



# Catalog of Guidance Notes

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BSM MARKET SUPERVISION

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# What are Guidance Notes?

Guidance Notes are the set of guidelines issued by BSM, under its Bylaws, with the aim of recommending to Participants good practices for complying with the obligations required by the regulatory standards to which they are subject and which BSM is responsible for supervising.

This document seeks to present, in a compiled form, the current Guidance Notes, aiming to facilitate consultation by Participants and other interested parties.

## Definitions

For the purposes of this document, capitalized terms have the same meaning as those given to them in the BSM Glossary, available on the BSM website [through this link](#), or in the Guidance Notes themselves.

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**No need to change contracts or addendums to address changes in rates and brokerages agreed with customers**

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## Introduction

The Guidance Note presents BSM's understanding that, in the event that the Participant agrees with the Customer on brokerage values, custody fees or other additional costs related to the products and services provided, including asset lending, different from those provided for in contracts, it is not necessary to change the contract to reflect the new agreed values, it being sufficient for the Participant to inform the Customer and for the customer to express their agreement by means of a registered and filed communication in accordance with the rules in force.

## Publication History of Notes on the Topic

External Communication	Publication date	Status
<a href="#">BSM-4/2022</a>	March 29, 2022	Current

## No need to change contracts or addendums to address changes in rates and brokerages agreed with customers

(Published through External Communication BSM-4/2021)

1. The Brazilian Securities and Exchange Commission (CVM), through Circular Letter No. 4/2020-CVM/SMI<sup>1</sup>, presented the best practices for providing its Customers with information about asset lending transactions.
2. Subsequently, BSM released External Communication 007/2020-BSM<sup>2</sup> informing the minimum expectations and evaluation criteria that would be adopted in the audits of the Participants regarding the disclosure of information to customers regarding the amounts, rates and percentages involved in asset lending transactions.
3. In addition, the B3 Operational Qualification Program Standard Rules<sup>3</sup>, the contract signed between the Participant and the customer must inform the criteria for charging brokerage fees, custody fees and other additional costs related to all products and services provided<sup>4</sup>.
4. In view of the above rules, the Customer must have prior knowledge of the amounts, rates and percentages involved in all transactions carried out through the Participant.
5. If the Participant agrees with the Customer on brokerage values, custody fees or other additional costs related to the products and services provided, including asset lending, different from those provided for in contracts, BSM understands that it is not necessary to change the contract to reflect the new agreed values, it being sufficient for the

<sup>1</sup> Available at: <https://conteudo.cvm.gov.br/legislacao/oficios-circulares/smi/oc-smi-0420.html>.

<sup>2</sup> Available at: [https://www.b3.com.br/pt\\_br/regulacao/oficios-e-comunicados/oficios-e-comunicados/](https://www.b3.com.br/pt_br/regulacao/oficios-e-comunicados/oficios-e-comunicados/).

<sup>3</sup> Available at: [https://www.b3.com.br/pt\\_br/b3/qualificacao-e-governanca/certificacoes/selos-pqo/roteiros.htm](https://www.b3.com.br/pt_br/b3/qualificacao-e-governanca/certificacoes/selos-pqo/roteiros.htm).

<sup>4</sup> Item 9 of the Basic Roadmap: The contract signed between the Participant and the Customer must state the criteria for charging brokerage fees, custody fees, and other additional costs related to all products and services provided. The Participant must keep the Customer informed in advance of each change."

Participant to inform the Customer and for the Customer to express their agreement by means of a registered and filed communication in accordance with the rules in force.

6. 6. This also applies to transfer links, in which the executing Participant is obliged to evidence the amounts agreed with the customer.
7. **Therefore, for the supervision and inspection of BSM within the scope of its activities, there is no mandatory need for changes or additions to the signed contracts, as long as the Participant demonstrates the Customer's prior agreement with the new agreed values and this agreement is recorded and demonstrable to the regulators when requested.**

# Monitoring the origin of order and transaction records

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## Introduction

The guidance note aims to provide examples of good practices to Participants in markets managed by B3 that offer electronic trading platforms to their customers, with regard to the duties of identifying the origin of their Customers' orders (IP), ensuring the tracking of their issuer, ensuring in their audit trails the origin of orders by the user's IP or other forms that allow the identification of the origin, and continuous monitoring in intermediated transactions in order to permanently know their customers.

## Publication History of Notes on the Topic

External Communication	Publication date	Status
<a href="#">018/2022-DAR-BSM</a>	September 21, 2022	Current

# Monitoring the origin of order and transaction records

(Published through External Communication 18/2022-DAR-BSM)

## 1. Introduction

**1.1.** BSM Market Supervision (“BSM”), in its role of guiding and supporting the market in adopting efficient processes and controls and implementing best practices, issues this Guidance Note (“Guidance Note”) to provide a level of adaptive flexibility for the fulfillment of its regulatory duties, considering its size and business model.

**1.2.** This Guidance Note aims to provide examples of good practices to Participants of the markets managed by B3 S.A. - Brasil, Bolsa, Balcão (“B3”), which offer electronic trading platforms to their customers (“Participants”), regarding the following duties:

(i) The necessary process of identifying the origin of customers' orders (IP), ensuring the tracking of their issuer, in accordance with Article 16<sup>5</sup> of RCVM 35;

(ii) The need for the Participant to ensure in its audit trails the origin of orders by the user's IP or other means that allow identification of the origin, as set forth in item 125.5<sup>6</sup> of the Basic Roadmap of the Operational Qualification Program issued by B3 (“PQO”); and

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<sup>5</sup> Article 16, § 1, item I, of RCVM 35: The intermediary may receive orders from its Customers through electronic trading systems with direct market access in accordance with the conditions and rules established by the market management entities. § 1 - The intermediary that receives orders from its Customers under the conditions set forth in the caput must: I - adopt procedures to seek identification of the origin of the orders and ensure the tracking of their issuer.

<sup>6</sup> Item 125.5 of the PQO: (...) for electronic trading systems provided and managed by the Participant or by a third party contracted by it, the Audit Trail events must be sufficient to ensure traceability: 125.5. of the origin of the offer (IP of the user and/or others that allow identification of the origin).

