

## **The Disclosure of ESG Practices in the Brazilian Capital Markets**

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Brazilian public companies (i.e., companies with shares or other securities traded in the Brazilian capital markets) are being led to adjust their activities in order to include (or expand, as the case may be) environmental, social and governance ("ESG") practices.

Truth is that, nowadays, the adoption of ESG practices has become pivotal for prosperity and perpetuity of companies' businesses. These practices also tend to be seen as fundamental for investors when it comes to their investment decision process, with several investors avoiding allocating funds to non-ESG companies.

### Improvement of current guidelines

Brazilian Securities and Exchange Commission ("CVM") issued the Rule CVM No. 59 in December 2021 ("Rule"), which altered the structure of the Reference Form ("FRE", Brazilian equivalent to the American 20-F Form). The FRE is disclosed annually (no later than May 31<sup>st</sup>) by Brazilian public companies, providing shareholders, investors and stakeholders with an overview of the company's information in a standardized form. For instance, the FRE provides information regarding main activities, MD&A, risk factors, relevant shareholders, directors and officers, related-party transactions, internal policies, and other relevant matters.

The new Rule, which will come into force in January 2023, was issued by the Brazilian Commission with the purpose of making the FRE more friendly to readers and reducing the compliance cost in connection with its drafting.

### ESG issues as a crucial factor for public companies

Inarguably, the Rule's biggest innovation is the obligation of Brazilian public companies to disclose information regarding ESG practices and reports, addressing a strong demand from foreign and local investors.

Companies will now be required to disclose information on diversity indicators in management positions and regarding companies' employees. They will also be obliged to disclose risk factors categorized under social, environmental or climate change.

The new FRE further introduced a "practice or explanation" method for disclosure of certain specific ESG initiatives. This means that Brazilian public companies shall choose between adopting key ESG performance indicators or explaining why such ESG practices have not been internalized.

It is worth noting, however, that CVM so far will not compel or coerce Brazilian public companies to adopt ESG practices, but rather it will simply determine what kind of information must be disclosed.

### What to expect

Currently, some Brazilian public companies (and also several Brazilian private companies) already adopt ESG practices and disclose ESG reports. Our expectation is that, in the upcoming years, more companies will enhance their practices.

Will Brazil soon fall into a new trend of foreign investments? Time will tell. But it seems that, encouraged (or forced) by investors and by the Brazilian authorities, Brazilian public (and private) companies will likely be more aligned with the global trend, where sustainable actions play a key role to attract the interest of investors.