

**BEYOND THE
REGULATOR'S DATA**
*Enforcement on the Brazilian
Capital Market*

2022

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Presentation

2022 ENFORCEMENT REPORT

Information about the regulator's 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 2022. The Center for Financial and Capital Markets Studies of Getulio Vargas Foundation Law School data adds to CVM's accountability efforts. It provides an independent and analytical view of its outcomes. 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. It must protect investors from issuer misconduct, executive wrongdoing, insider trading, and market abuse to achieve this goal.

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 that the material and opinions do not necessarily reflect those of the Brazilian Securities and Exchange Commission (CVM), the Getulio Vargas Foundation, or any other institutions the researchers have prior or current association.

Administrative Proceedings Decisions and Settlements Agreements

MAIN FINDINGS (1/2)

CVM ENFORCEMENT ACTIONS IN 2022

The number of sanctioning administrative proceeding decisions ruled by CVM dropped compared to past years. After reaching a historical record of 109 decisions in 2018, the number of cases has decreased, particularly after 2020 (63 cases against 98 in 2019), reaching 56 in 2021 and 50 in 2022.

According to the CVM's data, the decrease of ruled cases coexists with expanding number of new proceedings with potential sanctioning consequences. There were 693 proceedings by the end of 2022.

Although throughout the first months of 2022 the Board of Commissioners of the CVM functioned incompletely (with unfilled vacancies for members), this condition was no longer observed from May onwards, when all positions were filled. As expected, in July the term of the previous President ended, with the entry of a new leader into the regulator. In any case, historical budget limitations are repeated, accompanied by difficulties in hiring new employees. As reported, the CVM started the year 2023 with a 30% deficit in the staff compared to 2010, in a period in which the Brazilian market showed considerable growth.

As already noted in the 2021 MFCap report, it is worth noting that the new sanctioning regime adopted by Law No. 13.506/017 is being progressively observed in the cases since their facts have happened after the law's enactment and the new dosimetry may be applied.

Despite that, based on the analysis methodology applied by MFCap to data from the last three years, it is possible to notice a dynamism in the type of cases. In 2022 there was a decrease in corporate matters (from 45.6% of the accusations in 2021 to 17,3% in 2022) at the same time that the agenda has become more diversified.

Accusations involving irregularities in portfolio management increased from 2,4% in 2021 to 26,1% in 2022, market abuse practices showed representativeness again (they made up 23.8% of the accusations in 2020, dropped to only 2.0% in 2021 and reached 22.1% of cases in 2022) and breaches of obligations in public offerings reached 7,2% of accusations (against 4,4% in 2021).

Administrative Proceedings Decisions and Settlements Agreements

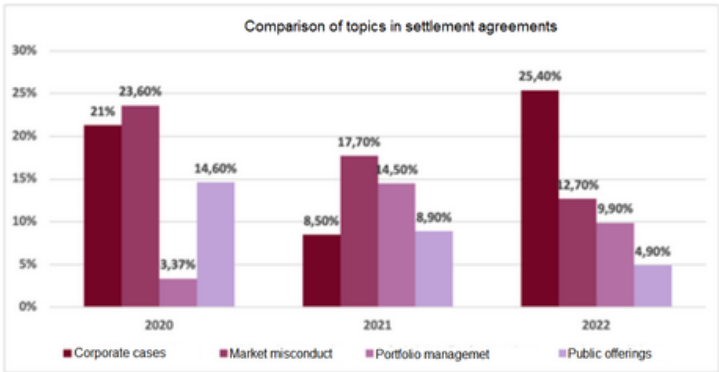
MAIN FINDINGS (2/2)

CVM ENFORCEMENT ACTIONS IN 2022

CVM maintained its history of favouring pecuniary fines, applied in 90% of the 193 sanctions, followed by warnings (6%). In 2022 the total value reached R\$48,4 millions, with almost half of this value corresponding to judgments involving market abuse practices (R\$20,4 millions).

It is worth noting that this value was calculated in a new context in which the amount of the potential pecuniary fine has increased from R\$500,000 to R\$50 million by the Law No. 13.506/2017 (applicable to facts that occurred after its entry into force).

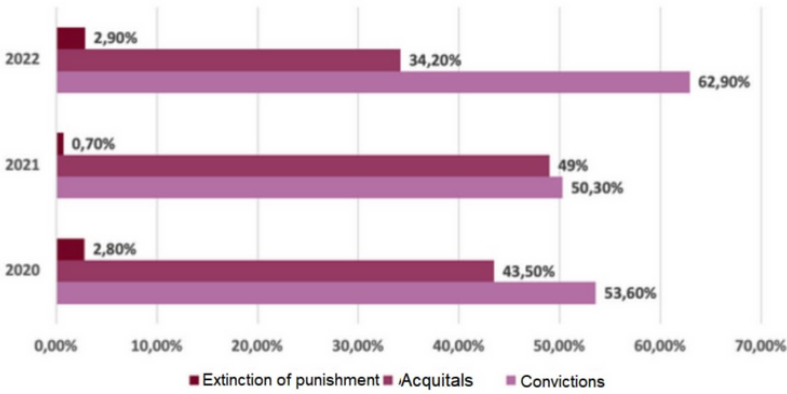
The percentage of condemnations grew compared to previous years, hitting 62,9% of MFCap's analysed conducts.



As for settlement agreement proposals, from the 142 decisions analysed by MFCap, there was a prevalence of corporate law matters (25,4%), disclosure problems (20,4%) while portfolio management (9,9%), market abuse practices (12,7%) and public offerings (4,9%) had less representation in settlement proposal's decisions.

In percentage terms, there was a decrease in rejected proposals (50,7% in 2022 against 57,3% in 2021). Among the accepted proposals, the prevalence of obligations to pay amounts remains, it reached R\$40,2 millions, slightly inferior to 2021 (R\$69 millions) but close to the fine's total value (R\$48,4 millions) applied in sanctioning judgments.

Results of administrative proceedings over the years



Administrative Proceedings Decisions

OVERALL RESULTS

ADMINISTRATIVE SANCTIONING PROCEEDINGS IN 2022

There were decisions on 50 CVM administrative sanctioning proceedings (PAS) in 2022. These cases involved 188 defendants, including 144 individuals, 44 legal entities but, contrary to 2021, no investment funds.