(iii) Continuous monitoring of intermediated transactions to permanently know their Customers, provided for in articles 33<sup>7</sup> and 37<sup>8</sup> of CVM Resolution No. 35, of May 26, 2021 (“RCVM 35”) and article 17<sup>9</sup> of CVM Resolution No. 50, of August 31, 2021 (“RCVM 50”).

**1.3.** The non-exhaustive examples mentioned in this Guidance Note should be interpreted in conjunction with other evidence collected by Participants to characterize irregular conduct and ensure due compliance with their duties. Therefore, the practices listed in this Guidance Note do not replace any existing internal controls of Participants to monitor principals' activities and prevent improper practices.

**1.4.** Terms used in this Guidance Note are in accordance with the BSM<sup>10</sup> Glossary or are defined herein as follows:

(i) Order Origin: Information capable of unequivocally identifying the equipment used by the Customer/investor to send orders, such as Public IP, Hostname, MAC Address, among other information, which is recorded in audit trails.

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<sup>7</sup> Article 33 of RCVM 35: The intermediary must: (...) IV – inform the CVM whenever it verifies the occurrence or evidence of a violation of the legislation that the CVM is responsible for monitoring, within a maximum period of 5 (five) business days of the occurrence or identification, without prejudice to communication to the managing entities of the organized markets in which it is authorized to operate or to the self-regulatory entity, keeping a record of the evidence found; and (...) IX – continuously monitor the transactions it intermediates, in order to identify those that aim to provide undue advantage or profit to one of the parties, or cause damage to third parties, as per specific regulation.

<sup>8</sup> Article 37 of RCVM 35: The intermediary is prohibited from: (...) II – accepting or executing orders from Customers who are not previously registered or whose registrations are out of date; III – allowing the exercise of activities specific to members of the securities distribution system by persons not authorized by the CVM for this purpose; and (...) V – allowing members of the securities distribution system under their responsibility to carry out activities for which they are not expressly authorized by the CVM.

<sup>9</sup> Article 17 of RCVM 50: The persons mentioned in the caput of art. 11 must continually adopt rules, procedures and internal controls, in accordance with guidelines previously and expressly established in the policy referred to in art. 4, to: (...) III – monitor operations and situations in order to permanently know their active customers.

<sup>10</sup> Available at: [https://www.bsmsupervisao.com.br/assets/file/BSM-glossario-das-normas-da-autorregulacao\\_Fev-22\\_sem\\_marcas2.2.pdf](https://www.bsmsupervisao.com.br/assets/file/BSM-glossario-das-normas-da-autorregulacao_Fev-22_sem_marcas2.2.pdf).

(ii) IP (Internet Protocol): A unique address assigned to each device connected to the internet or a local network. Devices and appliances have a fixed internal IP address, while internet connections generate public IP addresses, also known as external IP addresses.

(iii) Hostname: A name assigned to any device connected to a computer network, primarily intended to facilitate the differentiation of different machines or devices connected to the internet, the network, or both.

(iv) MAC Address (Media Access Control Address): A unique hardware identification number, usually assigned to network cards, that uniquely identifies each device on a network.

## **2. Best practices recommended by BSM**

### **2.1. Order origin in the context of Know Your Customer (KYC) processes**

**2.1.1.** RCVM 50 determines that Participants must improve routines related to the Know Your Customer (KYC) process and, among other obligations:

- (i) Validate your customer' registration information and keep it updated;
  - (ii) Monitor transactions and situations to permanently understand your active customers;
  - (iii) Take due diligence to identify the ultimate beneficiary of transactions brokered by Participants; and
  - (iv) Strengthen monitoring by adopting more rigorous procedures for selecting atypical transactions or situations, regardless of the investor's risk classification.
- (i)** Reforçar o monitoramento mediante a adoção de procedimentos mais rigorosos para a seleção de operações ou situações atípicas, independentemente da classificação de risco desse investidor.

**2.1.2.** Therefore, BSM highlights that identifying the origin of the order issued by Customers is a relevant measure in the context of the KYC processes carried out by Participants and

recommends, as a good practice, its capture and maintenance in the databases to prevent and monitor any atypicalities.

**2.1.3.** For example, for Participants that allow remote or digital account opening, approximate physical location information obtained from the origin of the order (IP) used by the Customer in the registration process could be used to compare it with the origin of the orders stored in their system. This procedure would allow for the identification of atypical or even fraudulent situations, such as two or more individuals using the same origin but declaring different locations in their respective registrations, or even individuals who have no relationship or registration link, indicating the potential use of an intermediary or third party to execute transactions with the market administrator.

**2.1.4.** This type of procedure would also allow for the verification of any atypicality related to a change in the origin of an order sent to the same Customer, such as in cases where transactions are executed, in a short period of time, from physically distant locations. In such cases, the Participant may, if deemed necessary and appropriate to its KYC and MLP/CTF policies, act immediately to prevent potential irregularities by contacting the Customer and verifying the authenticity of the order issued.

## **2.2. Preventive controls**

**2.2.1.** With order origin information in their Customers' KYC process, Participants could implement or improve their preventive controls against improper practices, including before sending orders to the market administrator's trading system.

**2.2.2.** The examples below, which are not exhaustive, are also considered good practices recommended to Participants:

(i) Monitoring Customers' access patterns through audit trails that record order origin, access, and/or registration;

(ii) Implementing two-factor authentication for Customer identification on platforms provided by Participants, increasing security regarding the identification of the order issuer in higher-risk scenarios, such as:

- a) attempted access outside the monitored pattern;
- b) order entry outside the Customer's profile; and
- c) identification of the origin of orders in transactions with known atypical characteristics; among others.

(iii) Assessing the need to implement a suspension period for the execution of suspicious orders (holding period), compatible with the Participant's verification of the identity of the order issuer, with due communication to the Customer that their order was not executed immediately and is being investigated. This diligence is supported by Article 16, §1, I, duly accompanied by the provisions of Article 31, 'caput', both of RCVM 35.

