



Center for Financial and Capital
Markets Studies

2020

**BEYOND THE
REGULATOR'S DATA**

Enforcement on the Brazilian
Capital Market

AUTHORS

VIVIANE MULLER PRADO (VIVIANE.PRADO@FGV.BR)

Viviane is a full time professor at the Getulio Vargas Foundation's School of Law in São Paulo,, where she coordinates the Center for Financial and Capital Markets Studies/FGV. She holds an LLB from the Federal University of Paraná and a PhD from University of São Paulo School of Law.

EZEQUIEL FAJRELDINES DOS SANTOS (EZEQUIEL.SANTOS@FGV.BR)

Ezequiel holds a degree from the Federal University of Rio Grande do Sul. He also has a master's degree and is a PhD candidate at Getulio Vargas Foundation's School of Law in São Paulo. He is a researcher at the Center for Financial and Capital Markets Studies/FGV.

MARCOS GALILEU LORENA DUTRA (MARCOS.DUTRA@FGV.BR)

Marcos holds a degree and master's degree in Business Administration from FGV Business School (EAESP - FGV). He also has an LLB and a PhD from University of São Paulo School of Law. He is a career staffer at the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários - CVM). Marcos is also professor at FGV Law - SP.

MARIANNA B. DIAZ M. DE OLIVEIRA (MARIANNA.OLIVEIRA@FGV.BR)

Marianna is a law student at University of São Paulo Law School. She is also a research intern at the Center for Financial and Capital Markets Studies/FGV. Marianna attends the Partenariat International Triangulaire d'Enseignement Supérieur (PITES) in order to receive a Law degree from the Université Jean Monnet Saint-Étienne.

BRUNO SILVA E SOUZA (C353750@FGV.EDU.BR)

Bruno is a law student at the Getulio Vargas Foundation's School of Law in São Paulo . He also has a Scientific Initiation Program (2020) scholarship from the same law school.

ANA PAULA RIBEIRO NANI (ANA.NANI@FGV.BR)

Ana Paula holds a degree in Law from the Getulio Vargas Foundation in São Paulo. She was awarded a scientific initiation scholarship from the Brazilian Association of Law and Economics (ABDE). She is a master candidate in Business Law at Getulio Vargas Foundation's School of Law in São Paulo and is a researcher at the Center for Financial and Capital Markets Studies/FGV.

LEONARDO H. D. DE OLIVEIRA (OLIVEIRA.LEONARDOH@GMAIL.COM)

Leonardo is a graduate law student at University of São Paulo. Leonardo attended the Partenariat International Triangulaire d'Enseignement Supérieur (PITES) and also holds a Law degree from the Université Jean Monnet Saint-Étienne.

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Presentation

2020 ENFORCEMENT REPORT

Information about the enforcement actions is essential to assess the effectiveness of the capital market laws.

This report presents the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários - CVM) enforcement actions during 2020. The Center for Financial and Capital Markets Studies of Getulio Vargas Foundation Law School data adds information about CVM's accountability efforts. It provides an independent and analytical view of its outcomes. When possible, these figures are compared with 2019's results to demonstrate how enforcement action has evolved. Our research is based on publicly available information and organizes data beyond the official reports.

Our objective is to identify long-term trends and their relationship with CVM's legal mandate. According to the Brazilian Capital Markets Law, CVM must guarantee a fair, efficient, and transparent market. To achieve this goal, it must protect investors from issuer misconduct, executive wrongdoing, insider trading, and market abuse.

It is worth noting that the CVM's enforcement actions exist within a broader context that includes educational, consultative and oversight initiatives. Some activities are taken directly and others indirectly, through self-regulatory bodies like BSM, ANBIMA, and APIMEC.

CVM is the regulatory agency responsible for regulating, monitoring and punishing offenders in the Brazilian securities market. The penalties are applied under an administrative sanctioning proceeding conducted according to Law n. 6,385/1976 and Law n. 9,784/1999.

DISCLAIMER

This report was produced by researchers working for several different institutions. Please note the material and any opinions it contains do not necessarily reflect those of the Brazilian Securities and Exchange Commission (CVM), the Getulio Vargas Foundation, or any other institutions the researchers have any prior or current association with.

Administrative Proceedings Decisions and Settlements Agreements

MAIN FINDINGS (1/2)

CVM ENFORCEMENT ACTIONS IN 2020

The number of sanctioning administrative proceedings decisions dropped from 2019 to 2020. Three factors can explain this outcome: 1. issues caused by the COVID-19 pandemic; 2. the fact that the Commission's board was short one member for most of the year; 3. the number of highly complex cases the CVM handled, especially those involving Petrobras and its executives.

In December of 2020, the Federal Court of Accounts (Tribunal de Contas da União - TCU) published a report recommending areas where the CVM could improve, some of which were directly related to its enforcement actions (case 027.307/2018-2). In the same month, the outcomes of the Petrobras cases - with the acquittal of several directors - attracted public attention. These acquittals directly impacted the year's results, particularly in corporate cases: 126 (approx. 70%) of 181 accusations did not result in convictions. This result differs from the outcome in other subjects.

Total financial penalties also fell from R\$ 1.04 billion in 2019 to R\$ 880 million in 2020. It is worth noting that almost half (R\$ 427 million) came from one penalty imposed against a single person under Market Abuse Regulation (CVM Rule 8/1979). The total value of fines imposed in this case (R\$ 770 million) represents 88% of all monetary penalties in 2020.

