



ICGN

International Corporate Governance Network

Inspiring good governance & stewardship

Mr. Fernando de Andrade Mota
B3 S.A.- Brasil, Bolsa, Balcão
Market Development for Issuers Superintendence
Praça Antônio Prado, 48 – Centro
Histórico de São Paulo,
São Paulo - SP, 01010-010

01 August 2024

Dear Mr. Mota,

Subject: Novo Mercado Evolution, Public consultation No. 01/2024-DIE

The International Corporate Governance Network (ICGN) appreciates the opportunity to comment on the public consultation on the proposed evolution of the Novo Mercado Regulation. We are grateful for the outreach by Brasil, Bolsa, Balcao (B3) to discuss the new proposals.

Led by investors responsible for assets under management of \$77 trillion, ICGN is an authority on global standards of corporate governance and investor stewardship. Headquartered in London, our membership is based in more than 40 countries. Many of our members are actively involved in the Brazilian capital markets. ICGN's Global Governance Principles, written from an investor perspective, are widely used by our members in their company assessments and voting decisions, and by regulators when developing corporate governance rules.¹

We support B3's efforts to promote high corporate governance and welcome the reference made to ICGN Global Governance Principles in the consultation document.

From the perspective of investors, the most important proposals in the consultation document are:

- Increasing the number of independent directors on the board and limiting over-boarding;
- Instituting a clawback requirement on compensation;
- Adding the requirement for the creation of statutory Audit Committees; and
- Ensuring the reliability of financial statements and internal controls.

The institution of the Novo Mercado Seal “under review”

QUESTION 1 Should B3 exclude or add any other hypothesis to place the Seal under review in relation to Novo Mercado Listed companies? Furthermore, in the event of an accounting error disclosed by the company through a material fact, should B3 establish minimum presumed materiality metrics, such as 3% of EBIT and 1% of Net Revenues? Therefore, if the company reaches these percentages and, even so, does not qualify the accounting failure as material, it should justify its position.

No response

¹ ICGN [Global Governance Principles](#) (2021)

Greater alignment between the senior management's activity and the company's interests: limited participation in boards of directors, tenure limit for independent directors, and increase in the number of independent directors

QUESTION 2 The proposal to limit the number of boards is restricted to publicly held companies. However, considering that the boards of private companies can take as much or more time from directors, B3 is particularly interested in collecting input on the scope of this rule.

ICGN supports most of the proposal in Subsection V, *Accumulation of Positions*, to limit the number of public *and* private company board seats on which a director, CEO or officer should serve. We agree that a director should not accumulate an excessive number of board positions. ICGN recommends in its Global Governance Principles that an individual director should not hold more than three directorships of any sort, and this should be substantially less for executive directors, as well as for the board chair and committee chairs. ICGN recommends that a director consider an additional factor, that of his or her *time commitment* already, in addition to a limited numbers of seats. It is the time commitment that should be factored into the number of appointments to address the ability of a director to fulfil his or her fiduciary duties. As the time commitment increases, the number of board seats should be substantially reduced for executive directors, board, and committee chairs.

The second part of the proposal is to increase the number of independent directors. ICGN believes that a board should be comprised of a majority of independent non-executive directors as a general standard. Moving the requirement in Novo Mercado listed companies to two independent directors or 30%, as proposed, is an incremental step in the right direction, however, does not reach a majority level.

We support the inclusion of language that a board member is no longer considered independent if they have been a member of the board of directors of the company for 10 years or more. We question whether a two-year cooling off period as the criterion alone is of sufficient for an individual to be newly considered as an independent director for reappointment. ICGN has a list of additional criteria in the ICGN Global Governance Principles which could be a reference to determine whether a director should be considered independent after the appropriate cooling off period. B3 may wish to include some or all of the criteria to bolster the independence standard.²

Increasing the reliability of financial statements, through statements regarding the effectiveness of internal controls

QUESTION 3 Should the statement also be provided by other directors? Furthermore, B3 is interested in receiving comments on the assurance report and its extension. Would it be necessary to edit specific audit rules to require independent auditors to review management's assessment? Should this assessment address, besides the effectiveness of internal controls, operational aspects, financial reports, compliance, and cybersecurity? Lastly international practices state that developing companies with revenues below USD1 billion might have the option of obtaining the auditors' assurance report after five years or from the moment their revenues reach USD1 billion. Given this, should B3 grant additional time to small and medium companies listed on Novo Mercado –under the terms of Law 6,404/76 – to submit such a report?

ICGN agrees with the proposal that statements about the effectiveness of a company's internal controls should be presented in a company's annual management report by the

² [ICGN Global Governance Principles 2021.pdf](#), Principle 2.6 Independence criteria, p. 13.

CEO and the CFO. This is an integral part of the CEO and CFO's responsibility in promoting the long-term success of a company.