It is also recommended that transparency be provided for the procedures eventually implemented by Participants for the purposes defined in this Guidance Note, and may even include them in their internal regulations – Rules and Parameters of Operation (“RPA”), Standards and Parameters of Operation (“NPA”), policies and/or contracts, pursuant to Article 21, §4, of RCVM 35, whereby the customer must be informed in advance of the procedures adopted by the Participant.

**2.2.3.** Participants, whenever possible, in their educational programs, must guide and show their Customers the importance of accessing without their IP identifiers being “masked” by a VPN (“virtual private network”), for example, to allow the process of identifying the origin of their orders.

## **2.3. Continuous monitoring in brokered operations**

**2.3.1.** Good practices include, among other measures, monitoring, on a special basis, by Participants:

- (i) groups of Customers and individuals linked to the Participant who place orders from the same source;
- (ii) customers who share registration data such as street address, proxy, order issuer, telephone number, email address, among others;
- (iii) customer access and the origin of orders sent, to identify connection patterns and, consequently, evaluate cases in which the order origin does not match the standard commonly adopted for Customer access;
- (iv) orders sent from the same source and Customers registered from the same source;
- (v) coordinated transactions in which the same order source is used by two or more Customers; and/or
- (vi) recent registrations made in the Participant's system from the origins of orders sent already mapped as risky by the Participant.

### **3. Conclusion**

**3.1.** BSM reinforces the guidance for Participants to communicate, when applicable, to COAF, CVM (by article 33, IV, of RCVM 35) and BSM the occurrence of atypical situations, in accordance with RCVM 50, providing, if applicable, information about the origin of the respective orders, with the identification of the Customers involved and the transactions carried out.

**3.2.** Participants should also recommend that their Customers contact their customer service channels whenever they wish to share information that may help prevent and suppress illegal activities related to atypical transactions. It is important to highlight that investors can file complaints directly with BSM by email at [denuncia@bsmsupervisao.com.br](mailto:denuncia@bsmsupervisao.com.br) or by phone at (11) 2565-6200.

# **Technology and software companies that provide services to Participants in the markets managed by B3**

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## Introduction

The Guidance Note is aimed at Market Participants and their technology and software providers, with the aim of preserving the integrity of the markets and mitigating systemic risks that may be materialized by technologies and software that do not meet the requirements established in the regulations.

## Publication History of Notes on the Topic

External Communication	Publication date	Status
<a href="#">19/2022-BSM</a>	September 8, 2022	Current

## Technology and software companies that provide services to Participants in the markets managed by B3

(Published through External Communication 19/2022-BSM)

BSM Market Supervision (BSM), in its role of guiding and supporting the market in complying with the standards established by the regulator and the B3 market administrator, issues this Guidance Note (Guidance Note), aimed at Market Participants and their technology and software providers, with the aim of preserving the integrity of the markets and mitigating systemic risks that may be materialized by technologies and software that do not meet the requirements established in the regulations.

The Brazilian Securities and Exchange Commission ("CVM"), through Resolution No. 35, of May 26, 2021<sup>11</sup> ("RCVM 35"), established rules and procedures to be verified in the intermediation of transactions carried out with securities in regulated markets.

B3 S.A. – Brasil, Bolsa, Balcão ("B3"), through the Operational Qualification Program Standard Rules<sup>12</sup> ("PQO Standard Rules"), established operational requirements and practices for Participants based on the rules of the Central Bank of Brazil ("Central Bank"), the CVM and B3's own self-regulation rules, including for contracts signed between Participants and relevant service providers<sup>13</sup>.

In this context, BSM, after discussions with market Participants and together with B3, issues this Guidance Note in order to clarify to technology and software companies that provide

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<sup>11</sup> Available at: <<https://conteudo.cvm.gov.br/legislacao/resolucoes/resol035.html>>.

<sup>12</sup> Available at: <[https://www.b3.com.br/pt\\_br/b3/qualificacao-e-governanca/certificacoes/selos-pqo/roteiros.htm](https://www.b3.com.br/pt_br/b3/qualificacao-e-governanca/certificacoes/selos-pqo/roteiros.htm)>.

<sup>13</sup> According to External Communication 005-2021-PRE, dated August 5, 2021, which released a statement from BSM on the minimum elements to be observed by BSM to comply with CVM Resolution 35/2021, Circular Letters 3/2020-CVM/SMI and 6/2020-CVM/SMI and External Communication 004/2020-PRE from B3, it defined relevant services as those "whose interruption or unavailability may generate significant negative impacts on the Participant's business. In this sense, Participants must classify as relevant, at a minimum, the trading platforms provided by these or by third-party software providers, whose contracting by the Customer is carried out with the Participant, or made possible by the Participant".

services to Participants that there are duties that Participants must fulfill with the assistance and collaboration of these Service Providers and that are observed by BSM in the audits that it regularly carries out on Participants.

The purpose of this Guidance Note is to alert technology providers to the important role they play with Participants in complying with regulatory standards and requirements established to preserve market health and reduce risks that may cause system instability and affect market credibility among investors. It is extremely important that all Service Providers are clear about these objectives and assist Participants in markets managed by B3, their Customers, in complying with the regulatory and self-regulatory requirements of the markets in which they operate, contributing to the integrity and regular functioning of these markets.

The Participants' inability to comply with the standards and technological requirements imposed by regulators and B3 may give rise to observations in audits conducted by BSM and, depending on the severity and timeliness of the identified issues, may result in Enforcement measures against the Participants, as per BSM's Procedural Regulations<sup>14</sup>. In this context, the collaboration of Service Providers is of paramount importance so that Participants can adequately comply with these standards and technological requirements, avoiding the adoption of Enforcement measures by BSM or regulatory agencies.

Therefore, this Guidance Note will address the following topics: (1) Audit trails; (2) Backup copies; (3) Order integrity and recording; (4) System capacity and performance monitoring; (5) Service level agreement disclosure: latency; (6) Access management; (7) Conducting connectivity tests with B3's electronic trading systems (morning tests); (8) Conducting infrastructure capacity tests in a stress scenario; (9) Participation in simulated trading sessions to validate business continuity plans; (10) Service level agreement (SLA); and (11) Passwords.