As in 2019, the subjects of administrative proceedings or settlement agreements are, for the most part, severe wrongdoings according to the rule regarding punishments (CVM Rule 607/2019). This finding suggests that CVM focuses its enforcement actions on the type of misconduct that attracts the harshest sanctions.

A substantive share of the enforcement actions (15 of 63) is related to market abuse. These cases resulted in a high percentage of convictions (over 80%), following 2019's trend.

Administrative Proceedings Decisions and Settlements Agreements

MAIN FINDINGS (2/2)

CVM ENFORCEMENT ACTIONS IN 2020

Few procedures about corporate issues involving directors' and executives' fiduciary duties resulted in convictions. Despite the large number of cases brought, 69.6% of directors and executives were acquitted in 2020, compared with 60% in 2019.

The results obtained from the settlement agreements are similar to the numbers from CVM administrative proceedings decisions.

We found that CVM reviewed 178 settlement agreements' proposals in 2020, a significant drop from 274 in 2019. This drop is also explained by the COVID-19 pandemic, CVM's incomplete border, and the focus on complex cases.

The number of rejected settlement agreement proposals rose slightly in relative terms (37% in 2019 to 43,8% in 2020). The vast majority of accepted proposals still involve payment obligations (96.5% of proposals).

Corporate and market abuse misconduct cases are the subjects of most settlement agreements.

With the total number of cases falling, the CVM also raised less from settlement agreements. We registered R\$ 66,2 million in 2019 against R\$ 43,5 million in 2020.

The drop in the number of cases concluded may increase further demand on the CVM's decision-making areas. There is a possible increment in the backlog of pending cases.

The CVM still had two unfilled board seats until the conclusion of this report. This poses an additional challenge that adds to the pandemic-related social distancing rules that are likely to continue into 2021.

Administrative Proceedings Decisions

OVERALL RESULTS

ADMINISTRATIVE SANCTIONING PROCEEDINGS IN 2020

There were decisions on 63 CVM administrative sanctioning proceedings in 2020. These cases involved 313 defendants, including 267 individuals and 46 legal entities.

Chart 01 - Individuals v. Legal Entities charged in administrative sanctioning proceedings - CVM 2020

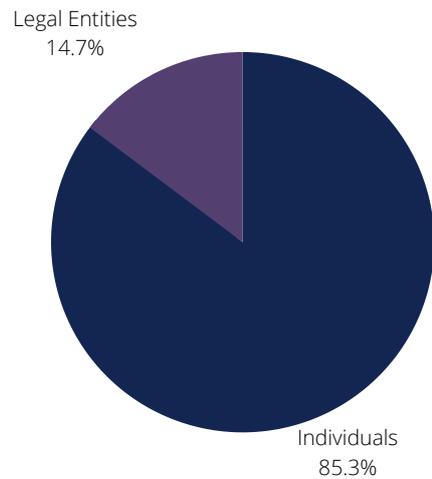
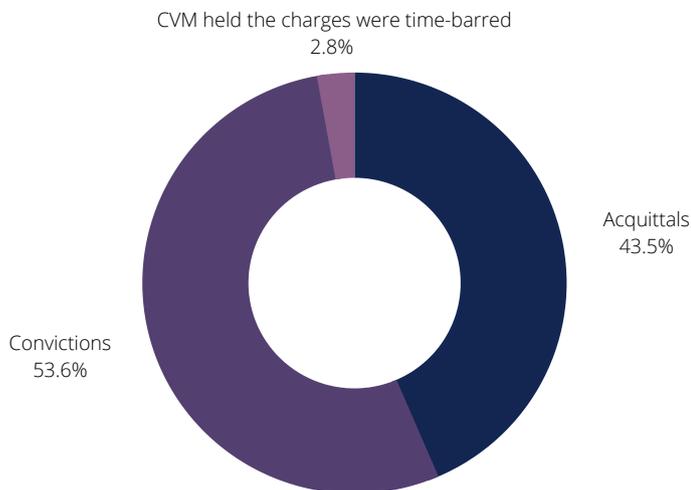


Chart 02 - Administrative sanctioning proceedings results, by accusation - CVM 2020



CHARGES

The 63 decisions on administrative sanctioning proceedings in 2020 assessed 386 charges against 313 defendants.

CONVICTIONS

These 386 charges resulted in 207 convictions and 168 acquittals. In 11 decisions, the CVM held the charges were time-barred.

