Proposal for a new investment fund regulatory framework

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I) General rules | Main Innovations

1. GENERAL RULE AND ANNEXES

The proposed draft of the Public Hearing No. 8/2020 ("Draft") updates the regulatory technique and proposes a main section, which contains rules applicable to all types of investment funds, and each fund category will be regulated by annexes to the resolution. Therefore, the Draft proposes to have specific annexes for each type of investment fund (such as those initially proposed for "FIDC" and "FIC-FIDC", and financial investment funds, "FIF" and "FIC-FIF").

As for the formation of investment funds, the Draft proposes that investment funds that are already functioning will depend on prior registration with the CVM, which will be automatically granted through the electronic system. Thus, the Draft standardizes the use of automatic registration when registering an investment fund, though it does not provide the possibility of unregistered investment funds as usual as it is in the North American market, especially regarding private equity funds.

2. CLASSES OF QUOTAS AND PORTFOLIO SEGREGATION

The usual practice in the North American and European markets, in which the use of segregated portfolio companies and portfolio segregation allows the manager to adopt diversified strategies in the same investment platform, as well as allows the investors to select the investments they want to participate in these platforms (deal-by-deal), the possibility of asset segregation in investment funds in different classes of quotas was one of the most anticipated subjects by the market regarding the Brazilian Economic Freedom Law, especially by the private equity industry, real estate, credit, and infrastructure markets.

In line with the liberal principles of the Brazilian Economic Freedom Law, the Draft seeks to grant freedom to the contracting parties to structure the characteristics of each class

and establish the segregation of assets, provided that they follow certain minimum requirements, briefly indicated below.

It is important to notice that the Draft also allows the segregation of the risks of each investment – and not only financial flows – which will make it possible to adjust characteristics of each class according to the strategy of the investment, intended governance, costs and charges structure, distribution of income and payment of fees, among other possibilities, facilitating the operation and reducing the costs of the investment fund's structure as a whole.

The requirements that must be met for the portfolio segregation between the classes of quotas are the following:

i. each segregated portfolio must be specific to a single class of quotas and will only respond to obligations of their respective class, without prejudice to the existence of subclasses within the same segregated portfolio;

ii. each segregated portfolio must maintain its own bookkeeping and financial statements, audited by an independent auditor, and the approval of the investment fund's statements would be linked to the approval of the statements by their respective classes with segregated portfolios; and

iii. the issuance of each class of quotas will be carried out under the terms of the investment fund's regulation and must be registered with the CVM.

According to the Draft, each class of quotas will have its own number in the National Register of Legal Entities – CNPJ, assets, investment policy, and may have a different target audience, amortization conditions, and, in the case of open-ended classes, different conditions for application and redemption, fees, charges, among others.

The administrator of each investment fund will be responsible for the segregation of portfolios into classes, as well as "to diligence that there is no wrong transfer of wealth between the classes" – this being one of the aspects that can be clarified during the public hearing.

Finally, on this subject, the Draft proposes that the segregation of portfolios into classes cannot change the investment fund's tax regime. In this regard, we emphasize that the current regime for taxing investments in funds, in most cases, depends on the actual compliance of the portfolio with certain limits, which may be the subject to discussion within the scope of the Public Hearing.

3. QUOTAHOLDERS' LIMITED LIABILITY

The Draft proposes that at the time of formation of each investment fund, the administrator and the portfolio manager can define and determine in the respective investment fund's bylaws whether the liability of the quotaholders will be limited or not to the number of quotas subscribed by them. As a result, the investment funds shall adopt the nomenclature "Unlimited Liability" or "Limited Liability", depending on if quotaholders may be held responsible for any negative net worth of the investment fund.

The quotaholders will have unlimited liability in case the investment fund's bylaws remain silent in that regard.

The Draft does not recognize the possibility of coexistence of classes of quotas with and without limited liability in the same investment fund, although the CVM acknowledges that this coexistence may be possible as the market evolves.

Hybrid funds, that is, when there is the coexistence of classes of quotas with open and closed regimes, must necessarily determine the limitation of the quotaholders' liability.

Finally, the Draft proposes that exclusive investment funds (fund of one) cannot limit the quotaholders' liability to the number of

subscribed quotas, under the grounds that such limitation could cause damages to the industry, despite the common use of such investment funds for wealth management.

This aspect will possibly be subject to discussions and clarifications during the Public Hearing, given that the fulfillment of any criteria and requirement such as discretionary management of the exclusive fund's portfolio should, eventually, allow such investment funds to be eligible to the limited liability of its quotaholders.