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<sup>14</sup> Available at: <<https://www.bsmsupervisao.com.br/assets/file/leis-normas-regras/Regulamento-Processual-da-BSM-01112021.pdf>>.

## 1. Audit trails

1.1. Item 125 of the PQO Standard Rules<sup>15</sup> determines that the Participant's electronic systems for trading, orders, registration, risk management, custody, settlement, and Customer investment profile management must contain complete and sufficient audit trails to ensure the tracking of inclusions, changes, and deletions of event records, allowing the identification of the responsible user, the date and time of the occurrence, and the identification of the event, containing the information included, changed, or deleted<sup>16</sup>.

1.2. The electronic trading systems provided and managed by the Participant or by a third party contracted must, through events recorded in audit trails, ensure the traceability of the following records: (i) customer identification; (ii) origin of the offer (user IP and/or others that allow identification of the origin); (iii) order; (iv) trading session used; and (v) user issuing the order<sup>17</sup>.

1.3. Audit trails must be maintained for a minimum period of 5 (five) years, or for a longer period, as determined by the CVM<sup>18</sup>.

## 2. Backup copies

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<sup>15</sup> Item 125. Electronic trading, Order registration, registration, risk management, custody, settlement and Customer Investment Profile management (suitability) systems must contain Audit Trails sufficient to ensure the tracking of events, including: 125.1. user identification; 125.2. date and time of occurrence of the event; 125.3. identification of the event, containing the information included, changed or deleted. For electronic trading systems provided and managed by the Participant or by a third party contracted by it, the Audit Trail events must be sufficient to ensure the traceability of: 125.4. the Customer identification; 125.5. the origin of the offer (user's IP and/or others that allow identification of the origin); 125.6. the Order; 125.7. the trading session used; and 125.8. the user issuing the Order. The retention period of Audit Trails must be at least 5 (five) years, or for a longer period as determined by regulatory bodies, B3 or BSM.

<sup>16</sup> In the same sense as item 125 of the PQO Basic Roadmap, the sole paragraph of article 7 of RCVN 35 determines that the intermediary must ensure that the electronic registration systems contain complete and sufficient audit trails to ensure the tracking of inclusions, changes and exclusions, and that they allow the identification of, at least: I – the responsible user; II – the date and time of the event; and III – whether the event is an inclusion, change or exclusion.

<sup>17</sup> Item 126 of the PQO Basic Script.

<sup>18</sup> CVM Resolution 35, article 48: "Intermediaries must keep, for a minimum period of 5 (five) years, or for a longer period as expressly determined by the CVM, all documents and information required by this Resolution, as well as all correspondence, internal and external, all working papers, reports and opinions related to the exercise of their functions, whether physical or electronic, as well as the full recordings referred to in article 14, the audit trails referred to in article 7 and in item II of the sole paragraph of article 13, and the records of the origins of the orders referred to in item I of § 1 of article 16".

2.1. 2.1. As described in article 14 of RCVN 35<sup>19</sup> and in items 134 and 135 of the PQO Standard Rules<sup>20</sup>, the Participant must monitor the execution of daily data copy routines, including registration and error resolution procedures, and test the integrity and recoverability of the information.

2.2. Furthermore, the Participant must file records of orders transmitted by Customers and the conditions under which they were executed, regardless of their form of transmission, and must also keep backup copies of such records in an environment separate from that intended for storage<sup>21</sup>.

2.3. Backups must cover, at a minimum, information from the following Participant processes, which may involve Service Provider systems: (i) orders; (ii) registration; (iii) risk (recording of risk limit exceedances, inclusion and change of operational limits); (iv) custody; (v) settlement (transactions in registration account); (vi) margin account (transactions in margin account, recording of breaches of minimum guarantee percentage); (vii) suitability; (viii) supervision of orders, offers and transactions (recording of analysis conclusions); (ix) prevention and combating of money laundering and the financing of terrorism and the proliferation of weapons of mass destruction (AML/FTP) (recording of analysis conclusions);

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<sup>19</sup> Art. 14. The intermediary operating in an organized market must maintain a recording system for all conversations with its Customers, including through agents, in order to record orders transmitted by telephone or other voice transmission systems.

<sup>20</sup> Item 134. The Participant must monitor the execution of data and voice copy routines, including recording and error resolution procedures, and test the integrity and recovery of the information. Item 135. Backups intended for the recovery of the Participant's electronic information, as well as recordings of Customer Orders, must be made and sent, at least daily, for storage at a location outside the main facilities, with controlled access and fire-fighting controls, within the retention period established by current regulations. Backups must cover, at a minimum, information from the following processes: 135.1. Orders; 135.2. Registration; 135.3. Risk (recording of risk limit exceedances, inclusion and change of operational limits); 135.4. Custody; 135.5. Settlement (transactions in registration account); 135.6. Margin account (transactions in margin account, recording of breaches of minimum guarantee percentage); 135.7. suitability; 135.8. supervision of orders, offers and transactions (recording of analysis findings); 135.9. prevention of money laundering and terrorist financing (recording of analysis findings); 135.10. investment clubs; and 135.11. directories containing information related to the processes mentioned above.

<sup>21</sup> CVM Resolution 35, Article 13: "The intermediary must archive records of orders transmitted by Customers and the conditions under which they were executed, regardless of their form of transmission. Sole paragraph. Without prejudice to other procedures and controls adopted pursuant to Article 43, the intermediary must have specific procedures for archiving data and voice records relating to transmitted orders that ensure: (...) III – the maintenance of backup copies in an environment separate from that intended for storing the information referred to in the caput, under secure storage, access, and preservation conditions".

(x) investment clubs; and (xi) directories containing information related to the processes mentioned above.

2.4. Intermediaries must maintain, for a minimum period of 5 (five) years, or for a longer period, as determined by the CVM, all documents and information required, pursuant to article 48 of RCVM 35.