Chart 01 - Individuals and Legal Entities charged in administrative sanctioning proceedings - CVM 2022

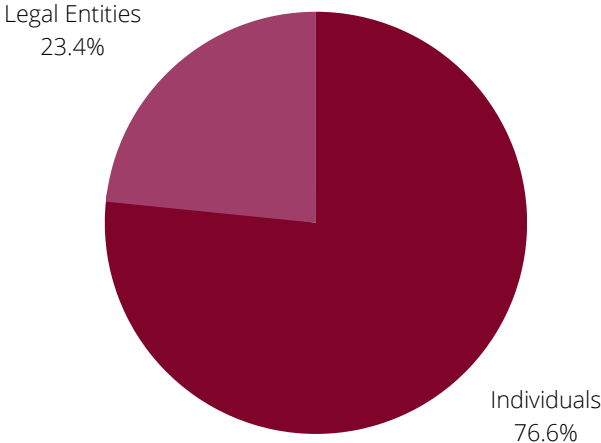
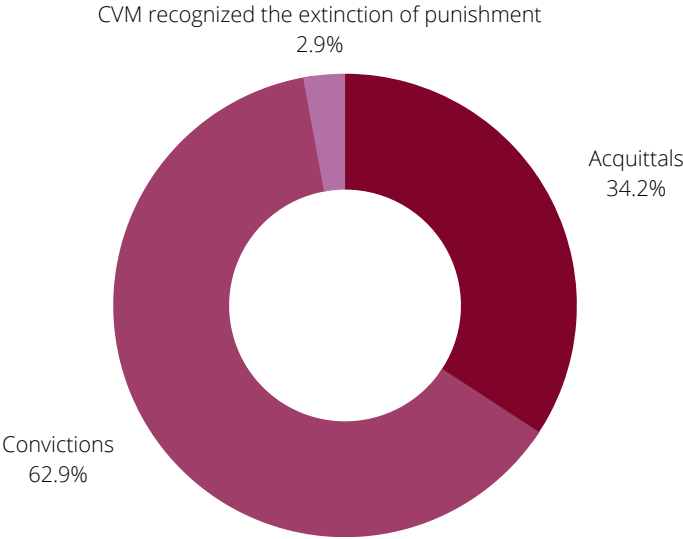


Chart 02 - Administrative sanctioning proceedings results, by accusation - CVM 2022



CHARGES

The 50 decisions on administrative sanctioning proceedings in 2022 assessed 307 charges against 188 defendants.

CONVICTIONS

These 307 charges resulted in 193 convictions and 105 acquittals. In 9 decisions, the CVM recognized the extinction of punishment.

50

Administrative sanctioning proceedings decisions in 2022

307

Charges in 2022

62,9%

Of cases resulted in convictions

Administrative Proceedings Decisions

TYPES OF MISCONDUCT AND CASES OUTCOMES

TYPES OF MISCONDUCT

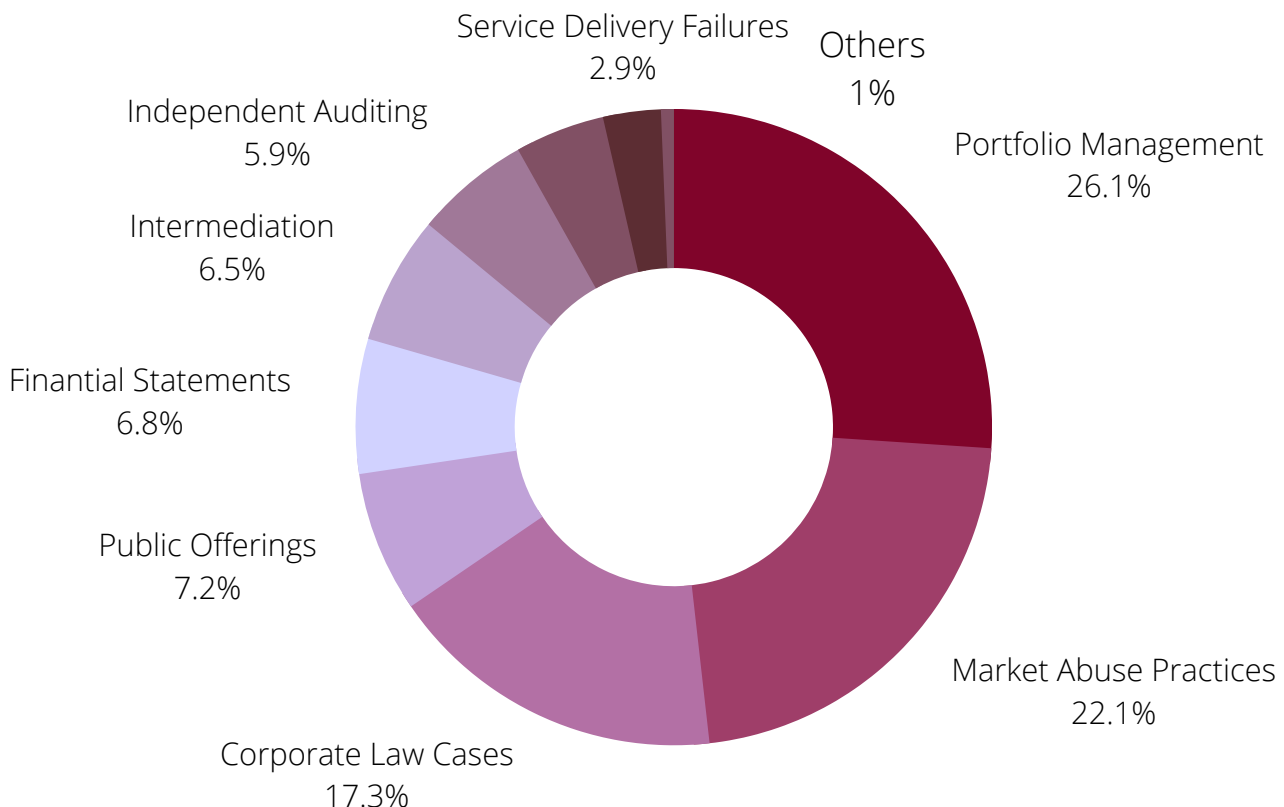
The 307 charges in PAS judged in 2022 involved portfolio management (80), market abuse practices (68) corporate law cases (53), public offerings (22), financial statements (21), intermediation (20), independent auditing (18), information problems (14), service delivery failures (9) and others (2).