4. NEGATIVE NET WORTH WITH LIMITATION OF LIABILITY

The Draft includes a specific chapter to deal with the hypothesis of an investment fund with a negative net worth that provides quotaholders with limited liability.

In this scenario, it will be up to the administrator to take immediate action to close the investment fund for redemptions or amortizations, as well as not to carry out new subscriptions of quotas. The administrator must publish a material fact to the market (similar to Form 8-K) disclosing the situation and prepare a "resolution plan" to solve the negative net worth to be approved by the quotaholders at a general or special quotaholders' meeting.

While analyzing the resolution plan, the general or special meeting may decide on the contribution of resources by the quotaholders or third parties to cover the negative net worth, spin-off, merger, incorporation, or liquidation of the investment fund, or even determine that the administrator shall file a request for a judge's declaration of insolvency (*insolvência civil*) of the investment fund (see topic below).

5. INSOLVENCY

The Brazilian Economic Freedom Law requires the application of the insolvency rules outlined in articles 955 to 965 of the Brazilian Civil Code (*insolvência civil*) to investment funds that do not have sufficient assets to account for their debts and which provides, in their bylaws, for the limitation of liability of quotaholders.

The Draft seeks to organize the liquidation procedure of investment funds, by means of which it will be checked whether the assets are insufficient to meet the obligations and liabilities of the fund and then, if necessary, initiate the insolvency procedure.

In addition, if the investment fund grants limited liability to quotaholders and, during the liquidation procedure, it is verified that the investment fund's net worth is negative, the Draft presents minimum requirements that must be followed by the administrator, including the elaboration of a resolution plan to solve the negative net worth, which must be approved by the quotaholders. During this procedure, quotaholders can choose to contribute additional capital to the investment fund to cover the negative net worth.

If the liquidation procedure does not solve the negative net worth, the insolvency claim of the investment must be filed by either the administrator, creditors, quotaholders, or even by the CVM, if the latter considers that the negative net worth may compromise:

i. the efficient functioning of capital markets;

ii. the integrity of the financial system.

The Draft proposes that the liquidation procedure may occur only in relation to a certain class of quotas. However, a declaration of insolvency by the judge will reach all classes of quotas of the investment fund.

6. THE PORTFOLIO MANAGER AS "ESSENTIAL SERVICE PROVIDER"

In line with recent discussions with market participants in the context of investment fund registrations and public offerings, the CVM expressly recognizes in the Draft the vital role of the portfolio manager in the process of structuring, forming, and operationalizing investment funds in Brazil – thus promoting better alignment of the Brazilian market with international practices.

In this regard, the Draft proposes, among other provisions, that the administrator and portfolio manager – referred to by the Draft as "essential service providers" – are co-responsible for drafting the fund's bylaws and both service providers shall jointly resolve on the formation of an investment fund.

7. ADMINISTRATIVE LIABILITY OF SERVICE PROVIDERS

The Draft proposes the distribution of liability for contracting and supervising service providers among the administrator and portfolio manager, the latter being responsible for engaging the distributor, the specialized consultant, and the market maker, as applicable, while the administrator will be responsible for engaging other service providers. In the same way, the Draft proposes that the expenses with the elaboration and publication of marketing materials of investment funds should be borne by the portfolio manager.

8. CIVIL LIABILITY OF SERVICE PROVIDERS

The Draft proposes that the civil liability of investment fund's service providers, whether essential or not, should be freely agreed upon within the scope of each investment fund, except for the obligation to provide joint and several liability for any losses caused to quotaholders due to conduct contrary to the law, the investment fund's bylaws, or regulations issued by the CVM.

The Draft proposes to limit the possibilities of inspection of other service providers by the administrator, assigning part of this responsibility to the portfolio manager in relation to service providers engaged by them. The Draft also proposes to limit the cases of joint and several liability between service providers to the following scenarios:

i. mandatory stipulation of joint and several liability between the essential service provider (administrator or portfolio manager) and third-party service provider if the relevant service is provided to a class of quotas targeted to the general public;

ii. between the administrator and the treasury, control and asset processing service provider;

iii. between co-managers; and

iv. between the FIDC or FIC-FIDC portfolio manager and the specialized consultant.

Considering that the majority of investment funds in Brazil, today, are targeted to the general public, in practice, the Draft proposes to make joint and several liability a rule for third parties engaged by the administrator or portfolio manager and not a faculty – as currently set forth in the Brazilian Economic Freedom Law[1].