### **3. Integrity and recording of Orders**

3.1. An “order” is understood as the prior act by which the Customer determines that the Participant negotiate or register a transaction with a security in his name, under the conditions specified.

3.2. Considering that the Participant may only carry out trades based on the existence of a prior order under the conditions established by the Customer, articles 12, 13 and 14 of RCVM 35 and items 142 and 143 of the PQO Standard Rules<sup>22</sup> list the characteristics and procedures necessary for periodic maintenance and continuous monitoring that ensure the quality, integrity, continuous operation and impossibility of insertions, editions or deletions of such orders.

3.3. The Participant or the supplier contracted by it must keep all transmissions of orders received from customers intact for a minimum period of 5 (five) years, containing the following recorded information: (i) date; (ii) start time; (iii) end time or duration; (iv) order issuer; and (v) conditions for its execution.

3.4. In the case of orders transmitted by voice, the telephone extension and recording code must also be recorded in the system of the Participant or the Service Provider contracted by the Participant. In addition, the archiving procedures for data and voice

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<sup>22</sup> Item 142. The Participant must take the necessary steps for periodic maintenance and continuous monitoring to ensure perfect recording quality and integrity, continuous operation, and the impossibility of insertions, edits, or deletions. Item 143. The Participant must maintain all transmissions of Orders received from Clients for a minimum period of 5 (five) years, containing the following information: date, start time, end time or duration, the sender, and the conditions for execution. In the case of orders transmitted by voice, the Participant must also record the telephone extension and recording code. In addition to the characteristics described above, procedures for archiving data and voice records related to orders must be sufficient to ensure confidentiality, authenticity, integrity, and availability of information.

records related to the orders must be sufficient to ensure the confidentiality, authenticity, integrity, and availability of the information.

3.5. The Participant must maintain a recording system for all conversations with its customers via voice transmission, including through agents, adopting the necessary measures for periodic maintenance and continuous monitoring, in order to ensure the quality and integrity of the recording, including continuous operation and the impossibility of insertions, edits or deletions, as determined by article 14 of RCVM 35 and item 142 of the PQO Standard Rules.

3.6. If the Participant uses Service Provider systems for order sending and recording procedures, these systems must also meet the requirements demanded by regulation and self-regulation, in accordance with the guidelines described in this item.

#### **4. Monitoring systems capacity and performance**

4.1. Article 40 of RCVM 35<sup>23</sup> imposes on the Participant the duty to develop and implement policies and practices aimed at ensuring the integrity, security and availability of its critical systems.

4.2. Item 132 of the PQO Standard Rules<sup>24</sup> establishes that the Participant must monitor the trading platforms offered to its Customers (including home broker and mobile applications), whether owned or provided by third parties, to ensure: (i) availability of the trading platform infrastructure and services; (ii) availability of trading sessions with B3; and (iii) record of incidents that may have affected the availability of the trading platforms, with a retention period of at least 5 (five) years.

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<sup>23</sup> Art. 40. The intermediary must: I – develop and implement policies and practices aimed at ensuring the integrity, security and availability of its critical systems; and II – establish guidelines for assessing the relevance of incidents.

<sup>24</sup> Item 132. The Participant must monitor the trading platforms (including home broker and mobile applications) owned or provided by third parties contracted by it, offered to its Customers, to ensure: 132.1. availability of the trading platform infrastructure and services; 132.2. availability of trading sessions with B3; 132.3. recording of incidents that may have affected the availability of the trading platforms, with a retention period of at least 5 (five) years.



4.3. Furthermore, Circular Letter No. 3/2020-CVM/SMI<sup>25</sup> and Circular Letter No. 6/2020-CVM/SMI<sup>26</sup> endorse the regulatory provision and recommend best practices to ensure integrity in the provision of services, in line with the rules that regulate the functioning of the market.

4.4. Item 136 of the PQO Standard Rules<sup>27</sup> specifies the Participant's duty to preventively monitor the capacity, performance and availability of the network service and communication channels, systems, servers and database, in order to maintain business continuity and proper functioning.

4.5. Critical systems adopted by Participants may be provided by Service Providers, and must, in any case, meet the regulatory requirements described above.

## 5. Service Level Agreement Disclosure: Latency

5.1. The internal order latency indicator that must be disclosed by the Participant on its website must measure the time interval between the arrival of the order at the Participant or on the trading platform contracted by it, until its sending to B3 and the return of the order status (insertion, execution, cancellation, rejection), from the arrival at the Participant or on the trading platform contracted by it, until the sending to the investor, as provided for in item 130 of the PQO Standard Rules<sup>28</sup>.

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<sup>25</sup> Available at: <<https://conteudo.cvm.gov.br/legislacao/oficios-circulares/smi/oc-smi-0320.html>>.

<sup>26</sup> Available at: <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/smi/anexos/ocsmi0620.pdf>.

<sup>27</sup> Item 136. The Participant must preventively monitor the capacity, performance, availability and service of the network and communication channels, systems, servers, and database, to maintain business continuity and smooth operation.

<sup>28</sup> Item 130. The Participant must establish, register, and make available to its Customers and potential Customers through its website, when applicable, a Service Level Agreement regarding: 130.1. Internal order latency indicator, from the arrival of the order at the Participant or at the trading platform contracted by it until its submission to B3 and the return of the order status (insertion, execution, cancellation, rejection), from its arrival at the Participant or at the trading platform contracted by it until its submission to the investor; 130.2. Service time of alternative service channels, in the event of interruption of the main channel, through each of the channels made available: telephone, email, chat, others. The Participant must record and disclose the history of all changes made, with their respective validity periods.



5.2. It is the Participant's duty to disclose the service time of alternative service channels in the event of interruption of the main channel<sup>29</sup>.

5.3. The Participant may update the service level agreements regarding the maximum latency of the trading platforms and the service time of alternative channels whenever it deems necessary and, to this end, must maintain an accessible history of all changes, with the respective effective dates of each agreement.