Contrary to previous years, there were no decisions concerning insider trading.

PORTFOLIO MANAGEMENT AND MARKET MISCONDUCT PRACTICES AS THE MOST FREQUENT TYPES OF MISCONDUCT

Cases of portfolio management (26,1%) and market abuse practices (22,1%) represent together almost half the decisions in 2022, followed by corporate law cases and public offerings. Market abuse practices became important again, differently from 2021, following the trend in 2019 and 2020 where it appeared in large numbers in the sanctioning action of the CVM.

Chart 03 - Types of misconduct in administrative sanctioning proceedings - CVM 2022



(*) The two cases classified as "others" referred to conduct related to obstruction of supervision.

Administrative Proceedings Decisions

OVERVIEW OF PORTFOLIO MANAGEMENT CASES

According to the methodology used by MFCap in categorizing cases as "portfolio management", there are two groups well defined: (i) violations of rules by authorised participants and (ii) irregular exercise of activity without previous authorization according to art. 23 of the law n.º 6.385/ 1976. In the sample analysed in 2022 there are cases in both categories, standing out cases of the second: near two-thirds (67,2%) of the 64 people charged were involved in irregular exercise activity of securities portfolio management, conducts that, beyond administrative sanctions, may also give rise to criminal liability (irregular exercise of position, profession, activity or function, art. 27-E of Law n.º 6385/1976).

In the MFCap's chosen sample, all the persons charged in 2022 with portfolio management wrongdoings were part of the same administrative sanctioning proceeding; it involved one brokerage house, its managers, investment advisors and other investors.

It is a singular case, not only by the number of persons involved but to the time period the conduct was practiced (from 2008 to 2011) and to the fine's total value applied, R\$11,6 millions. It was applied 7 fines of R\$ 500 thousand - the maximum value mention by the law at the time of the events.

In the cases of service delivery failures by personnel conducts varied: problems in management and administration of Credit Rights Investment Funds (FIDC), Stock Investment Funds (FIA), Real Estate Funds (FII) and "Fundos 555". In those cases the accusation was not only against the legal entity (management firm or corporate trustee) but also against its managers (usually the "responsible director").

64

Accusations in portfolio management

26%

Of the cases analysed by MFCap were about portfolio management

10

Managers or trustees involved

Administrative Proceedings Decisions

OVERVIEW OF MARKET ABUSE CASES

Despite the small participation in 2021 (representing less than 5% of the conducts studied), in 2022 cases related to Market Abuse (fundamentally, violations of CVM Rule No. 62/2022, a reissue of the old CVM Rule No. 8/1979) gained representativeness and accounted for 22.1% of the conducts studied in the sample collected by MFCap.

When considering the four traditional types of Market Abuse Practices, there was a predominance of the fraudulent transaction, with 54 decisions concentrated in 5 cases: one related to irregular portfolio management (characterized by churning), three concerning the management of investment funds combined with fraud, another related to irregular transfer of resources among participants through day trades, and a last one about fraud in bonds trading.

In cases of fraudulent transaction with conviction decision, the dosimetry varied considerably, ranging from a minimum pecuniary fine of R\$ 175,000 to a five-year penalty of disqualification for the Director of a securities brokerage firm involved in the wrongdoing.

The other three prohibited conducts under CVM Rule n. 62/2022 were much less representative in the 2022 cases: creation of artificial conditions of demand, supply, or price of securities (4 charges in a single process), price manipulation (3 charges in 3 different processes), and unfair practices (6 charges in a single process, which caused losses to a state pension fund).

Despite being less representative in the context of the judgments carried out in 2022, as will be seen later in the report, two cases of manipulation and one of unfair practice resulted in some of the most severe monetary penalties, all calculated as a multiple of the unduly obtained economic benefit: R\$ 1.9 million and R\$ 2.9 million for cases of price manipulation, and R\$ 1.5 million for unfair practice.

R\$2,9MM

Largest monetary fine for market abuse practice

54

Allegations involving violations of CVM Rule n.º62/2022

79,4%

Of the allegations involving market abuse cases were fraudulent transactions

Administrative Proceedings Decisions

OVERVIEW OF CORPORATE LAW CASES

In 2022, 13 administrative sanctioning proceedings involved topics on Corporate Law, representing 53 accusations. It is worth noting that the number of accusations decreased compared to 2021 (133)

Following the 2020's and 2021's trend, acquittals outnumber executive's convictions. In 2022, the accusations of corporate law issues resulted in 30 acquittals and 23 convictions.

The same as 2021, the accusations were charged mostly against directors and officers of publicly-held companies (41), controlling shareholders (6) and people that occupied both directors and controlling shareholder positions (6).

Similarly to 2021, the proceedings about corporate law matters involved irregularities in the convening and holding of meetings, abuse in the exercise of voting rights by controlling shareholders and conflict of interest, violation of minority rights, problems with capital increase and breaches of the duties of directors and officers. Differently from 2021, in 2022 breaches of the duties of executives were not the most numerous accusations, reaching only 17 out of 53.

The convictions resulted in fines, and only in one case regarding irregularities in capital increase, a warning was issued to the members of the Board of Directors. The highest fine was R\$2.3 million, applied to the controlling shareholder accused of acting in a conflict of interest, with a violation of Article 115 of Law No. 6,404, and the lowest was R\$49,000 in a case of failure to hold a Shareholders General Meeting.

R\$2,3MM

Fine for the controlling shareholder in case of conflict of interest

53

Accusations involving corporate law issues

23

Convictions involving corporate law issues

Administrative Proceedings Decisions

OVERVIEW OF DISCLOSURE PROBLEMS AND FINANCIAL STATEMENTS

The Law No. 6.385/1976 and Law No. 6.404/1976 and CVM regulation impose many disclosure obligations on issuers of securities, either by requiring the periodic information (Financial Statements, Quarterly Financial Information, and Reference Form), or by imposing the occasional disclosure of material facts to the market.

In 2022, 9 cases were ruled, containing 35 allegations, regarding disclosure problems and financial statements. These numbers are lower compared to 2021 results, in which there were 12 cases concerning disclosure problems and 6 about irregularities in financial statements, involving 66 accusations on both topics.

In almost all cases judged in 2022 regarding disclosure problems and irregularities in financial statements, the defendant were officers or members of the Board of Directors, which is not surprising due to the inherent responsibilities of those occupying these positions regarding these matters.