9. SUBSCRIPTION OF QUOTAS IN NOMINEE ACCOUNTS

An innovation to the current regime of CVM Rule 555, of December 17, 2014, as amended ("CVM Rule 555"), the Draft proposes that in case a distributor that subscribes and holds quotas for their clients in nominee accounts (*subscrição por conta e ordem*) is not registered before the CVM as a bookkeeper, then such distributor must necessarily arrange for the deposit or registration of the fund's quotas at B3 SA – Brasil, Bolsa, Balcão ("B3") or in another entity that manages organized markets in Brazil.

In addition, the conversion of the subscription of quotas in nominee accounts into direct subscription or portability to another distributor in the event of the termination of the agreement between the portfolio manager and the distributor – which is currently a faculty – would become mandatory.

10. PUBLIC REGISTRATION OF INVESTMENT FUNDS ACTS

The Draft does not innovate in regard to the public registration of investment funds acts and maintains the obligation to register all the resolutions of the "essential service providers", except

1. The current article 1.368-D of the BCC, because of the Brazilian Economic Freedom Law, provides in its item II that the regulation of each fund provides the rules for limiting liability and parameters of its measurement before the fund and between themselves, without joint and several liability.

when they exclusively address amendments to the investment fund's bylaws.

11. SPECIAL QUOTAHOLDERS' MEETING

The Draft proposes that, in the event of portfolio segregation between classes, an investment fund, matters of specific interest to a certain class of quotas, may be resolved through a "special meeting" held by the relevant quotaholders – as opposed to the general quotaholders' meeting, which it will continue to exist and will have powers to decide on matters that are of general interest to quotaholders of all classes, such as the replacement of essential service providers and amendments to the bylaws. The matters subject to resolution at the special quotaholders' meeting are similar to the one attributed to the general meeting.

12. VIRTUAL QUOTAHOLDERS' MEETINGS

Indicating the consolidation of one of the practices adopted by the industry in the context of restrictions due to the lockdowns imposed by the Covid-19 pandemic, the Draft proposes to authorize, regardless of the provision in the bylaws, that all quotaholders' meetings can be held digitally or remotely.

In addition, the Draft proposes that all service providers of investment funds are prevented from voting at quotaholders' meetings, as well as related companies, their partners, directors, and employees.

II) Annex I – FIF and FIC-FIF

1. INVESTIMENTO EM BDR

Continuing the flexibility granted by the CVM for investments in Brazilian Depositary Receipts ("BDR"), the Draft proposes that:

i. BDRs of market index investment funds ("BDR-ETF") and BDRs of quotas traded abroad ("BDR-Quotas") are computed in the minimum concentration limit of 67% of the net worth of FIF's in the category "Quotas"; and

ii. the investment in BDR-ETF is computed in the minimum concentration limit of 95% of the FIC-FIF's net worth in the categories "Quotas", "Fixed Income", and "Multimarket".

2. INVESTMENT IN OFFSHORE FINANCIAL ASSETS

Also in line with the flexibility of investment in BDR brought by CVM Resolution 3, which allowed non-qualified investors to invest directly in BDR, the Draft proposes that investment funds targeted at the general public can invest up to 100% of its net worth in offshore financial assets, provided that these assets are allowed by each category of the investment fund and provided that the minimum requirements provided in the Draft are expressly set forth in the investment fund's bylaws.

The investment fund's manager and the custodian will be responsible for ensuring compliance with such provisions.

As a result, the requirements currently provided in Annex 101 of CVM Instruction 555 has been literally incorporated in the body of Normative Annex I of the Draft and continues to be mandatory for classes intended for qualified investors who invest over 40% of their net worth in offshore financial assets.
Regarding investment funds targeted at the general public, in response to the industries' requests, the Draft also allows these investment funds to invest up to 100% of their net worth in offshore financial assets. For this purpose, in addition to other applicable requirements, the local investment fund targeted at the general public may only invest through investment funds or investment vehicles abroad that have, at least, the following structure or provisions:

i. a calculation methodology for asset pricing and leverage recognized and monitored by a local authority;
ii. risk management that takes into account the potential mismatch between assets and liabilities of the investment fund or vehicle abroad, with the need for periodic reporting;
iii. daily calculation of the value of its quotas;
iv. liquidity management suited for the investment profile and redemption terms of the investor class, with liquidity provided, at least weekly;
v. rules that do not allow the investment fund or vehicle abroad to have negative net worth or that require the quotaholder to contribute additional resources above the committed capital to cover any loss of the investment fund or vehicle abroad;
vi. be targeted at the general public or equivalent in its home jurisdiction;
vii. asset concentration rules recognized and monitored by a local authority, whilst the investment funds or vehicles abroad must be subject to the following limits:

