AMEC BULLETIN
November 2026

WHERE SHOULD BRAZIL'S CAPITAL MARKETS BE LOOKING?

Recent debates over the CVM independence, tokenization, and public tender offers (OPAs) raise broader questions about regulation and investor protection in the country



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Dear Amec members,

Setting aside Brazil's recent general elections, the most relevant discussions in the country's capital markets over the past few weeks have centered, one way or the other, on the role of the Brazilian Securities and Exchange Commission (CVM). From changes in how the regulator develops new rules to its growing focus on tokenization and its decisions on public tender offers, these debates raise broader questions about regulatory priorities and institutional capacity.

For this reason, this Bulletin examines three recent developments that illustrate these challenges. Across these discussions, Amec has emphasized regulatory independence and transparency, as well as careful consideration of market priorities and the consistent application of rules designed to protect all investors.

AMEC AND IBGC RAISE CONCERNS ABOUT RECENT CHANGES AT THE CVM

Amec has recently joined the Brazilian Institute of Corporate Governance (IBGC) in raising concerns about changes to how the CVM develops new rules. The alterations increase the possibility that the Agency's Board of Commissioners can conduct rulemaking directly, without the participation of the technical teams traditionally responsible for coordinating regulatory proposals.

The issue is particularly relevant because the CVM staff brings expertise to the preparation of rules governing Brazil's capital markets. In a joint statement that gained considerable media attention, Amec and IBGC called for caution and emphasized that any gains in procedural speed should preserve public consultations and the participation of the CVM's technical personnel.

The debate comes at a sensitive moment for the CVM, which has long struggled to strengthen its technical staff at the highest levels. Antônio Carlos Berwanger, who is a career civil servant with

expertise in regulation and digital assets, was nominated in August to fill the remaining vacancy on the CVM's Board. However, the Senate has not yet considered his nomination, leaving the position unfilled.

As for investors, the discussion goes beyond the CVM's internal organization, as how rules are developed can affect their quality and legitimacy. A regulatory process that combines technical expertise, public consultation, and institutional independence is key to maintaining confidence in Brazil's capital markets.

THE RECENT FOCUS OF CVM ON TOKENIZATION

Back in July, the Supreme Court ratified the CVM's Emergency Restructuring Plan, giving the regulator more financial and human resources to strengthen its operations, including new hires and modernized systems.

Against this backdrop, however, much of the Agency's recent attention has been directed toward tokenization. In September, for instance, its Tokenization Working Group proposed a pilot program to test distributed ledger technology (DLT) across the issuance, trading, registration, custody, and settlement of securities.

There is value in testing these technologies before establishing permanent rules. Tokenization can improve traceability and make it easier to identify market participants, but it does not fix the underlying asset. An instrument created with insufficient information or weak governance will retain those characteristics after tokenization.

International experience also shows that digital transformation and supervisory technology should be part of the same strategy. As markets become more digital, regulators need better data and technological infrastructure to monitor them effectively.
As I argued in my latest column for Valor Investe, this makes priorities especially relevant. With greater resources to strengthen its core supervisory functions, the CVM should also be able to address longstanding gaps in oversight and institutional capacity. For that reason, tokenization and the Emergency Restructuring Plan should therefore move forward together.

OPA RULES UNDER SCRUTINY

Public tender offers, or OPAs, have become increasingly relevant as M&A activity has intensified in Brazil, particularly in an environment marked by lower equity-market liquidity. At Amec, we have observed a weakening of the rules governing these situations, with some flexibility in interpreting the triggers that require this mandatory offer.

The subject has been featured prominently in Amec's forums, as recent cases have raised questions about how these rules are enforced. The latest involves the healthcare company Oncoclínicas. In August, the CVM's full board unanimously confirmed that the company's bylaws required an OPA.

According to estimates reported by Valor Econômico, the offer could be worth up to around USD 2.8 billion (BRL 14 billion). This is a significant amount for a company with a market value of around USD 301 million (BRL 1.5 billion) that is undergoing an out-of-court restructuring process to negotiate approximately USD 1 billion (BRL 5 billion) in debt.

The case has since expanded into a broader dispute, with shareholders pursuing arbitration and court proceedings related to the OPA and potential compensation. Minority shareholders have also sought judicial measures to ensure that the offer is carried out.
The case highlights why OPA rules matter beyond individual transactions. When the interpretation of OPA triggers becomes uncertain, the consequences can affect valuation and investor expectations. As M&A activity grows, consistent application of these rules will be more important to maintaining a predictable environment for investors.

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