Most of the charges were related to the failure on the periodic information (Quarterly Financial Information, Financial Statements, and Reference Form), with only 3 defendants being charged with violations in disclosing material facts.

Of the 14 charges related to information issues, there were 11 convictions, two cases in extinction of punishment, and only one acquittal. The trials regarding irregularities in financial statements resulted in 11 convictions and 10 acquittals. All acquittals were in the same case and related to the liability of members of the Fiscal Council and Board of Directors.

The failure to prepare periodic information resulted in fines ranging from R\$40,000 to R\$120,000. In cases of irregularities in financial statement, a fine of R\$224,000 was imposed. And in the trial involving the failure to disclose material facts, a fine of R\$300,000 was applied.

9

Cases involving disclosure problems and financial statements

35

Allegations involving disclosure problems and financial statements

11

Convictions concerning disclosure problems

Administrative Proceedings Decisions

OVERVIEW OF INDEPENDENT AUDITING

In the first months of 2023, there was an increase in media and public interest in the regime of independent auditor responsibility, following news of significant problems in the preparation, review, and disclosure of financial statements by publicly traded companies.

However, with respect to independent auditing, the year 2022 is not a good illustration of the regulator's understanding of the limits of liability for audit firms, their partners and directors, at least regarding more significant issues.

In the sample studied by MFCap, 6 cases involving independent auditing were judged in 2022, with ten charges against 6 legal entities (audit firms) and 4 natural persons (partners or responsible directors in audit firms). A more careful examination of the six cases indicates low complexity factual and legal issues.

These include non-compliance with the continuing education program, failures in the preparation of financial statements (in cases of lesser media impact), and breaches of conduct rules by the independent auditor. There are also cases involving activity is exercised without authorization.

The penalties applied indicate the low relevance of these cases. Although all were convicted, the fines applied ranged from R\$25,000 to R\$127,500.

With regard to independent auditors, the results in 2022 largely repeat the situation of previous years. In 2021, independent audit cases represented only 4.8% of the conducts brought to trial, with fines ranging from R\$45,000 to R\$250,000. In 2020, the numbers were not much different: 6.3% of the cases analyzed, with fines ranging from R\$50,000 to R\$275,000.

6

Cases involving independent auditing

10

Allegations involving independent auditing

R\$127K

the largest fine applied in cases of independent auditing

Administrative Proceedings Decisions

SANCTIONS

193 PENALTIES WERE IMPOSED IN 2022

The most common sanction was fines: 174 were applied in 2022. Other penalties such as warnings (11), prohibitions (4) and disqualification (3) were far less common.

The temporary bans ranged from 6 to 8 years and were applied in cases of fraudulent operation. The disqualifications varied from 69 months (in cases of unauthorised portfolio management) to 5 years (in cases of fraudulent operation).

Chart 04 - Penalties applied in administrative sanctioning proceedings - CVM 2021

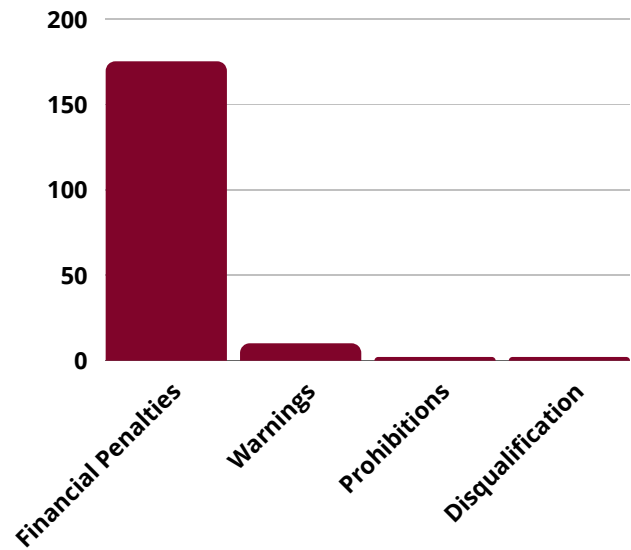


Table 01 - Number of Convictions, Acquittals and Extinction of Punishment in administrative sanctioning proceedings - CVM 2022

Area	Convictions	Acquittals	Extinction of punishment	Total
Portfolio Management	45	29	6	80
Independent Auditing	12	6	0	18
Financial Statements	9	12	0	21
Service Failures	5	4	0	9
Market Abuse Practices	52	16	0	68
Insider trading	0	0	0	0
Intermediation	18	1	1	20
Public Offerings	18	4	0	22
Disclosure Problems	11	1	2	14
Corporate Law Cases	23	30	0	53
Others	0	2	0	2
Total	193	105	9	307

PENALTIES

According to article 11 of Brazilian Capital Markets Law (Law No. 6,385/1976), 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 No. 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.

COMPARISON WITH PREVIOUS YEARS

Compared to 2021, it is evident a decrease in the number of warnings applied, which went from 30 to 11 – a similar situation to 2020 when 12 warnings were applied. The number in 2022 is far from what was seen in 2019, when 43 warnings were applied.

Administrative Proceedings Decisions

FINES

CVM APPLIED AROUND R\$ 48 MILLION IN FINES IN 2022

In 2022, there was an increase in the total fines applied compared to 2021. If in 2021, the total sum of fines amounted to R\$ 22 million, in 2022, it surpassed the double reaching R\$48 millions.

It should be noted that over the years, the total amount of fines applied varied greatly. As mentioned, the amount in 2022 is higher than that in 2021, but considerably lower than in previous years: in 2019 it reached R\$1.04 billion and in 2020 the total sum reached R\$880 million. As for the amount of fines, the highlight is the convictions for market abuse practices, almost half of the total amount in the year (about R\$20 million in 2022).

Individually considered, the highest fine was defined in a case of market abuse practice (price manipulation), in the amount of R\$ 2.9 million. In this case, the fine calculation basis was 1.5 times the value of the economic benefit obtained. It is also striking the fine of R\$ 2.3 million, applied in a case of conflict of interest in a general meeting.

The different possibilities for determining the value help explain the large variations observed over the years. Even though Article 11, §1º, I of Law No. 6,385/1976 sets a maximum of R\$ 50 million, the other possibilities (e.g. use of the value of the issuance or operation, economic benefit or detriment caused) may result very high amounts, depending on the value of the calculation basis.