63

Administrative sanctioning proceedings decisions in 2020

386

Charges in 2020

53,6%

Of cases resulted in convictions

Administrative Proceedings Decisions

TYPES OF MISCONDUCT AND CASES OUTCOMES

TYPES OF MISCONDUCT

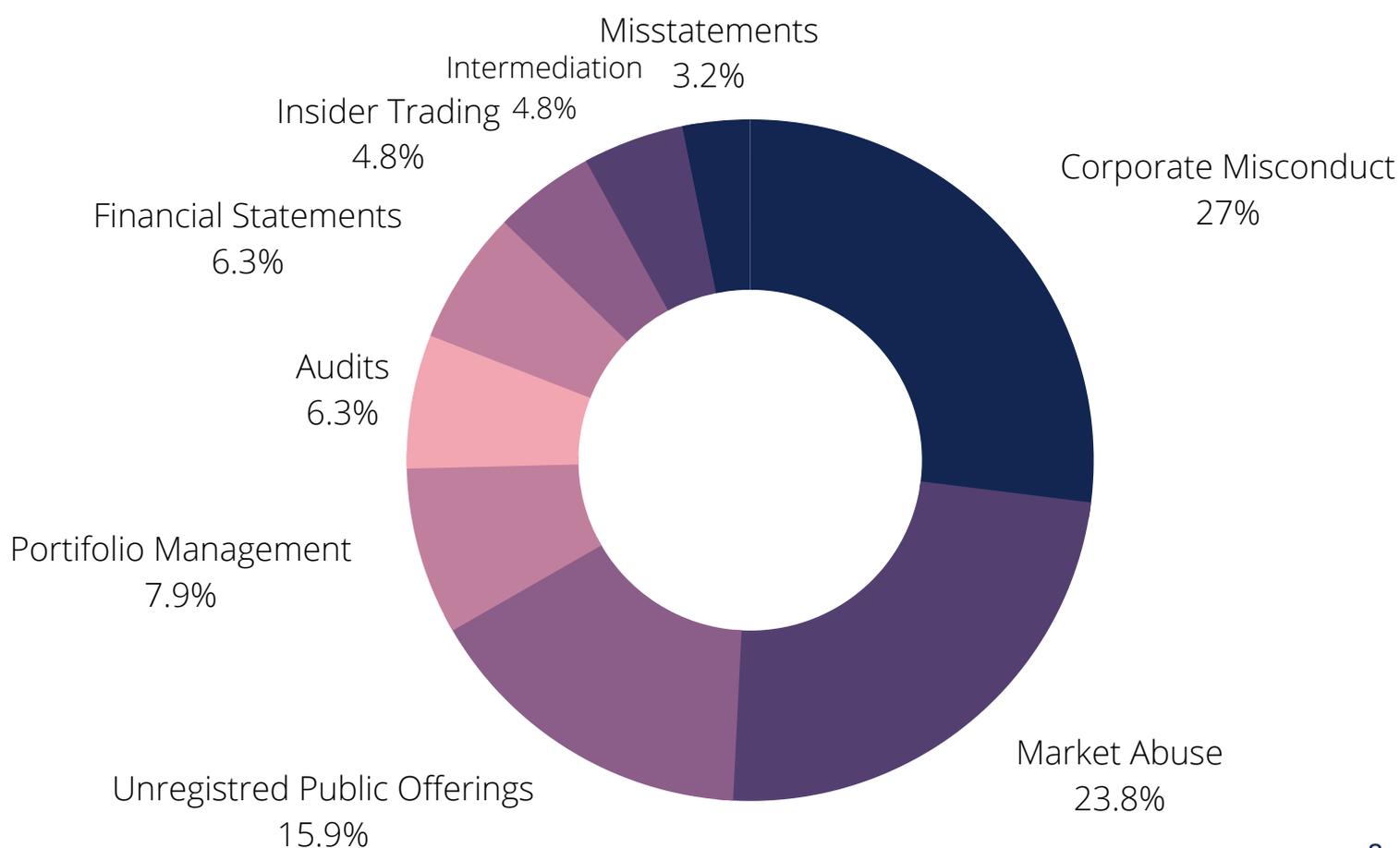
CVM's decisions on the 63 administrative sanctioning proceedings in 2020 involved corporate misconduct (17), market abuse (15), unregistered public offerings (10), portfolio management (5), audits (4), financial statements (4), insider trading (3), intermediation (3) and misstatements (2).

CORPORATE WRONGDOING AND MARKET ABUSE WERE THE MOST FREQUENT TYPES OF MISCONDUCT

Cases of corporate misconduct and market abuse listed in CVM Rule n. 08/1979 represent half the decision in 2020, which is slightly higher than 2019 (44%). Cases involving unregistered public offerings came in third, unchanged from 2019 (when they represented 12%).

The number of cases related to audits and financial misstatements fell year on year.

Chart 03 - Types of misconduct in administrative sanctioning proceedings - CVM 2020



Administrative Proceedings Decisions

OVERVIEW OF CORPORATE CASES

The corporate cases in 2020 dealt with issues such as breach of directors' and executives' fiduciary duties, formalities in shareholders' general meetings, abusive voting, and conflicts of interest.

In 10 of the 17 cases on corporate matters, charges involved directors and executives. The subject of these cases were violations of their duties under the Brazilian Corporation Act. In only four cases, the decisions were related to abuse by controlling shareholders, two of which also included charges for breach of directors' and executives' fiduciary duties.

Corporate cases accounted for 150 of the 273 defendants charged in 2020, almost all of them directors and executives of listed companies. Of the 150 parties charged, 42 were convicted on at least some of the accusations. However, five cases accounted for 115 directors or executives, of whom 20 were convicted.

Three of these cases are related to Petrobrás (Case n. 06/2016, Case n. SP2017/0294 and Case n. 19957.008751/2019-11), and another two involved Forja Taurus (Case n. RJ 2014/1377 and Case n. RJ 016/7961).

Board of Directors and Fiscal Council members, and executive officers were most frequently charged for breaching their fiduciary duties. Of the 175 charges filed against 115 directors and executives, 110 were based on the duty of care provided by article 153 of Brazilian Corporation Act. In second place were the 38 charges related to misstating financial statements - filed under article 176 of the same Act. However, 114 of the 175 charges filed against directors and executives resulted in acquittals and 50 in convictions, with 11 cases judged to be time-barred.

We note that the majority of these acquittals (106) came in just the five cases mentioned.