5.4. If the trading platforms used by Participants are provided by Service Providers, the Participant also needs the Service Providers' latency information to inform its Customers, as required in the rules described above.

## 6. Access management

6.1. To ensure the confidentiality, authenticity, integrity and availability of the Participant's sensitive data and information, the rules for accessing the systems must include, as provided for in article 43 of RCVM 35<sup>30</sup>, the protection of registration information and operations carried out by the Customer against unauthorized access or deletion, leakage or tampering, and there must be control over the granting and administration of individualized access to systems, databases and networks, and the segregation of data and access control, in order to prevent the risk of unauthorized access, tampering or misuse of information.

6.2. In this sense, item 127 of the PQO Standard Rules<sup>31</sup> defines the guidelines that must be observed by Participants in the access management process.

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<sup>29</sup> On this topic, BSM released a Guidance Note, through External Communication 005/2021-PRE of B3, dated 8/5/2021.

<sup>30</sup> Art. 43. The rules, procedures and controls referred to in art. 42 must include: I – the protection of registration information and transactions carried out by the customer against unauthorized access or destruction, leakage or tampering; II – the granting and administration of individualized access to systems, databases and networks; and III – data segregation and access control, in order to prevent the risk of unauthorized access, tampering or misuse of information.

<sup>31</sup> Item 127. Access to systems, databases, and networks – whether owned, acquired from third parties, or B3 – must meet the following characteristics: 127.1. be for individual users and not shared; 127.2. be protected by a password or a method with equivalent security; 127.3. be granted in a manner that avoids conflicts of interest and access inconsistent with the role performed. To this end, the Participant must define, prior to granting access, the activities relevant to the role performed and the activities that, when accumulated and performed by the same person in the systems, could generate a conflict of interest, which must be subject to

6.3. Service Providers, by ensuring that the systems and services provided to Participants comply with such CVM and B3 rules, contribute to Participants' system access management and, consequently, to market access governance and security.

## **7. Conducting connectivity tests with B3's electronic trading systems (Morning Tests)**

7.1. The purpose of determining whether to carry out connectivity tests with electronic trading systems is to allow for the early identification of any problems that may affect the trading environment.

7.2. Item 137 of the PQO Standard Rules<sup>32</sup> imposes on Participants the duty to perform daily connectivity tests of all sessions on the trading platforms used, whether their own or provided by third parties, in accordance with the specifications determined by B3.

7.3. Furthermore, the B3 Trading Operating Procedures Manual<sup>33</sup> requires that connectivity tests encompass all B3 trading interfaces, such as trading screens provided by B3 or software providers, market data dissemination channels, or copies of execution report messages (drop copies). Execution procedures and times, instrument codes, and the specific connectivity test script are available on the B3 website<sup>34</sup>.

7.4. In this sense, the participation of Service Providers in this routine, if applicable, is essential to avoid potential problems that may affect B3's trading environment.

## **8. Conducting infrastructure capacity tests in a stress scenario**

8.1. The determination to carry out stress tests, as set out in item II, §3, of article 33, of RCVM 35<sup>35</sup>, aims to ensure the compatibility of the Participant's technological structure with

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verification; 127.4. be approved by the owner of the information; 127.5. be granted only to professionals who have a relationship with the Participant; and 127.6. be assigned to a responsible person. The Participant must manage access (granting, modification, and deletion) to maintain the characteristics described.

<sup>32</sup> Item 137. The Participant must perform daily connectivity tests for all sessions on the trading platforms used, both its own and those provided by third parties, in accordance with the specifications determined by B3.

<sup>33</sup> Item 7 of the B3 Trading Operating Procedures Manual.

<sup>34</sup> Available at: <[https://www.b3.com.br/pt\\_br/regulacao/estrutura-normativa/operacoes/](https://www.b3.com.br/pt_br/regulacao/estrutura-normativa/operacoes/)>.

<sup>35</sup> Art. 33. The intermediary must: (...) § 3 The technological systems used by the intermediary must be: (...) II – subjected to tests at an appropriate frequency, established in the policy referred to in art. 41, to verify their functioning in stress scenarios.

any increase in the volume of transactions that may occur in the market, and the Participant's systems must be capable of handling peak volume situations.

8.2. Item 138 of the PQO Standard Rules<sup>36</sup> specifically requires that the Participant's technology structure be compatible with the volume, nature and complexity of its operations, and must be subjected to testing at least annually to verify its operation in stress scenarios, with the establishment of action plans, if applicable.

8.3. In this sense, item 22 of Circular Letter SMI 6/2020<sup>37</sup> mentions that the Participant must also submit third-party trading platforms to tests at least annually, to verify their operation in stress scenarios, as is done in relation to its own systems.

8.4. Therefore, infrastructure capacity testing in stress scenarios also extends to third-party platforms to comply with this legal requirement<sup>38</sup>.

## **9. Participation in simulated negotiation sessions to validate business continuity plans**

9.1. It is the Participant's duty to review and perform tests to monitor the efficiency and effectiveness of its business continuity plans at appropriate intervals, not exceeding one year, as per item I, §2, of article 38 of RCVN 35<sup>39</sup> and item 131 of the PQO Basic Roadmap<sup>40</sup>.

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<sup>36</sup> Item 138. The Participant's technology structure must be compatible with the volume, nature, and complexity of its operations and must be subjected to testing, at least annually, to verify its operation in stress scenarios, with the establishment of action plans, if applicable.

<sup>37</sup> Available at: <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/smi/anexos/ocsmi0620.pdf>.

<sup>38</sup> On September 21, 2021, BSM held a webinar on the topic, which is available on its website: <https://www.bsmsupervisao.com.br/Noticias/orientacao-ao-mercado-teste-de-capacidade-da-infraestrutura-em-cenario-de-estresse-res-cvm-cvm-03-05-2021>.

<sup>39</sup> Art. 38. The intermediary must implement and maintain: (...) § 2 The intermediary must: I – review and perform tests to monitor the efficiency and effectiveness of its business continuity plans at appropriate frequency, not exceeding one year.