Furthermore, we believe it is important for the board to oversee the assessment and disclosure of the company's key risks and approve the approach to risk management and internal controls regularly.³

Evolution of mechanisms used for dealing with irregular conduct through the provision of disqualification penalties and adjustments to penalty amounts

QUESTION 4 The application of the disqualification sanction might cover all company areas responsible for complying with supervision and control rules. B3 is particularly interested in receiving comments on the need to limit the directors potentially subject to this penalty.

No response.

QUESTION 5 Considering that penalties applied based on the RNM have pre-defined ranges for each type of infringement, B3 would like to receive application of the disqualification sanction might cover all company areas responsible for complying with supervision and control rules comments on the convenience of adopting some other limitation criteria regarding their application.

No response.

Flexibility regarding the Arbitration Chamber to be chosen by the Company

ICGN understands that judicial systems differ across the world. B3 may have good reasons to include an Arbitration Market Chamber in the regulations that would take precedence over the court system as a forum to resolve corporate and business disputes that might arise between issuers, shareholders, or directors. In general, investors expect that within the legal channel that is provided to resolve disputes, there will be an independent and impartial review of the evidence applied against the facts of the case. In some cases, arbitration may be a reasonable alternative, however, investors should have clear access to the courts, if necessary. We believe that "[P]roper remedies and procedural rules should be put in place to make the protection effective and affordable".⁴

QUESTION 6 In your opinion, should B3 demand that companies listed on Novo Mercado include in their remuneration policies, minimum rules for deferral and recovery of remuneration by the company? In case of clawback, should such rules be restricted to directors who could be directly linked to the facts that led to the recovery of remuneration or once applied, should the rules cover all directors? From a labor perspective, are there any concerns that you would like to emphasize?

ICGN supports the proposed requirement to withhold payments and recover sums paid to directors and officers in the company in the event of serious misconduct or a material misstatement in the company's financial statements. We believe that companies should include provisions in their incentive plans that enable the company to withhold the payment of any sum ('malus'), or recover sums paid ('clawback'), in the event of serious misconduct or a material misstatement in the company's financial statements.

³ [ICGN Global Governance Principles 2021.pdf](#), Principle 6 Risk oversight and Principle 8, Internal and external audit, pp. 26 and 30.

⁴ [ICGN Global Governance Principles 2021.pdf](#) p. 35.

There would not be a reason to exempt certain directors as they all should have oversight over a company's financial statements. We are not aware of any labour concerns related to this issue in Brasil.

QUESTION 7 In your opinion, should B3 require companies listed on Novo Mercado to have an integrity policy? If so, what are the main points that need to be considered? Should it be extended to suppliers? If not, should the code of conduct address any specific aspect contained in integrity policies?

We appreciate the question of an integrity policy, which ICGN sees as one that includes culture, high standards of business ethics and integrity. In the ICGN Global Governance Principles, we state, "The board should instil and demonstrate a culture of high standards of business ethics and integrity aligned with the company's purpose and values at board level and throughout the workforce."⁵

We welcome the emphasis in the listing requirements on continually reinforcing a culture across the organisation of acting lawfully, ethically, and responsibly. We support the proposal that companies should adopt an integrity policy that extends to the board of directors, all employees, as well as suppliers.

In addition to the consultation questions, we respectfully ask that B3 consider these points:

- **Quarterly meetings between the audit committee and the independent auditor.** ICGN agrees in part with this proposal. In some cases, an audit committee may need more frequent or less frequent meetings with the independent auditor. We believe that flexibility is key to ensure that the audit committee has access to the independent auditor at any time. Audit committees should draw up minutes to reflect their discussions, however, we do not believe that the minutes of the audit committee should always be subject to complete disclosure. At times, audit committees may discuss sensitive topics related to company issues and personnel that are not ready for public disclosure at the time and do not rise to the level of being "material". Members of the audit committee should be able to discuss matters openly and resolve matters without concern that their discussions will be disclosed. Such discussions could signal the market in a premature way. Investors should have access to audit committee members to ask questions and discuss audit-related concerns.
- We welcome the proposal for a new rule for **audit committees** to become statutory bodies for all Novo Mercado Listed companies. ICGN recommends that the audit committee be comprised entirely of independent non-executive directors.
- **We believe that all complaints should be forwarded through an active and monitored complaint channel.** If a company decides to send complaints through its audit committee or a separate body, ICGN would like to ensure that all complaints are forwarded to the appropriate body and handled according to the relevant policy. **It is essential to protect the identify of whistle-blowers.** Any complainant's identity should not be exposed unless the individual agrees to such release.

⁵ [ICGN Global Governance Principles 2021.pdf](#), p. 6.

Thank you again for the opportunity to share our perspective. If you would like to follow up with questions or comments, please contact our Senior Policy Manager, Carol Nolan Drake (carol.nolandrake@icgn.org).

Yours faithfully,

A handwritten signature in blue ink that reads "Jen Sisson". The signature is written in a cursive, flowing style.

Jen Sisson

Chief Executive Officer, ICGN