   a. 10% (ten percent) of its net worth in unlisted assets;
   b. 20% (twenty percent) of its net worth in bank deposits in a single institution; and
   c. 20% (twenty percent) of its net worth in assets of the same issuer, considered in the calculation of said limit, cumulatively, bank deposits and the value of positions in derivative contracts with underlying assets of the issuer or in which they act as a counterparty.

3. LIMITS FOR LEVERAGE

The Draft innovates in regard to the current regulations set forth in CVM Rule 555 by proposing that the class of FIF or FIC-FIF quotas targeted at the general public must necessarily have coverage or margin of guarantee in organized markets, observing that such coverage or margins may use a maximum of 10% of the net worth of the class to which the exposure to capital risk

refers. The Draft proposes that this limit can be increased to up to 50% for FIF and FICFIF targeted exclusively at qualified investors. Quotas classes designed for professional investors will not have limits on exposure to capital risk unless otherwise set forth in the bylaws of the relevant investment fund.

4. IDENTIFICATION OF FINANCIAL ASSETS

The Draft proposes that all financial assets acquired by FIF and FIC-FIF must have an International Security Identification Number - ISIN, following the international standards for financial assets. Obtaining this code from B3 is free of charge and, according to the CVM, will not incur additional costs to the investment funds.

5. WAIVER OF THE NECESSITY OF AN INTERMEDIARY IN THE DISTRIBUTION OF OPEN-ENDED QUOTAS

In a very innovative way, the Draft proposes to waive the necessity of an intermediary institution in the distribution of open-end classes of quotas of investment funds, as long as the administrator is responsible for the activities of preventing money laundering and counter-terrorism financing – AML/CFT. This proposal can enable new arrangements in the market and lower operational costs, resulting in a more competitive market and lower fees for investors.

6. DISTRIBUTION OF CLOSED-END INVESTMENT FUNDS

The Public Hearing proposes that the regulation of the public offer for distribution of quotas of closed-end investment funds intended exclusively for qualified investors, currently governed by article 22 of CVM Instruction 555 - known as "offer 555" -, be included in the rules that come to regulate the public offers for the distribution of securities - therefore, it is not yet included in the Draft. In compliance with Ordinance CVM / PTE 108/2020, this regulation is scheduled to be published by November 30, 2021, and a public hearing is expected to discuss with the market participants the proposed new regulation.

III) Annex II - FIDC and FIC-FIDC

1. DISTRIBUTION OF FIDC AND FIC-FIDC CLASS QUOTAS TO THE GENERAL PUBLIC

In view of the longstanding market demand, the Draft proposes that classes of FIDC and FIC-FIDC can be targeted at the general public, provided that certain requirements are met, including:

i. provision for periodic amortization or income distribution;

ii. distribution to the general public allowed only for senior subclass quotas;

iii. collateral provision or other forms of substantial retention of risks and benefits by the assignor or third party;

iv. in case of open-end classes of quotas, redemption closing limited terms to up to 180 days between the redemption request and its payment;

v. the fund shall not invest in:
- **a.** non-performing receivables;
- **b.** receivables originated by the investment funds service providers; and/or
- **c.** financial assets prohibited to the general public; and

vi. in case of FIC-FIDC, the prohibition of investment in a class or subclass of FIDC or FIC-FIDC that may acquire, directly or indirectly, non-performing receivables.

2. DISTRIBUTION OF FIDC AND FIC-FIDC CLASSES OF QUOTAS FOR QUALIFIED AND PROFESSIONAL INVESTORS

The Draft proposes that FIDC and FIC-FIDC classes intended exclusively for qualified investors are eligible for some regulatory exemptions, such as, among others:

i. greater flexibility to establish terms for the conversion of quotas and payment of redemption in open-end funds;

ii. greater flexibility for calculating and charging the performance fee;

iii. waiver from risk classification;

iv. possibility of providing collateral any other form of co-obligation in the name of the investment fund, as long as approved by a special quotaholders' meeting representing at least 67% of the quotas of the class under discussion.

In addition to investing in non-standardized receivables, the Draft proposes that classes intended exclusively for professional investors may be eligible for exemption from sending certain information to quotaholders and, only in the case of FIDC, such investment funds could receive receivables payments through an account held by the assignor, for later transfer to the FIDC.