150

Defendants charged in corporate matters

5

Cases accounted for the majority of charges filed against directors and executives

63%

Were acquitted in corporate matters involving shareholders and executives

Administrative Proceedings Decisions

OVERVIEW OF MARKET ABUSE AND INSIDER TRADING

MARKET ABUSE AND INSIDER TRADING

The types of market abuse referred to in CVM Rule n. 8/1979 - such as market manipulation, fraud and unfair transactions - accounted for 77 charges, which resulted in a significant number of convictions (69) and just 8 acquittals.

The majority of charges were for unfair practices (53), followed by fraudulent transactions (13). There were just 11 charges of manipulation and none for creating artificial market conditions.

Many of the cases based on CVM Rule n. 8/1979 resulted in convictions. All defendants charged with fraudulent transactions, manipulation, and artificial market conditions were penalized, as were 45 of the 53 defendants accused of unfair practices.

The majority of defendants charged under CVM Rule n. 8/1979 were investors (38) or independent investment advisers (17).

There were three cases of insider trading tried in 2020 in which four people were charged, resulting in only one conviction (on a financial penalty of R\$ 100,000.00) and three acquittals.

100%

Of cases based on market abuse resulted in at least one conviction

1

Person was convicted of insider trading in 2020

3

Types of market abuse prohibited by CVM Rule n. 8/1979 in 2020

Administrative Proceedings Decisions

SANCTIONS

207 PENALTIES WERE IMPOSED IN 2020

The most common sanction was financial penalties: 172 were applied in 2020. Other penalties such as disqualification (16), warnings (12), prohibitions (4), and suspensions (3) were far less common.

Of the 181 charges in corporate cases, only 55 resulted in convictions (30%). There was, however, a higher percentage of convictions for market abuse cases (84%).

All 27 charges in the eight cases involving unregistered public offerings resulted in convictions.

Chart 04 - Penalties applied in administrative sanctioning proceedings - CVM 2020

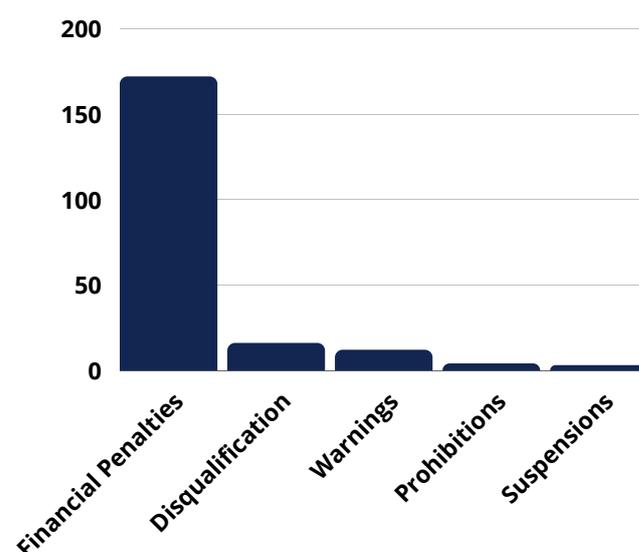


Table 01 - Number of Acquittals, Convictions and Time-Barred Cases by topic in administrative sanctioning proceedings - CVM 2020

AREA	Acquittals	Convictions	Prescription	Total
Corporate	115	55	11	181
Market Abuse	14	74	0	88
Financial statements	6	26	0	32
Insider trading		1	0	4
Unregistered public offerings	0	27	0	27
Audits	9	6	0	15
Portfolio Management	15	9	0	24
Intermediation	6	6	0	12
Information misstatement	0		0	
Total	168	207	11	386

PENALTIES

According to article 11 of Brazilian Capital Markets Law (Law 6,395/1976), the CVM can apply a range of penalties, including warnings, financial penalties, temporary disqualification from holding posts or engaging in activities regulated by the CVM for up to 20 years, suspending business permits or registration, temporarily prohibiting certain activities or transactions, or involvement in certain capital market transactions, for up to 20 years. Law 13,506/2017 also entitles the CVM the power to prevent parties from contracting with state-owned financial institutions or bidding for government contracts (for up to five years). However, it has yet to apply this penalty.

Administrative Proceedings Decisions

SANCTIONS

CVM APPLIED AROUND R\$ 880 MILLION IN FINANCIAL PENALTIES IN 2020

The highlight was penalties for market abuse under CVM Rule n. 8/1979, which add up to R\$ 847 million in 2020. However, the financial penalties issued in only one case (Case n. 06/07) represented practically the entire amount.

CMV charged 14 people with engaging in unfair practices in the Case n. 06/07, resulting in financial penalties totaling R\$ 771.6 million. The CVM also applied two suspensions, one disqualification and a prohibition, in each case for seven years.

This case also produced the highest single penalty applied in 2020: R\$ 427.7 million. To reach this value, CVM multiplied transaction value by 1.5 times.

Except for insider trading (which only attracted one fine for R\$ 100,000), the average penalty in other cases varied between a little over R\$ 150,000 – for misleading financial statements – to R\$ 730,000 – for unregistered public offerings.