Table 02 - Minimum, medium and maximum financial penalties by topic - Administrative sanctioning proceedings - CVM 2022

	Fines					
	Minimum	Medium	Maximum	Total		
Portfolio Management	R\$ 50.000,00	R\$ 177.354,65	R\$ 500.000,00	R\$ 7.626.250,00		
Independent Auditing	R\$ 25.000,00	R\$ 49.000,00	R\$ 127.500,00	R\$ 490.000,00		
Financial Statements	R\$ 55.000,00	R\$ 134.444,44	R\$ 310.000,00	R\$ 1.210.000,00		
Service Failures	R\$ 50.000,00	R\$ 125.000,00	R\$ 150.000,00	R\$ 500.000,00		
Market Abuse Practices	R\$ 44.115,27	R\$ 443.031,16	R\$ 2.943.283,24	R\$ 20.379.433,36		
Insider trading	R\$ -	R\$ -	R\$ -	R\$ -		
Intermediation	R\$ 100.000,00	R\$ 260.148,17	R\$ 532.667,04	R\$ 4.682.667,04		
Public Offerings	R\$ 85.000,00	R\$ 245.833,33	R\$ 930.000,00	R\$ 3.687.500,00		
Disclosure Problems	R\$ 55.000,00	R\$ 172.727,27	R\$ 224.000,00	R\$ 1.900.000,00		
Corporate Law Cases	R\$ 49.000,00	R\$ 468.058,82	R\$ 2.300.000,00	R\$ 7.957.000,00		
Total	R\$ 513.115,27	R\$ 2.075.597,85	R\$ 8.017.450,28	R\$ 48.432.850,40		

Administrative Proceedings Decisions

CALCULATING FINANCIAL PENALTIES

APPLYING THE NEW FINANCIAL PENALTIES CALCULATION RULES

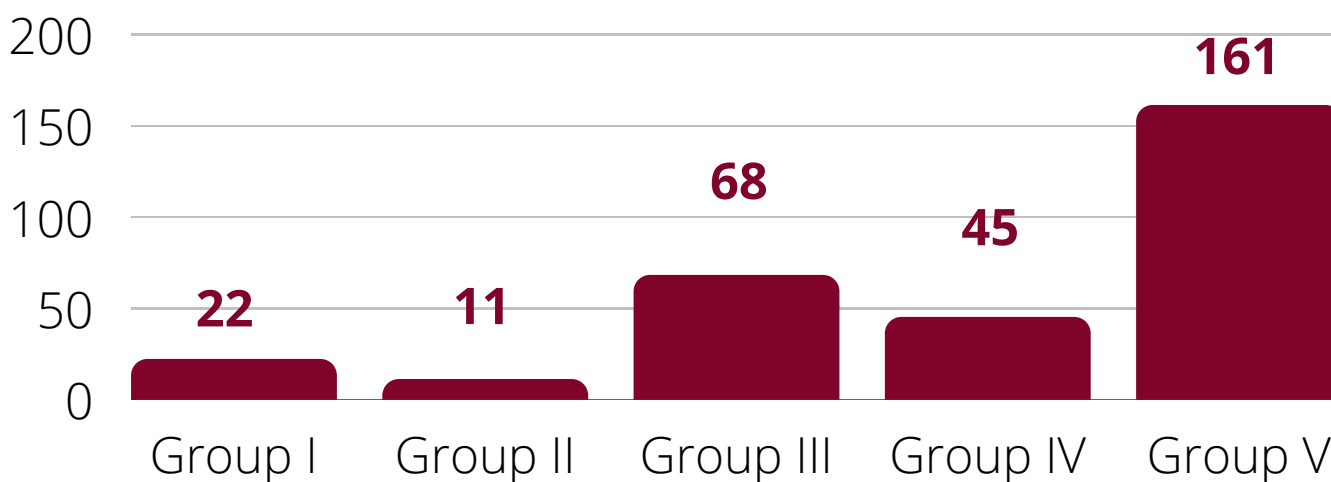
Law No. 13,506/2017 and CVM Rule n. 607/2019 (currently, CVM Rule No. 45/2021) increased the maximum fine from R\$ 500,000 to R\$ 50 million. Furthermore, under the new regulation, monetary penalties can now be calculated to reflect the harm caused by wrongdoing. CVM can also use the amount of issuance 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 No. 45/2021 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, each with a particular ceiling based on their severity.

For this report, a hypothetical application of the new dosimetry was carried out for the cases judged in 2022, in which, for the most part, the CVM analyzed conduct practiced before Law no. 13,506/2017. When distributing the 307 charges judged by CVM according to the groups described in Annex A of CVM Rule No. 45/2021, it appears that they were primarily concentrated in Group V (with a maximum base penalty of R\$ 20 million), followed by Groups III (R\$ 3 million) and IV (R\$ 600 thousand).

Chart 05 - CVM Rule n. 45/2021 Groups and charges - 2022



Administrative Proceedings Decisions

APPLYING THE NEW PENALTY CALCULATION RULES

THE NEW FINANCIAL PENALTY CALCULATION RULE IN PRACTICE

Just as in 2020 and 2021, in 2022 there was a concern from judges to apply the new criteria for calculating penalties, provided in CVM Rule No. 45/2021, especially in the express indication of aggravating and mitigating factors.

On the other hand, it should be noted that, considering the date of the irregularity in question (based on what was reported in the report or votes), it can be seen that, at least in theory, in 30 cases (involving at least 210 charges), it would already be possible to apply the new level of penalties, as well as to use the three-phase system for determining the penalty to be applied.

In cases where there was an attempt to use the three-phase system, there was a mix of expressions that would still require additional explanations for a precise understanding of their scope in setting the base penalty ("proportionality" and "reasonableness") with other more objective and easily verifiable expressions, such as "prior violations," "repeated practice," "severity," "characteristics of the specific case," "regularization of the information" among others.

