



JARDIM BOTÂNICO INVESTIMENTOS

SPECIAL EDITION

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INTRODUCTION

As mentioned in the 1st issue of our Newsletter (August 31st, 2009), one of the main objectives of the partners of Jardim Botânico Investimentos (JBI) is for the firm to become recognized as a reference in corporate governance within the Brazilian asset management industry.

We believe that the adoption of adequate corporate governance practices is key for long-term wealth creation. It is important to clarify that governance, as laudable a concept as it may be, will not transform a firm with weak fundamentals into a strong source of value generation. Nonetheless, we hold that when two companies have similar business models and management systems, that which adopts better governance practices should perform better in the long term and consequently generate higher returns for its investors.

As this subject holds such importance for JBI, we insist upon becoming involved with and contributing to initiatives that have the potential to improve corporate governance standards in Brazil. One such initiative was put in motion earlier this year: a programmed and broad review of the listing rules of the Novo Mercado (segment in the Bovespa with listed companies that voluntarily adopt corporate governance practices in addition to those normally required by law).

In this special edition of our Letter, we transcribe for our shareholders the letter which we sent to the Board of the BMF Bovespa in September 2009 outlining our suggestions for reforming the rules of the Novo Mercado. Our aim in doing so is to share our views on this subject and to promote discussion and the exchange of ideas about incoming proposals and ongoing developments in what is an extremely relevant initiative for the future of corporate governance in Brazil.

SECTION I

GENERAL DISCUSSIONS

I. Changes in the Regulation of the Novo Mercado (NM)

The achievements of NM have become an important milestone in the reduction of cost of capital and the dependence of Brazilian companies on capital from official institutions. Nonetheless, recent operations involving companies listed in this segment are posing a serious threat to its credibility. For this reason, and considering the evident importance of NM to the sustainable development of the Brazilian economy, we fully endorse the need to review some of the listing rules' provisions.

We have reviewed the many recommendations made by the Novo Mercado's Consulting Committee (NMCC) and have also made use of our own experience in the amendment of laws and statutes to look for rules capable of increasing the efficiency of the Brazilian market.

Our initial impression is that the strategy of presenting numerous amendment proposals to the regulations governing all three of BMF Bovespa's special listing segments (Level 1, Level 2 and Novo Mercado) is mistaken. We believe that this can lead to difficulties in the approval process due to the high number of companies listed in those segments. Moreover, there is a significant risk that the focus of discussions will deviate from the issues that are in fact damaging NM's credibility.

This is why we have decided to focus on fewer recommendations. There are three fundamental topics, which we believe must be revised in order for NM to continue its successful path. Such reform would also avoid the dangerous perception of a lack of corporate security created by recent operations that did not respect what we consider to be the fundamental principle of NM: to promote shareholders' equality, i.e. to ensure equal political and economic rights to all shareholders.

In all companies listed in NM, the 'one share-one vote' principle must be observed and all shares must have the same value throughout the firm's entire business cycle: from its IPO, to secondary offers, eventual mergers or even delisting.

All suggestions specified below are based on the concept that the enforcement of NM regulation should be principles-based, rather than rules-based, with the essence of rules prevailing upon their form. It is our understanding that a considerable improvement in the credibility of the Brazilian capital market could be achieved if BMF Bovespa's Board gave a clear sign of its commitment to an enforcement regime more concerned with the spirit of the rules than with their legalistic details.

Considering the above, we recommend the following improvements:

a) A maximum length for the poison pills of all companies joining NM after the proposed change is approved.

Justification: we can understand that the presence of poison pills in companies' bylaws attracts entrepreneurs to NM since it gives the former controlling group a degree of

stability after the company's control is publicly floated. However, some of the Brazilian poison pills fix minimum prices for takeover offers triggered by very low thresholds and are combined with penalty clauses that make their removal from companies' bylaws very unlikely. These 'perpetual' rules usurp power from shareholders meetings where matters such as uninvited take-overs should be discussed and decided. As a matter of fact, in some recent cases, the final word remained with the former controlling shareholders, since they were able to make the acquisition look like a merger or another arrangement capable of bypassing the poison pill.

The reality is that, as they are currently structured, Brazilian poison pills only protect the controlling or the dominant shareholder from a hostile takeover and do not set out to secure minimum levels of free float as originally argued. Worse still, the Brazilian poison pill simply excludes many shareholders from the decision making process, clearly disrespecting the political equality expected of a 'one share-one vote' system. The basic principle of shareholder equality is enshrined in the sovereignty of shareholders' meetings.