3. NON-STANDARDIZED RECEIVABLES

The Draft proposes extinguishing the category of non-standardized FIDCs (FIDC-NP and FIC-FIDC-NP), without, however, ending the concept of "non-standardized receivables". This concept remains, however, changed to:

i. include receivables that "are assigned by a company undergoing judicial or extrajudicial recovery process (the Brazilian equivalent to the American Chapter 11)", except when cumulatively:
   a. it does not have co-obligation from the originator;
   b. have performed receivables; and
   c. the assignor's recovery plan has been approved in court; and

ii. exclude federal government writs of payment, provided that, cumulatively:

a. do not present any judicial objection;
b. they have already been issued and sent to the competent Federal Regional Court; and
c. represent individually, by type of government writ of payment, a maximum of 20% (twenty percent) of the assets of a certain class of quotas.

The existing FIDC classes that admit investment in non-standardized receivables and the FIC-FIDC classes that admit investment in such FIDC would continue to be restricted to professional investors, however, the Draft waived the hypothesis of subscription of subordinated quotas by the assignors of such receivables.

The Draft proposes that quotas of FIDC classes that have as investment policy the allocation of a preponderant portion of its net worth in receivables originated from companies undergoing judicial or extrajudicial recovery process can be distributed to the general public, as long as the subscribed quotas are paid-in-kind with receivables.

4. PORTFOLIO

The Draft proposes that relevant changes regarding the composition of FIDC and FIC-FIDC portfolios:

i. the creation of a concept of "financial assets" distinct from the concept of CVM Rule 555, which would include:
   a. "bonds or issued or with co-obligation by the National Treasury";
   b. "Fixed income securities", except for quotas of another FIDC; and
   c. "Fixed income financial assets issued or with co-obligation by financial institutions", not prohibiting the use of derivatives of hedge purposes and the performance of repo operations (*operações compromissadas*);

ii. an extension to 180 days of the first payment of quotas to fit the FIDC / FIC-FIDC portfolio - twice the term currently set forth in CVM Rule 356, of December 17, 2001 ("CVM Rule 356");

iii. the possibility of a FIDC class destined exclusively for professional investors that invest a percentage above 20% of its net worth in receivables or assets under the responsibility or co-obligation of the same debtor;

iv. the minimum limit concerning the percentage of the FIC-FIDC class's net worth that should be allocated in quotas of FIDC and/or FIC-FIDC would go from the 95% currently set forth in CVM Rule 356 to 67%;

v. the possibility of classes of FIC-FIDC destined exclusively for qualified investors that invest a percentage above 25% of their net worth in quotas of the same FIDC or FIC-FIDC, as long as it is provided in the annex to the investment fund's bylaws applicable to this class; and

vi. that the portfolio's compliance with the investment policy must be verified at the end of each month, no longer daily.

5. INVESTMENT BY THE ASSIGNOR

The Draft brings restrictions to investment by creditors who assign receivables exclusively in quotas that are subordinate to all others for amortization and redemption.

6. ESG FIDC

The Draft proposes the creation of a new category - the "Social & Environmental" Fund -, with the use of the suffix "Socioambiental", in its nomenclature, restricted to FIDC or FIC-FIDC classes of quotas whose associated receivables are related

to the creation of social and/or environmental benefits verified through a second opinion report or certification of standards with internationally recognized methodologies. The regulation of this category is a point of interest for the industry, which has been demanding such provision from the CVM since Public Hearing Nº. 4/2018, of September 27, 2018.

7. CUSTODIAN'S INDEPENDENCE

The Draft proposes that the custodian cannot, under any circumstances, be a related party to the investment fund's portfolio manager or the specialized consultant.

8. CUSTODY OF RECEIVABLES BY THE ASSIGNOR OR ORIGINATOR

In line with some precedents by CVM that waived requirements in the recent past, the Draft proposes that the assignors or originator of a FIDC can carry out the custody of the supporting documents that back the receivables they are assigned to the fund, provided that such receivables comprise the portfolio of a class of quotas restricted to professional investors and the following additional cumulative requirements are met:

i. receivables have defaulted, widespread, of low average value and assigned to the FIDC for a low percentage of their face value, making the custody costs by the custodian or subcontracted service provider unfeasible for this purpose;

ii. the credit collection is carried out, predominantly, in an extrajudicial manner, which would waive the presentation of the original credit agreement;

iii. there is prior unanimous approval by the FIDC's quotaholders;

iv. all receivables assignment agreements contain clauses that provide for repurchase mechanisms or the

resolution of the assignment in case the supporting documents cannot be presented, or they contain formalization defects;

v. back up of receivables is not carried out by sampling; and

vi. the quarterly reports disclose the FIDC's exposure to each assignor and the number of credits repurchased or indemnified for the resolution of the assignment.