Table 03 - Justifications for conviction in PAS - 2022

Reason	Mitigating	Aggravating	Total
Prior violations	77	16	93
Repeated Practice	10	31	41
Severity	12	18	30
Characteristics of the specific case	23	6	29
Regularization of the wrongdoing	5	15	20
Proportionality/reasonableness	13	6	19
Duration of conduct	8	7	15
Reduced number of investors	2	13	15
Economic situation of the company	15	0	15
Recidivism	13	1	14
Others (=13)	18	26	44

CALCULATING PENALTIES ACCORDING TO CVM RULE N.º 45/2021

Inspired by the three-phase process used in Brazilian criminal proceedings, CVM Rule No. 45/2021 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

APPLICATION ANALYSIS RESULTS

SETTLEMENTS AGREEMENTS (TERMO DE COMPROMISSO - TC) IN 2022

The 142 behaviors evaluated in TC analyzed in 2022 were related to 66 sanctioning administrative processes.

They came from 111 natural persons and 31 legal entities. As in 2021, no proposals for investment funds were recorded.

Chart 08 - Settlement agreement proposals accepted and rejected - CVM 2022

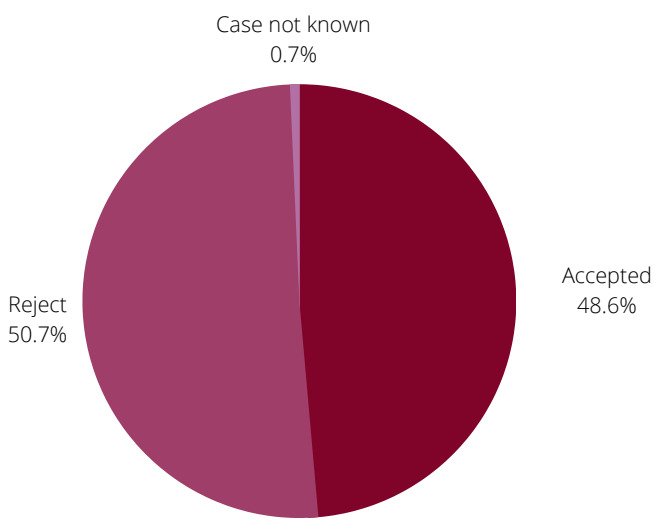
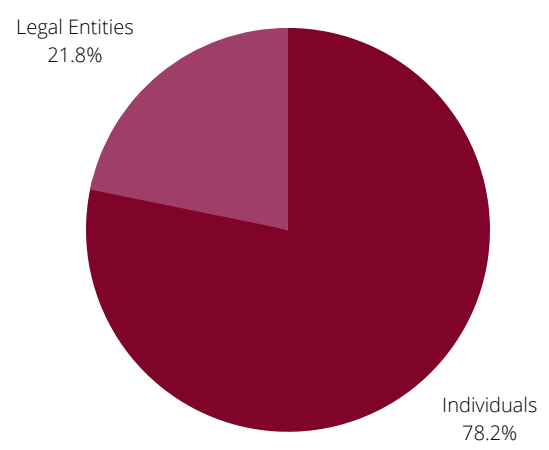


Chart 07 - Proportion of Individuals and Legal Entities filing settlement agreement proposals - CVM 2022



NUMBER OF SETTLEMENT AGREEMENTS ACCEPTED AND REJECTED

Of the proposals evaluated by the CVM board and related to the 142 behaviors included in the sample, 72 were rejected, 69 were accepted, and 1 was not acknowledged.

66

Administrative proceedings related to settlement agreement proposals

48,6%

Of settlement agreement proposals were accepted in 2021

21,8%

Of settlement agreement proposals were filed by legal entities

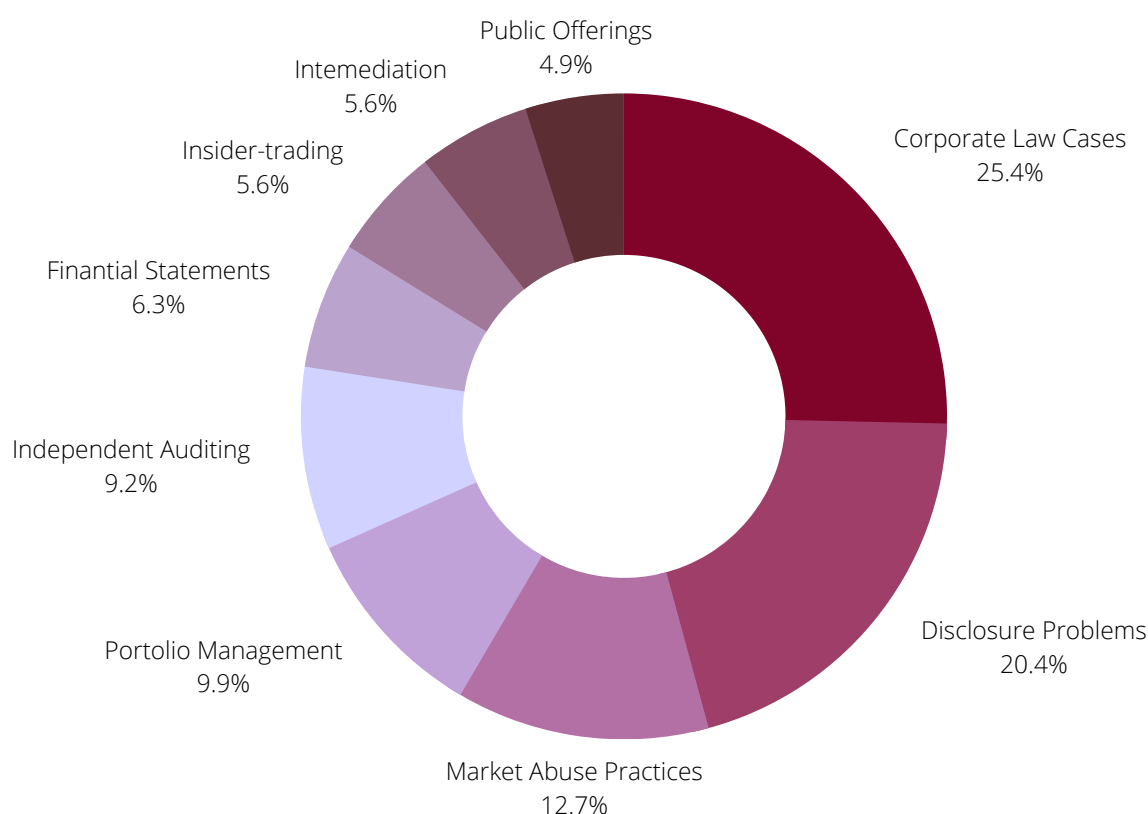
Settlements Agreements

TYPES OF CASES

The 142 behaviors evaluated in TCs in 2022 deal with corporate law cases (36), disclosure problems (29), market abuse practices (18), portfolio management (14), independent auditing (13), financial statements (9), insider trading (8), intermediation (8), and public offerings (7).