Table 02 - Minimum, average and maximum financial penalties by topic - Administrative sanctioning proceedings - CVM 2020

AREA	Individual penalty (R\$ thousands)			Total amount (R\$ thousands)	Total penalties
	Minimum	Average	Maximum		
Portfolio management	125	394	720	2,755	7
Audits	50	275	800	1,650	6
Financial statements	28	151	880	3,314	22
Market abuse	100	12,833	427,731	847,000	66
Insider trading	100	100	100	100	1
Intermediation	50	179	495	895	5
Unregistered public offerings	82	732	1,500	17,573	24
Information misstatement	100	200	250	600	3
Corporate	15	199	700	7,576	38
Total				R\$ 881,463.90	172

Administrative Proceedings Decisions

ADDITIONAL INFORMATION ABOUT PENALTIES

CALCULATING FINANCIAL AND NON-FINANCIAL PENALTIES APPLIED IN 2020

In 28% of cases (or 49 convictions), CVM explicitly stated it had calculated financial penalties using the transaction value, the profit gained, or loss avoided, as stated in article 11, § 1 of Law 6,385/1976.

CVM also applied various non-financial penalties, such as warnings, disqualifications, temporary prohibitions, and suspensions.

Three out of the four temporary prohibitions were for market abuse violations (CVM Rule n. 08/1979). Three convictions resulted in suspensions: two under CVM Rule n. 08/1979 and one for portfolio management.

The 16 disqualifications were applied in 6 administrative sanctioning proceedings related to corporate matters (10), market abuse (3), and financial statements (3).

28%

Convictions resulted in financial penalties based on the value of the illegal transaction, the profit gained or the loss avoided

16

Cases, mostly involving corporate matters, resulted in temporary disqualification

3

Cases filed under market abuse prohibition resulted in temporary prohibitions

Administrative Proceedings Decisions

CALCULATING FINANCIAL PENALTIES

APPLYING THE NEW FINANCIAL PENALTIES CALCULATION RULES

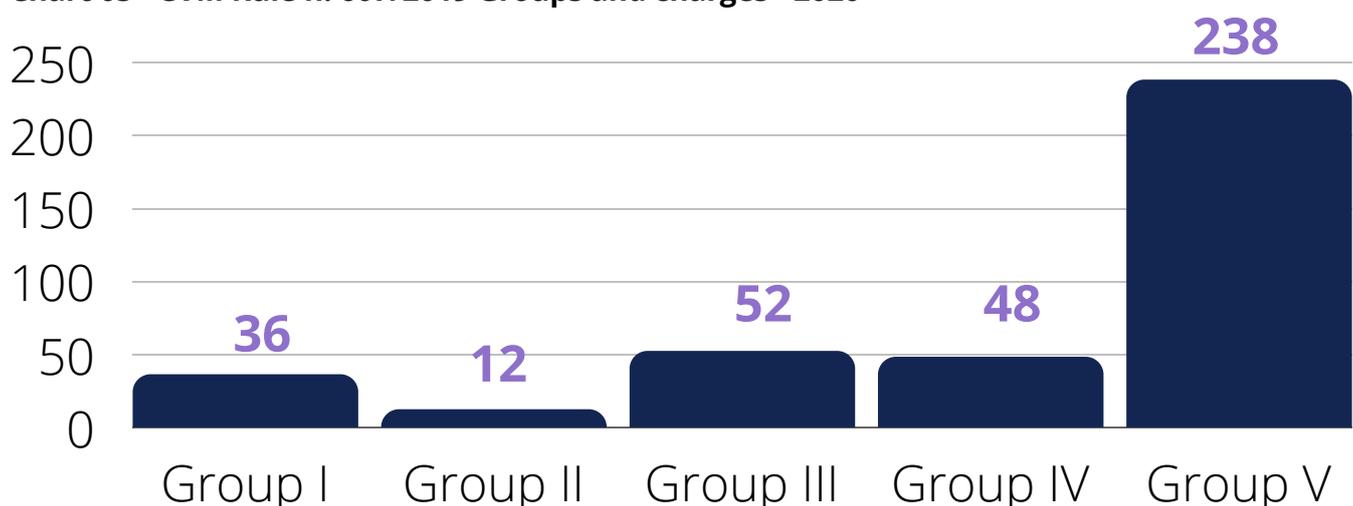
Law 13,506/2017 and CVM Rule n. 607/2019 elevated the maximum financial penalty from R\$ 500,000 to R\$ 50 million. Furthermore, under the new regulation, financial penalties can now be calculated to reflect the harm caused by wrongdoing. CVM is also still able to use the amount of issuance or illegal transaction to calculate financial penalties (which can now represent up to twice the transaction amount that triggered the case). Penalties can also be based on the economic advantage obtained or loss avoided by wrongdoing (the rate, in this case, remained unaltered at three times the benefit received).

Article 62 of CVM Rule n. 607/2019 adopted a three-step penalty calculation process. First, a baseline penalty is defined, then CVM applies any aggravating or mitigating circumstances and subsequently considers any reasons for reducing the penalty.

The article sets specific limits on the baseline penalty depending on the type of crime. It divides the types of wrongdoing into five separate groups, based on their severity, each with a specific ceiling.

Almost every case that CVM heard involved misconduct before Law 13,506/2017 and CVM Rule n. 607/2019 came into force. In a theoretical exercise, we apply the new penalty calculation to the CVM enforcement decisions in 2020. After allocating the 396 charges into the groups described in Schedule 36 of the CVM Rule n. 607/2019, most of them fell in Group V (which has a maximum baseline penalty of R\$ 20 million), followed by Groups III (R\$ 3 million) and IV (R\$ 10 million).

