215, and of "related party" (*pessoa vinculada*) to the definition in CVM Resolution 215 (and in the proposed amendments to CVM Resolution 44), the proposed reform of CVMR 77 introduces a new article 7-B. The proposed article 7-B introduces a series of conditions for daily share repurchases made in organized markets, including:

- the purchase price may not exceed the price of the most recent trade made "without the company's interference";
- the daily volume of repurchased shares may not exceed the lower of 25% of the average daily trading volume over the past 20 sessions or 0.5% of the company's outstanding shares;
- repurchases in the opening auction are prohibited, but companies may participate in the closing auction provided their orders are not canceled;
- all repurchase transactions on the same trading day must be executed through a single broker;
- corporate day trading is prohibited, even across different markets; and
- after a repurchase, companies must wait for 15 trading sessions before reselling shares on organized markets.

As for outstanding shares, the new article 7-C raises the cap on treasury shares to 12% of each class or type of outstanding shares, replacing the previous 10% limit. CVMR 77 also establishes a minimum free float of 15% established: companies may not carry out buybacks that would result in less than 15% of any class or type of shares remaining in public circulation. This rule aligns with the tender offer regime for increased ownership stakes under CVM Resolution 215.

The consultation also invites market participants to comment on the potential introduction of an aggregate annual limit – for example, capping buybacks at 15% of the free float over a twelve-month period. This measure is designed to prevent successive cycles of repurchases and cancellations that could rapidly diminish the number of shares available for trading.

As a further safeguard against conflicts of interest, the proposed amendments update article 8 to expressly prohibit companies from acquiring their own shares – or derivatives linked to those shares – if the underlying securities belong to the controlling shareholder or parties related to the controlling shareholder, or during a third-party tender offer. Restrictions on buybacks above market price, or that require the use of funds exceeding available resources, have been relocated to Articles 7-B and 7-A, respectively.

A new Article 8-A offers an alternative pathway for large-scale buybacks: if a company chooses to repurchase shares through a formal tender offer, following the applicable regulatory procedures, it will be exempt from the restrictions set out in Articles 7-B (daily trading limits), 7-C (buyback limits), and 8 (conflict of interest rules), as long as shareholder approval is obtained when required.

For exemptions from the requirements under CVMR 77, article 23 delegates authority to the CVM's Market and Intermediaries Division (SMI – *Superintendência de Relações com o Mercado e Intermediários*) for applications related to daily trading limits (Article 7-B) and to the Public Companies Division (SEP – *Superintendência de Relações com Empresas*) for other cases. The SMI's and SEP's decisions can be appealed to the CVM's Board of Commissioners.

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