<sup>40</sup> Item 131. The Participant must implement and maintain a business continuity strategy in the event of interruption of its Critical Business Processes. To this end, the Participant must, at a minimum: 131.1 develop, implement, update, and test, with a frequency not exceeding one year, a Business Continuity Plan for scenarios of total unavailability of the main infrastructure (facilities, systems, connections), addressing, at a minimum, the following Critical Business Processes: 131.1.1. reception and execution of orders, with the objective of preserving customer service; 131.1.2. settlement with entities managing organized markets; 131.1.3. settlement of its customers; and 131.1.4. reconciliation and updating of its customers' positions. 131.2 establish procedures and deadlines for restarting and recovering Critical Business Processes; 131.3. Define a

9.2. As required by the B3 Operating Procedures Manual<sup>41</sup>, the Participant's presence in tests carried out to validate the business continuity plan is mandatory, as well as validation and use of the web address to complete said tests. The calendar with the dates defined for the tests must be disclosed by B3 to the market before they are carried out.

9.3. Therefore, participation in simulated negotiation sessions to validate the Participants' operational continuity plans relies on the collaboration of Service Providers that provide services that need to be tested, for the purpose of complying with the legal requirement imposed on the Participant.

## 10. Service Level Agreement (SLA)

10.1. Regarding contracts signed by the Participant with Service Providers, articles 47 and 48 of RCVM 35<sup>42</sup> establish obligations that must be observed by the Participants when drafting the contractual clauses, in order to evaluate the controls related to: (i) confidentiality; (ii) integrity; (iii) availability of information, retrieval of information and data processed or stored by the service provider; (iv) retention for a minimum period of 5 (five) years; and (v)

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strategy and utilize a contingency infrastructure that includes connection to the B3 trading environment (trading and Drop Copy), to ensure the continuity of operations in the event of unavailability of the main infrastructure. 131.4. Establish a communication plan for the process, in accordance with the deadlines and target audiences required by current regulations, encompassing, at a minimum: 131.4.1. Results of tests, improvements, and updates to the business continuity plan; 131.4.2. Activation of the business continuity plan; 131.4.3. Notices and guidance regarding the unavailability or instability of critical systems.

<sup>41</sup> Title II – Trading Environment. The presence of the full trading participant in tests conducted for the business continuity plan is mandatory, as is the validation and use of the web address to complete the test. The calendar with the dates set for the tests is published by B3, upon prior notice to the market.

<sup>42</sup> Art. 47. In the case of services provided by third parties, the intermediary must identify and list its relevant service providers, evaluate the controls performed by these providers, and ensure that service provision contracts ensure: I – compliance with the information maintenance requirements set forth in Art. 48; II – the institution's access to the data and information to be processed or stored by the service provider; and III – the confidentiality, integrity, availability, and retrieval of data and information processed or stored by the service provider. § 1. The hiring of third parties does not exempt the intermediary from the registration and archiving of the documents and information mentioned in Art. 48. § 2. The intermediary must ensure that the contracts relating to the provision of outsourced services do not limit or prohibit access by the CVM and the self-regulatory entity to: I – the content of the contracts; and II – documents, data, and information processed or stored by service providers. Art. 48. Intermediaries must maintain for at least a minimum period of 5 (five) years, or for a longer period as expressly determined by the CVM, all documents and information required by this Resolution, as well as all internal and external correspondence, all working papers, reports, and opinions related to the performance of their duties, whether physical or electronic, as well as the full recordings referred to in art. 14, the audit trails referred to in art. 7 and item II of the sole paragraph of art. 13, and records of the origins of orders referred to in item I of § 1 of art. 16.

access by the Participant, the regulator and the self-regulator to the information and data processed by the Service Provider..

10.2. Circular Letter No. 6/2020-CVM/SMI<sup>43</sup> endorses the regulatory provisions and recommends best practices to ensure integrity in the provision of services, in accordance with the rules that regulate the functioning of the market.

10.3. Furthermore, item 145 of the PQO Standard Rules<sup>44</sup> provides that the Participant must establish and monitor service level agreement clauses for customer service and problem-solving, within deadlines and conditions that ensure the availability of services and the fulfillment of commitments made to its customers, including objective criteria for measurement, billing, confidentiality and compliance with the applicable regulatory basis in its contracts with providers of: (i) telecommunications services; (ii) help desk; (iii) computer and server maintenance and monitoring, information security and data backup; (iv) systems provision, development and maintenance; (v) custody of information in physical and logical media; and (vi) order routing and trading platforms<sup>45</sup>.

10.4. Service Providers are instructed to provide such services to Participants and comply with the above-mentioned rules.

## 11. Passwords

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<sup>43</sup> Available at: <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/smi/anexos/ocsmi0620.pdf>.

<sup>44</sup> Item 145. The Participant must establish and monitor service level agreement clauses for customer service and problem resolution within deadlines and conditions that ensure the availability of services and commitments to its Customers, including objective criteria for measurement, billing, confidentiality and compliance with the applicable regulatory basis in its contracts with service providers of: 145.1. telecommunications; 145.2. help desk, computer and server maintenance and monitoring, information security and data backup; 145.3. supply, development and maintenance of systems; 145.4. custody of information in physical and logical media; and 145.5. Order routing and trading platforms. For contracts signed by the Participant with Relevant Service Providers, the contracts must also contain, when applicable, clauses regarding: integrity, availability of information, recovery of data and information processed or stored by the service provider, retention for a minimum period of 5 years, access by the Participant, the regulator and the self-regulator to data and information processed by the service provider..

<sup>45</sup> For contracts signed by Participants with relevant Service Providers, the contracts must also contain, when applicable, clauses regarding: integrity, availability of information, recovery of data and information processed or stored by the service provider, retention for a minimum period of 5 (five) years, access by the Participant, the regulator and the self-regulator to the data and information processed by the Service Provider, in accordance with item 145 of the Basic Roadmap.

11.1. Passwords used to authenticate Participant users and customers who make inquiries and transactions through electronic relationship channels managed by the Participant or by a third party hired by it must be secure, individual and not shared.