Chart 05 - CVM Rule n. 607/2019 Groups and charges - 2020



Administrative Proceedings Decisions

APPLYING THE NEW PENALTY CALCULATION RULES

THE NEW FINANCIAL PENALTY CALCULATION RULE IN PRACTICE

In most 2020 CVM decisions, the regulator focused on applying the new calculation rule, particularly the rules on aggravating and mitigating circumstances, to calculate financial penalties issued under CVM Rule 607/2019.

However, we only found one case that applied the new three-step financial penalty calculation process described in CVM Rule 607/2019. This was Case n. 19957.0002382019-82.

In this case, the misconduct in question began in 2017 and continued until 2019. The new guidelines were applied under Federal Supreme Court (STF) Precedent 711, which states the following: “Provided the law came into force before the cessation of the crime, continued, or permanent crimes are subject to the harshest criminal law.”

When explaining how the penalty was calculated, the decision took into account one aggravating circumstance (the misconduct did not cease although the wrongdoings had already been detected) and one mitigating circumstance (no prior misconduct). Each was determined to have a 15% effect on the baseline penalty. In practice, the aggravating and mitigating circumstances offset one another.

The decision did not give any reason to explain how the baseline penalty was calculated. It was simply set at R\$ 1,500,00 for each violation (illegal securities distribution and illegal securities offering).

CALCULATING PENALTIES ACCORDING TO CVM RULE N. 607/2019

Inspired by the three-phase process used in Brazilian criminal proceedings, CVM Rule n. 607/2019 describes how financial penalties should be calculated: “Article 62. Unless issuing a warning, to calculate a penalty, the Board of Commissioners shall first establish the baseline penalty, then apply any aggravating or mitigating circumstances and subsequently any reasons for reducing the penalty, in that order”.

Settlements Agreements

TYPES OF CASES

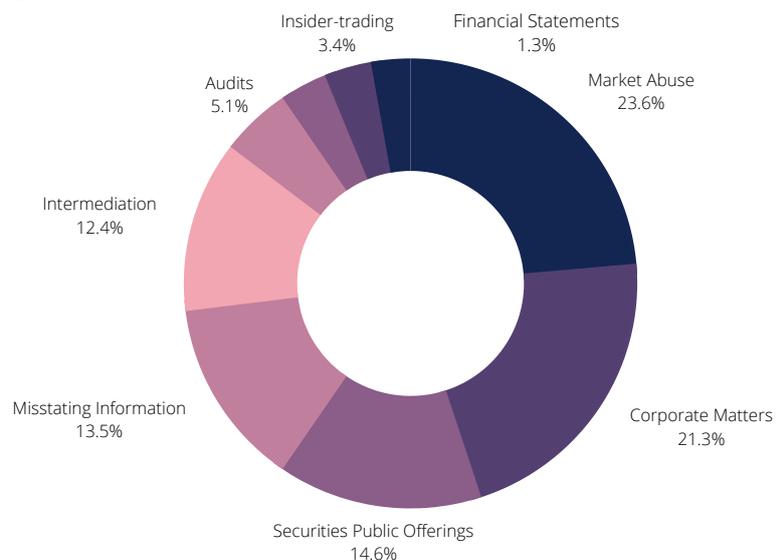
AGENDA

The 178 settlement agreements applications reviewed in 2020 involved market abuse (42), corporate matters (38), securities public offerings (26), misstating information (24), intermediation (22), audits (9), portfolio administration (6), insider-trading (6) and financial statements (5).

As the CVM administrative sanctioning proceedings' decisions in 2020, most settlement agreement applications (45%) were on corporate issues and market abuse. A significant number of applications involved public offerings. However, unlike the cases that went to administrative trial, these cases were related to registered offerings.

Settlement agreement applications filed in response to charges on corporate matters and market abuse resulted in the highest disapproval: 31 of 38 applications on this subject were rejected (81,5%). 23 of 42 applications on market abuse (CVM Rule 8/1979) were also not accepted (54,7%).

Chart 06 - Settlement agreements applications by area - CVM 2020



All 22 settlement agreement applications related to intermediation were accepted. These applications were distributed across four cases concerning illegal intermediation, public offering registration, fiduciary duties of the corporate directors and executives, and independent investment agents' activities.

SETTLEMENTS AGREEMENTS BY LAW 6,395/1976

Article 11 of Law 6,395/1976 forbids CVM to initiate enforcement actions (and requires it to suspend them) if CVM approves a settlement agreement with a party under investigation. A settlement agreement is only accepted if the regulator deems it appropriate and opportune in light of public interest. The law states applicants must agree to cease any alleged wrongdoing and correct any misconduct, including compensating any affected parties.

Settlements Agreements

APPLICATION ANALYSIS RESULTS

SETTLEMENTS AGREEMENTS IN 2020

The 178 settlement agreements applications analyzed in 2020 were related to 68 administrative proceedings.

In total, 128 individuals, 44 legal entities, and 6 investment funds filled applications.

