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Increased Flexibility with New Public Offerings Regulatory Regime in Brazil

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The Brazilian capital markets regulator, the *Comissão de Valores Mobiliários* (the “CVM”), has recently reformulated the regulatory framework for public offerings in Brazil. Enacted on July 13, 2022 after a long review period where the CVM received and implemented hundreds of comments from public companies, investment banks, law firms, and other market participants, the new CVM Resolution 160/22 (“Resolution 160/22”) will become effective on January 2, 2023 and will replace CVM Instructions 400/03 and 476/09.

Pursuant to the new regulatory framework, public offerings will no longer be classified into registered offerings (under prior CVM Instruction 400/03) and unregistered offerings to qualified institutional investors (under prior CVM Instruction 476/09). Instead, all public offerings shall be registered with the CVM, which registration will follow either an automatic registration process (with no regulatory review prior to launch) or an ordinary registration process (with prior review by the CVM), depending on the issuer size, type of security offered and targeted investors. Among others, the ordinary registration process will be mandatory for initial public offerings, follow-on equity offerings (other than those by frequent issuers), offerings by pre-operational issuers, and offerings of convertible debt.

Beginning in January 2023, offerings under an automatic registration process, currently governed by CVM Instruction 476/09, will no longer be limited to 50 qualified institutional investors, which can broaden the pool of prospective investors significantly.

Below, we discuss the main aspects of Resolution 160/22 pertaining to Brazilian public offerings with international tranches or international offerings to investors resident or organized in Brazil.

I. Safe Harbor Allowing Brazilian Professional Investors to Participate in International Offerings

Currently, international equity and debt offerings cannot be offered to Brazilian investors due to the absence of an available exemption or safe harbor in Brazil. As a practical matter, Brazilian institutional investors have routinely been excluded from equity and debt offerings of securities listed on U.S., European and Asian stock exchanges. Resolution 160/22 creates a safe harbor that provides that an offering outside of Brazil will not be subject to Brazilian rules nor any regulatory review if: (i) the securities are listed in a non-Brazilian stock exchange; (ii) settlement and payment are made outside of Brazil not using Brazilian currency; and (iii) the securities are offered exclusively to “professional investors” resident or organized in Brazil. “Professional investors” are investors with more than R\$10 million (approximately USD\$1.8 million) in financial investments, financial institutions, insurance

companies, pension funds, investment funds, and investment clubs, among others institutional investors.

II. Pilot Fishing

Currently, an issuer or its underwriters can conduct confidential consultations regarding the viability of a potential offering with up to 50 investors. Pursuant to Resolution 160/22, such consultation can be made with any number of professional investors in Brazil, with a list of investors and copy of the consultation materials furnished to the CVM for monitoring.

III. Publicity of Roadshow Materials

Previously, any supporting materials of roadshow presentations only had to be filed with the CVM in offerings subject to registration. Roadshow presentations in unregistered offerings to qualified institutional investors remained confidential. Under the new Resolution 160/22, where all offerings shall be registered, the materials used in roadshow presentations will have to be made public by the issuer and the underwriters in the same websites where the prospectus and other offering documents are made available, within one day after its use with investors. This requirement will not be applicable to offerings aimed exclusively at professional investors.

IV. Quiet Period

Resolution 160/22 changed the Brazilian quiet period rules, mostly: (i) to clarify that the quiet period begins on the earliest of the engagement of the underwriters and the 30th day prior to the filing of the registration request with the CVM; (ii) to create communication safe harbors in the ordinary course of business; and (iii) to allow communications regarding the offering in any format, including media interviews, after the offering is launched.

V. Brazilian SPACs

Although it does not regulate special purpose acquisition companies ("SPACs") directly, Resolution 160/22 provides for important rules relating to their securities offerings, including: (i) exempting the SPAC from submitting an economic-financial feasibility study (required from other pre-operational issuers); (ii) restricting the offering of SPAC securities to "qualified investors" only (defined as professional investors; individuals or companies that hold financial investments in an amount of, at least, R\$ 1 million, and investment clubs managed by quota holders classified as qualified investors, as well as natural persons certified by entities accredited by the CVM); and (iii) permitting the trading of SPACs' securities on the secondary market exclusively among qualified investors, which trading restriction shall cease to apply after six months from a business combination with a target company.

Conclusion

Resolution 160/22 represents a much anticipated modernization of the regulatory regime of public offerings in Brazil, creating more flexibility for the execution of public offerings and simplifying the informational regime and offering documents.

Please contact our Capital Markets team in São Paulo for any further information.

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