Unlike what was seen in sanctioning administrative processes, where issues involving portfolio management predominated, for the settlements agreements, the most representative theme is corporate law cases (25.4%).

Chart 06 – Settlement agreements applications by area - CVM 2022



SETTLEMENT AGREEMENTS BY LAW NO. 6,385/1976

Article 11 of Law 6,385/1976 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 that applicants must agree to cease any alleged wrongdoing and correct any misconduct, including compensating any affected parties.

Settlements Agreements

OVERVIEW OF THE LAST 3 YEARS

Comparing data since 2020 allows for some general observations about the use of settlement agreements. The following table illustrates some of the key figures collected by MFCap over the years:

	2020	2021	2022
Number of processes	68	101	66
Number of proposals	178	282	142
% accepted	56,2%	42,7%	48,6%
% rejected	43,8%	57,3%	50,7%
Total amount(R \$ MM)	R\$ 43,3	R\$ 69,2	R\$ 40,2

The number of cases varies considerably, as does the total number of proposals analyzed by CVM. The proportion of proposals per case remained relatively stable, between 2 and 3, although this number also varies according to the number of investigated individuals and conducts in each case (e.g., investigation of the liability of members of Board of Directors).

There is a certain stability in the percentage of acceptance and rejection of proposals by CVM, without extreme results. Acceptance ranged between 42.7% and 56.2%, with the last year of 2022 showing a slight recovery compared to 2021, when rejections reached 57.3%.

In any case, for all analyzed variables, the results of the year 2021 stand out, whether in terms of the number of proposals and cases analyzed or the total value obtained through the use of settlement agreements.

THE SETTLEMENT AGREEMENT AT CVM

Settlement agreements within the scope of CVM is governed by CVM Rule No. 45/2021. After the opinion of the Specialized Federal Prosecutor's Office (PFE), the General Superintendence (SG) forwards the proposal to the Committee on Settlement Agreements (CTC), which issues an opinion on the opportunity and convenience of its conclusion and the adequacy of the proposal made by the accused or investigated party. At this stage, there is the possibility of negotiation with the proposer. The final decision is up to the CVM Board of Commissioners.

Settlements Agreements

REASONS FOR ACCEPTING AND REJECTING APPLICATIONS

MOST FREQUENT REASONS GIVEN

The most mentioned reasons for accepting or rejecting proposals are identified in the table below - remembering that the decision may contain more than one of these expressions. The primary justification is the generic expression “enough to discourage conduct.”

For the rejection of proposals, the inconvenience and inopportune of the case, the severity of the case and the legal impediment are the most frequent reasons.

Table 04 - Reasons for accepting or rejecting settlements agreements - CVM 2022

Reason	Accepted	Rejected	Total
Enough to discourage	37	11	48
Severity of the case	13	31	44
Convenient/opportune	57	57	114
Characteristics of the concrete case	17	12	29
Legal impediment	0	29	29
Prior violations	17	10	27
Preventive purpose of AS	19	2	21
Insignificant/ disproportionate amount	4	12	16
Others (=21)	38	67	105

48

Opportunities in which the decision on the settlement agreement was justified based on the sufficiency - or not - to discourage the conduct.

44

Proposals' decision based on the severity and visibility of the case.

114

mentions of "convenience and opportune" for the consideration of settlement agreement

Settlements Agreements

OBLIGATION BY THE TYPE OF CASE

AMOUNTS THE CVM COLLECTED FROM APPROVED SETTLEMENTS AGREEMENTS IN 2022

According to the investigation carried out by MFCap, the amounts of the obligations to pay assumed in settlements agreements in 2022 add up to approximately R\$ 40 million.

In the MFCap sample, the largest proposal involves behavior associated with corporate law issues (fraudulent contract between the officer/controlling shareholder and the company). The amount of the obligation to pay was set at R\$ 10 million combined with the obligation to settle the amount with the company.

Chart 09 - Obligations in settlements agreements accepted - CVM 2022

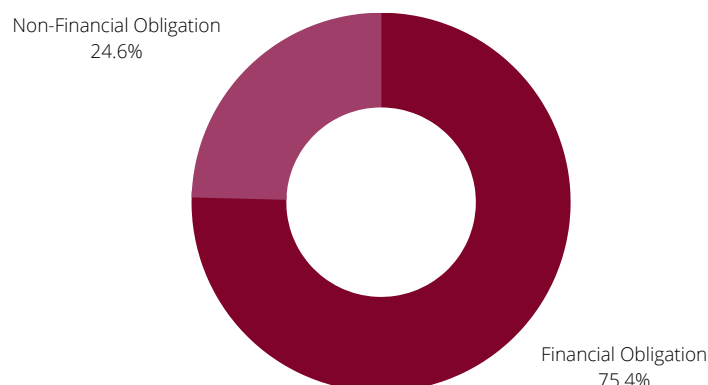


Table 05 - Minimum, Medium, Maximum and Total Amounts in settlement agreements accepted - CVM 2022

Area	Value of oblig. to pay			
	Minimum	Medium	Maximum	Total
Portfolio Management	R\$ 79.616,88	R\$ 275.529,22	R\$ 540.000,00	R\$ 1.102.116,88
Independent Auditing	R\$ 46.200,00	R\$ 269.340,48	R\$ 780.000,00	R\$ 1.885.383,36
Financial Statements	R\$ 103.076,75	R\$ 103.076,75	R\$ 103.076,75	R\$ 824.614,00
Market Abuse Practices	R\$ 736.000,00	R\$ 1.751.928,76	R\$ 2.314.786,28	R\$ 5.255.786,28
Insider trading	R\$ 21.132,00	R\$ 220.082,49	R\$ 597.134,01	R\$ 1.760.659,89
Intermediation	R\$ 550.000,00	R\$ 933.333,33	R\$ 2.800.000,00	R\$ 5.600.000,00
Public Offerings	R\$ 300.000,00	R\$ 450.000,00	R\$ 600.000,00	R\$ 900.000,00
Disclosure Problems	R\$ 30.600,00	R\$ 338.037,73	R\$ 690.000,00	R\$ 7.436.830,00
Corporate Law Cases	R\$ 85.000,00	R\$ 1.709.444,45	R\$ 10.000.000,00	R\$ 15.385.000,01
Total	R\$ 1.951.625,63	R\$ 6.050.773,20	R\$ 18.424.997,04	R\$ 40.150.390,42

75,4%

Obligations in accepted settlement agreements included financial obligation

R\$ 40MM

Total amount payable under settlement agreements accepted in 2021

17

Number of applications accepted that included non-financial obligation

Settlements Agreements

SEVERITY OF CASES ANALYZED

SEVERITY CLASSIFICATION - CVM RULE N.º 45/2022

As already mentioned, with the enactment of Law No. 13,506/2017, the maximum limits for applying pecuniary penalties by the CVM have been expanded.