FIDC with a single professional quotaholder or group of quotaholders linked by a single and inseparable interest aren't obligated to comply with the requirements **(iii)** and **(iv)** above.

9. ADMINISTRATIVE RESPONSIBILITY OF SERVICE PROVIDERS

The Draft innovates and provides for a significant reduction in the duties currently conferred on the custodian, which would now be performed by the portfolio manager, such as:

i. the verification of compliance with the eligibility criteria provided in the investment fund's bylaws and, if applicable, the conditions of the assignment provided in rules and each assignment agreement;

ii. the formalization of the transfer of the supporting documents of the receivables; and

iii. engagement of a collection agent. In turn, the responsibility for hiring a third-party institution to keep the documents that back the receivables assigned to the FIDC becomes the responsibility of the administrator.

In addition, the portfolio manager's duties regarding the monitoring of the portfolio were more clearly defined, including default and repurchase rates, the average term, and the possibility of early payment of receivables by debtors. The Draft also proposes that

managers be responsible for verifying the tax compliance of the assignors, as part of the due diligence process in the scope of credit assignment, establishing an exemplary list of how such verification can be carried out. If the portfolio manager finds that there is a reasonable risk that the assignment will become effective due to demand from the Brazilian National Treasury, the portfolio manager should disclose this fact to the quotaholders. In this context, the Draft proposes that custodians be responsible only for:

i. carrying out the ordinary collection of receivables comprising the FIDC's portfolio;

ii. performing physical or electronic and financial settlement of these receivables; and

iii. keeping the supporting documentation of the receivables if a specialized institution has not been hired for this purpose by the administrator.

On the other hand, administrators, in addition to the duties currently set forth in CVM Rule 356, would be responsible for verifying any events related to the revaluation of federal government writs of payments comprising the FIDC's portfolio, informing in the quarterly report:

i. whether the government writs remains on the Union's payment order;
ii. the existence of judicial objection or supervening facts capable of altering the order or payment term of the government writ; and
iii. the assessment of the chance of success of any objection from the Brazilian National Treasury.

10. REGISTRATION OF RECEIVABLES

The Draft also proposes two additional service providers to be hired by the administrator:

i. a registrar authorized to operate by the Central Bank of Brazil, which cannot be a related party to the assignor or originator of the registered receivables; and
ii. agent responsible for the physical or electronic settlement of receivables.

These provisions formalize practices that have already been adopted by the market, especially in the context of receivables assigned by participants of a payment arrangement, according to the provisions of the Central Bank of Brazil. In this sense, the provisions bring greater objectivity to the responsibilities of each service provider in such structures in line with the most recent CVM rules.

11. THE USE OF SERVICE PROVIDERS AS ASSIGNORS

An important innovation of the Draft is the possibility of the administrator, portfolio manager, consultant, or its related parties to be assignors or originators of receivables, provided that:

i. the manager, administrator, consultant, and registrar are not related parties among themselves; and

ii. the registrar is not a party related to the originator or assignor - the requirement of item **(i)** above is waived in the case of a FIDC intended for professional investors.

The Draft also provides a suggestion for the definition of the term "originator" as the "agent that acts in the primary concession of credit and competes directly for the formation of receivables", including, without limitation, the commercial relationship initially made with the debtor at the time of concession of the credit.

12. FEES

The Draft proposes the elimination of the exhaustive list of fees set forth in the rule, with other fees being freely established regarding classes restricted to qualified investors and, even in relation to classes targeted at general investors, the bylaws

could provide for other fees as long as necessary for the "good administration" of the FIDC or if ratified at quotaholders' meeting.

13. MARKETING MATERIALS AND ESSENTIAL INFORMATION SLIDE

The Draft proposes the harmonization of the rules applicable to FIDCs and FIC-FIDCs regarding the preparation and distribution of marketing materials in relation to rules applicable to FIF and FIC-FIF, as well as requiring the monthly publication of a slide of essential information (*lâmina de informações essenciais*) which provides for the same items of the current Annex 42 of CVM Rules 555, *mutatis mutandis*.

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