Chart 07 - Proportion of Individuals, Legal Entities and Investment Funds filing settlement agreement applications - CVM 2020

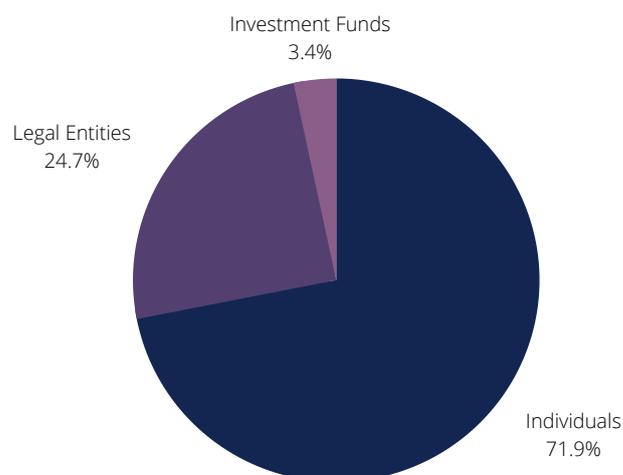
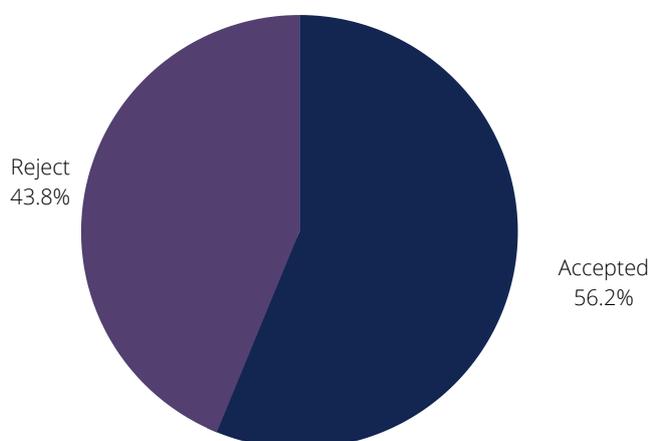


Chart 08 - Settlement agreement applications accepted and rejected - CVM 2020



NUMBER OF SETTLEMENT AGREEMENTS ACCEPTED AND REJECTED

100 of the 178 settlement agreement applications that CVM reviewed in 2020 were accepted, and 78 were rejected.

68

Administrative proceedings with settlement agreement applications

56,2%

Of settlement agreement applications were accepted in 2020

24,7%

Of settlement agreement applications were filed by legal entities

Settlements Agreements

REASONS FOR ACCEPTING AND REJECTING APPLICATIONS

MOST FREQUENT REASONS GIVEN

The following table lists the reasons commonly mentioned for accepting or rejecting applications - bearing in mind a decision may contain more than one reason. The primary justification is the generic expression “convenience and opportunity” (which is mentioned in the law), followed by the perception the proposed undertaking is sufficient and appropriate to discourage further misconduct.

Applications were mainly rejected because of either the severity of the case or the fact that the misconduct was continuing. Less commonly, CVM held the amounts proposed insufficient (lower than amounts previously accepted in similar circumstances), or the applicant had not offered any compensation for those affected by their misconduct.

Table 03 - Reasons for accepting or rejecting settlements agreements - CVM 2020

Reason	Accepted	Rejected	Total
Convenient/opportune	64	6	70
Sufficient to discourage the misconduct	68	0	68
Conduct ongoing/suspended	18	30	48
Severity of the case	2	31	33
Amount lower than agreed in other cases	0	24	24
Prior violations	18	4	22
Corrections of irregularities	20	0	20
CVM track record	12	5	17
The applicant’s track record	12	4	16
Settlements in similar cases	14	0	14
Others (n=39)	103	109	212
Total	331	213	544

68

Occasions where CVM felt the proposed undertaking was sufficient to discourage the misconduct

64

References to the “convenience and opportunity” of accepting the settlement agreement

30

Cases in which the continuity of conduct is explained as a reason for rejecting the settlement agreement

Settlements Agreements

OBLIGATION BY TYPE OF CASE

AMOUNTS THE CVM COLLECTED FROM APPROVED SETTLEMENTS AGREEMENTS IN 2020

In 2020, settlement agreements applicants agreed to pay approximately R\$ 43million.

One case involving failure to control position limits on the futures market resulted in the most significant settlement: R\$ 7 million, of which R\$ 6.3 million were payable by the corporation and R\$ 700,000 by the executive responsible.

These amounts do not include compensation for affected third parties.

Chart 09 - Obligations in settlements agreements accepted - CVM 2020

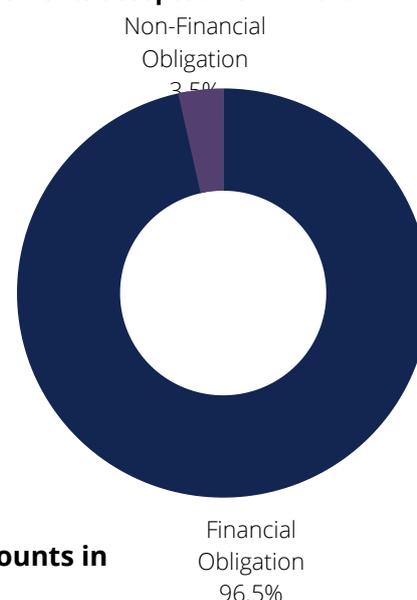


Table 04 - Minimum, Maximum and Average Amounts in settlement agreements accepted - CVM 2020

AREA	Financial penalty per offender (R\$ thousands)			Total amount (R\$ thousands)	Total of applications
	Minimum	Average	Maximum		
Portfolio management	210	1.535	3.898	9.208	6
Audits	80	273	550	1.364	5
Market wrongdoing	3	436	5.517	12.201	28
Insider trading	15	139	208	693	5
Intermediation	50	527	6.300	11.588	22
Public offerings	50	242	500	2.900	12
Information misstatement	10	202	675	4.440	22
Corporate	15	126	250	880	7
Total				43.275	107

96,5%

Obligations in accepted settlement agreements included financial obligation

R\$ 43.2

MI

Total amount payable under settlement agreements accepted in 2020

4

Number of applications accepted that included non-financial obligation

Settlements Agreements

SEVERITY OF CASES ANALYZED

SEVERITY CLASSIFICATION - CVM RULE N. 607/2019

As mentioned previously, Law 13,506/2017 and CVM Rule n. 607/2019 increased the limit for CVM's financial penalties.