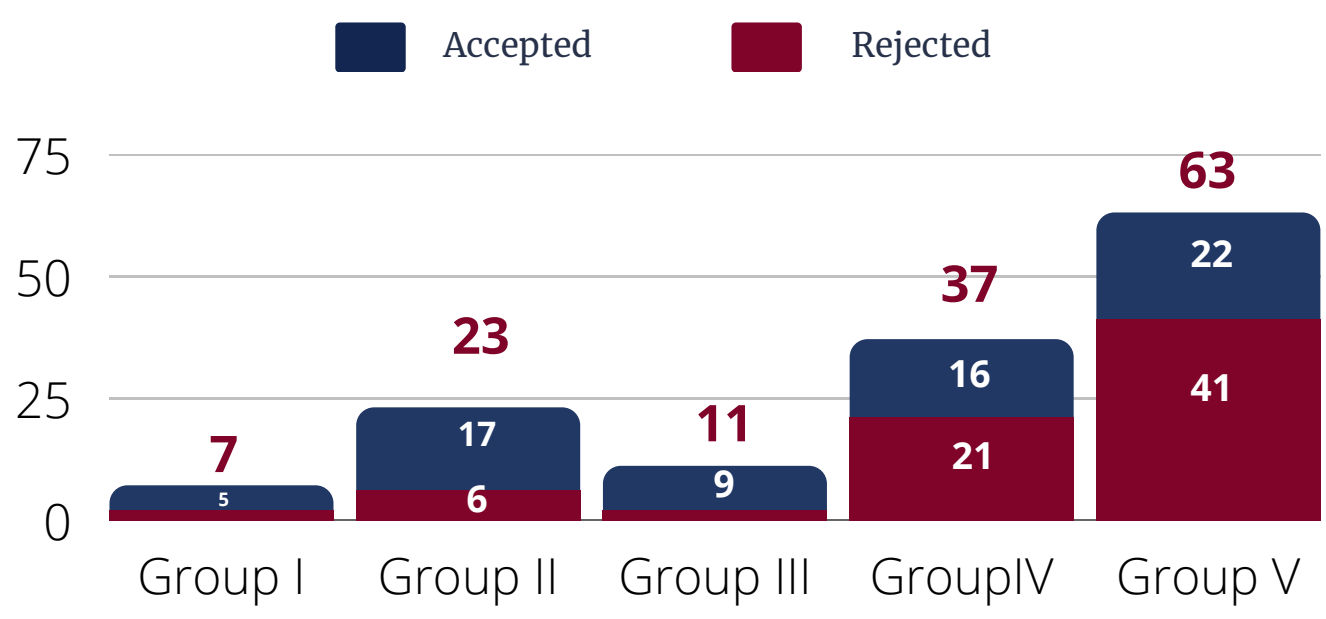
To guide the application of these new references, CVM Rule No. 45/2021 (which replaced CVM Rule No. 607/2019) divided the conducts into five groups according to their severity.

As for the decided administrative proceedings, an exercise was carried out to hypothetically apply this classification to settlement agreements analyzed in 2022.

When distributing the 142 proposals analyzed by the CVM according to the groups described in Annex A of the regulation mentioned above, it appears that the accusations were primarily concentrated in Group V, followed by Group IV, diverging from what was observed in the judged cases.

Based on the 2022 results, it can be seen that in the most severe cases (Group V), most proposals are rejected, while the percentage of proposal acceptance increases when the severity is lower (Groups I, II, and even III).

Chart 10 - CVM Rule 45/2021



Notes on Methodology and the Research Database

This report analyzed the rulings on sanctioning processes and decisions on proposed settlement agreements issued by CVM throughout 2022. The information was gathered from the agency's website, by checking the agendas, minutes, and results of rulings and decisions made by the collegiate body. The queries were closed in January 2023, so any decisions made in 2022 and not disclosed until that date were not considered in the sample analyzed by MFCap.

For administrative sanctioning processes, for inclusion in the report, the date considered was the day of the ruling, and those concluded by December 31, 2022, were included. For settlement agreements, the date considered is the day of the collegiate body's decision and not the day of signing the agreement.

According to the official disclosure of CVM in its Annual Sanctioning Activity Report 2022, 50 processes were ruled on in 2022, the same number considered by MFCap. But there is a slight difference regarding the total amount of fines applied: MFCap found R\$ 48.4 million, while CVM disclosed R\$ 44.5 million. Any adjustments will be made in later versions of this report.

For settlement agreements, CVM disclosed 43 approved in 2022, involving 70 proposers and R\$ 41.9 million. At this point, the results are not directly comparable because MFCap's numbers include rejected proposals.

In any case, regarding the accepted proposals for settlements agreements, the official numbers from CVM are very close: according to the sample used by MFCap, there are 69 accepted proposals, totaling R\$ 40.2 million.

The unit of analysis adopted was the illegal acts attributed to the accused, referred to as "conducts" throughout the report. Each accusation was individually classified according to a general theme and the legal norm that supports the accusation and the judgment or decision to accept the settlement agreement.

Thus, there are more conducts than accused. In addition, the accused may have charges that relate to different themes. Moreover, administrative proceedings can bring together a plurality of accused individuals with different profiles. For these reasons, MFCap chooses not to classify processes and proposals for commitment terms under a single theme, which would decrease the precision of the picture painted.

For citation of the data and graphs in this report, the authors suggest mentioning the Center for Financial and Capital Market Studies of FGV DIREITO SP (MFCap/FGV Direito SP), coordinated by Viviane Muller Prado.

To present any suggestions, questions, or requests for additional information, please write to: mfcap.direitosp@fgv.br

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