We believe a 3-year period is enough for controlling groups or dominant shareholders of companies not listed in NM to adapt to the new standard of equality we propose. We assume the legal department of BMF Bovespa will ensure a legal solution to allow poison pills to be maintained for these said 3 years in order to give the controlling group of newly listed companies enough time to adapt.

To preserve the voluntary aspect of NM, clearly one of the reasons for its success, we believe this rule should only apply to companies joining NM after the proposed change is approved. In this regard, we suggest that BMF Bovespa's Board checks with its legal councils whether it is necessary to gain approval from NM's current members, since this change would not affect them directly.

We would also encourage BMF Bovespa's Board to provide legal advice to all companies listed in NM whose bylaws contain these 'perpetual' poison pills. Although the current understanding of the CVM's Board of Commissioners is that such clauses do not have prevalence over the decisions of a shareholders meeting (see CVM Opinion n.36), it is not yet clear if this opinion will be maintained when new Commissioners are appointed. To eliminate uncertainty it would be necessary to know the opinion of BMF Bovespa's Legal Department and to enquire as to the views of companies that currently have such clauses in their bylaws. As a consequence, in all companies where CVM's understanding is explicitly accepted, the matter would be resolved.

b) Prohibition of all M&As evolving different treatment of shareholders of the same class of shares.

Justification: it is well known that Article 254-A (tag along) of the Brazilian Corporations Law has lost most of its credibility among investors. As an example, when the controlling shareholder of a NM company accepts to share its power with a new shareholder (in a proportion of 50/50 in the controlling holding company) and the arrangement entitles the controlling shareholder to receive a price different from the one offered to his fellow shareholders, the firm cannot be said to be offering additional protection to shareholders, as it is expected from all NM members. In this way, the presumption of economic equality

is severely challenged. In fact, there is no difference between this type of practice and the endless discussions involving firms listed in the traditional market about the classification of transactions as acquisitions or transfer of control that only confuse investors, who thought they were protected from any control change by Article 254-A. Again, we would like to stress that JBI understands that NM's equality principle is absolute and protects the credibility of the segment.

c) Prohibition that NM companies issue securities not registered on approved custodians or authorised OTC markets.

Justification: NM companies must observe the pre-emption rights of current shareholders since, once more, it is the only way to ensure that the equality principle is observed and duly applied.

When a company issues securities which are not registered with approved custodians or authorised OTC markets, it shows a complete disregard or, at a minimum, creates relevant barriers to a significant group of investors, especially equity funds, financial institutions, private pension funds and foreign investors registered under Resolution 2689. This group is bound by strict rules that generally forbid them from dealing in or maintaining in custody securities not registered in an authorised market.

We have analysed this issue and could not think of any reasonable explanation for a company to issue securities that cannot be traded in an authorised market.

It may be possible for BMF Bovespa's Board to avoid the discussion of this specific matter by consulting the CVM on the possibility of not applying pre-emption rights (Article 172, Corporations Law) when securities are issued without being previously registered with an authorised custodian or OTC market. CVM's understanding may be that this is against the rights guaranteed by Article 172 and this decision would bind all listed companies, not only those listed in NM.

We hope it is clear from the above JBI's intention to target only a few, but yet critical points of reform. In our opinion, these are the matters currently threatening the segment's credibility. As already stated, although other topics under discussion by the NMCC are worthwhile, we understand from our legislative experience that attempting to reach consensus on a large number of reform proposals can be counter-productive and dilute their overall impact.

We warn that imposing a mandatory bid to any shareholder reaching a threshold of 30% of the company's total capital (European Model), the most popular proposal currently under discussion, is not enough to address and neutralise the threats to NM's equality principle identified above. The example described in item 2, for instance, where different prices are paid for shareholders of a same class of shares (unequal economic rights) would still be possible.

Another popular topic involves BMF Bovespa's enforcement of NM's rules. In this front, we propose that BMF Bovespa implements in its website a section devoted to all market participants, allowing them to go online and check the Board's opinion on all transactions where compliance with NM's rules and principles is not clear.

Lastly, in line with the transparency that characterised the implementation of NM and the general conduct of BMF Bovespa, we would like to propose that all suggestions received also be discussed and voted in an open and transparent way. This would guarantee that all companies disclose their votes to the general public.

Should you require any further information or wish to discuss any of the above topics in greater detail, please do not hesitate to contact us.