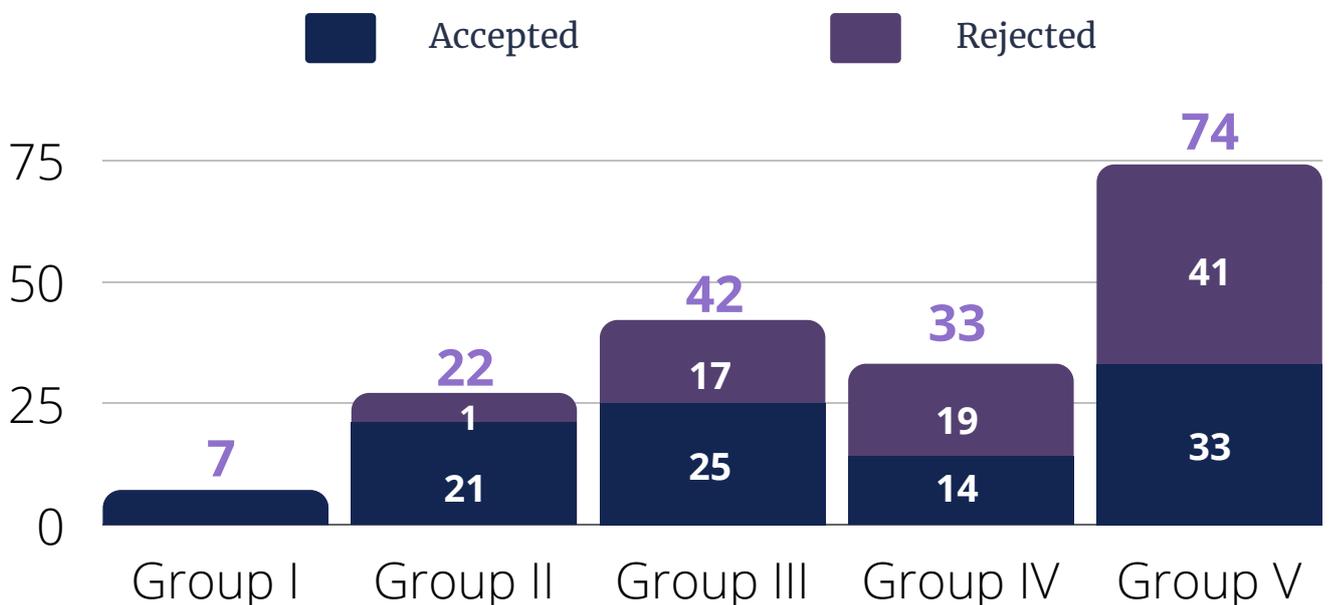
To provide a calculation rule when applying these new penalties, CVM Rule n. 607/2019 split the various types of misconduct into five groups, depending on their severity.

As we did with the administrative sanctioning proceedings decision in 2020, we also applied the calculation rule to the settlement applications analyzed in 2020 as part of a hypothetical exercise.

As a result, we found that proposals analyzed by CVM in 2020 fell under all the groups of the new regulation. The charges fall mainly in Group V, followed by Group III.

Based on the 2020 results, the number of applications accepted changes as severity increases. The approval rate was more favorable towards applicants as the severity of accusations (as defined by regulation) decreased.

Chart 10 - CVM Rule 607/2019 Groups - 2020



Notes on Methodology and the Research Database

This Report collected data publicly available on the CVM website up to March 19, 2021, disregarding enforcement actions decisions in 2020 without publicly available information. The research employed the case search tool available on the CVM website and official press releases. Differences in methodology from other reports may explain variations in observations and conclusions.

Cases were classified by area based on their principal subject matter, chosen by researchers. Although they do not represent the majority, some cases involve more than one type of misconduct - in these situations, the cases were assessed to determine the primary wrongdoing involved.

Administrative sanctioning proceedings sometimes have more than one defendant, and settlement agreement applications may include more than one proponent. This means that the number of defendants involved is larger than the number of cases.

Additionally, enforcement actions may include charges for several different types of misconduct, meaning the number of charges exceeds the number of parties charged.

CVM applies penalties separately by charges. However, in some cases, one penalty was issued for various types of misconduct. In these cases, the penalty was distributed across the accusations.

Similarly, some settlement agreement applications involve more than one area of misconduct, and each may include more than one obligation. In these cases, each proponent was considered one application, and the obligations were counted for individually.

These reports mention all amounts in Brazilian Reals (R\$). In 31 December of 2020, the exchange rate was 1 US Dollar = 5,1961 R\$.

If you wish to cite the data or charts from this report, the authors suggest referencing the Center for Financial and Capital Markets Studies at FGV Law SP, coordinated by Viviane Muller Prado.

If you have any suggestions or questions or would like any further information, please contact mfcap.direitosp@fgv.br

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RUA ROCHA, 220. ROOM 13 - 1ST FLOOR
BELA VISTA, SÃO PAULO.

ZIP: 013330-000

TEL: (55) 11-3799-2199

EMAIL: MFCAP.DIREITOSP@FGV.BR