11.2. To this end, Service Providers would demonstrate to Participants that their systems follow the principles established by B3.

## **12. Conclusion**

12.1. In view of the above, even though technology and software Service Providers are not directly subject to the incidence of regulation or self-regulation by CVM, B3 or BSM, their contribution is essential to ensure compliance with the normative and regulatory requirements imposed on Quota holders, to ensure the regular and healthy functioning of the markets managed by B3.

12.2. BSM is available to the market and Service Providers to conduct webinars and training sessions that are necessary and requested by institutions and technology providers for better understanding and compliance with the rules mentioned herein.

# Digital Influencers

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## Introduction

The Guidance Note aims to disseminate recommendations considered best practices in the relationship between Participants and Digital Influencers hired by them, directly or indirectly, on topics related to investments in the capital and financial markets.

## Publication History of Notes on the Topic

External Communication	Publication date	Status
<a href="#">20/2023-BSM</a>	September 5, 2023	Current



## Digital Influencers

(Published through the Guidance Note 20/2023-BSM)

BSM Market Supervision (“BSM Market Supervision” or “BSM”), as per the authority defined in its Bylaws<sup>46</sup> and in accordance with its purpose of maintaining a permanent channel for discussion and development regarding the improvement of supervisory activities with market Participants, issues this Guidance Note to Participants of B3 S.A. – Brasil, Bolsa, Balcão (“B3”).

The debate on how to improve social media monitoring, especially with regard to the impact of the actions of digital influencers (“Influencers” or “Influencer” as defined below) on the behavior and investment decisions of investors in the capital and financial markets, in which collaborators from technical areas of the Brazilian Securities and Exchange Commission (“CVM”) also participated, raised the need to agree on guidelines for best practices in the hiring of Influencers by Participants and monitoring their performance during the term of the contract, as part of their education, communication, advertising and/or marketing strategy.

Digital marketing in the capital and financial markets is essential to educate and gain the trust of effective investors, in addition to attracting potential Customers. Influencers play a relevant role in these markets, as they contribute to financial education by disseminating accessible, accurate and appropriate information to the public.

The role played by Influencers in disseminating educational or advertising content is a topic that requires attention, as the dissemination of content without meeting certain parameters can be detrimental to the credibility and integrity of the capital and financial markets.

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<sup>46</sup> BSM Market Supervision’s Bylaws, available at <https://www.bsmsupervisao.com.br/assets/file/leis-normas-regras/BSM-Estatuto-Social.pdf>: Art. 3 - BSM, in compliance with the provisions of the applicable regulations, has the following corporate purpose: [...] VIII - to collaborate with similar national and foreign entities or with others whose purpose is to discuss and deliberate on matters related to the activities carried out by Organized Market Management Entities, Financial Market Infrastructure Operators, and BSM itself.

In this context, this Guidance Note, in line with the conclusions presented by the “Study based on Regulatory Impact Analysis” published by CVM in April 2023, aims to disseminate recommendations considered best practices in the relationship between Participants and Influencers hired by them, directly or indirectly, on topics related to investments in the capital and financial markets.

For the purposes of this Guidance Note, Influencers are considered to be natural and legal persons who are recognized for their ability to disseminate educational, advertising and/or information content, as well as to induce behaviors, especially through social networks<sup>47</sup>.

Therefore, this Guidance Note aims to guide Participants to implement controls over the performance of Influencers hired by them, related to the scope of the contract, including the provision of contractual penalties, especially with the purpose of identifying, preventing and curbing infractions provided for in the regulations in force, among which the following stand out:

- I. engaging in a regulated activity without CVM authorization<sup>48</sup> (“Regulated Activity”);
- II. Conflicts of interest related to the fiduciary duties that govern the performance of the intermediation activity; and
- III. Market violations, such as creating artificial conditions for demand, supply, or price of assets, price manipulation, fraudulent transactions, unfair practices, and other violations.

Considering all the above, this Guidance Note, as defined in the BSM Glossary, consists of a set of guidelines issued by BSM, pursuant to its Bylaws, with the objective of recommending best practices to Participants for compliance with the obligations required by the regulatory standards to which they are subject and which BSM is responsible for supervising.

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<sup>47</sup> Definition compatible with that adopted by the North American Securities Administrators Association (NASAA), available at: <https://www.nasaa.org/64940/informed-investor-advisory-finfluencers/>

<sup>48</sup> Examples of these activities include securities analysts, regulated by CVM Resolution No. 20 of February 25, 2021; securities consultants, regulated by CVM Resolution No. 19 of February 25, 2021; and investment advisors, regulated by CVM Resolution No. 178 of February 14, 2023.

## 1. Transparency regarding hiring

In cases where the Participant chooses to hire Influencers as part of their communication, advertising and/or marketing strategy, whether in commercial relationships for an indefinite period or in specific hires for specific campaigns, whether directly or through third parties hired by them, such as digital influencer hiring agencies, it is good practice to seek to comply with the following guidelines:

### 1.1. Influencer Due Diligence

It is recommended that the Participant carry out a prior reputational and conduct analysis of the Influencer they intend to hire, a process equivalent to “know your business partner” or “KYP”, in accordance with the regulations in force<sup>49</sup> and the rules of conduct and compliance policies (“Compliance Policies”) of the institution, with the aim of identifying the existence of:

- I. Disqualification or suspension from holding office in financial institutions and other entities authorized to operate by the CVM, the Central Bank of Brazil, the Superintendence of Private Insurance (SUSEP), or the National Superintendence of Supplementary Pensions (PREVIC);
- II. Conviction for bankruptcy, malfeasance, bribery, extortion, embezzlement, money laundering, or concealment of assets, rights, and values, against the popular economy, the economic order, consumer relations, public faith or public property, or the national financial system;
- III. Conviction or sanction of any nature in administrative or sanctioning proceedings before regulatory and self-regulatory entities of the capital and financial markets;
- IV. Judicial or administrative proceedings in which the Influencer is accused of crimes or infractions within the capital and financial markets;
- V. Mention of the Influencer in news reports from reliable media outlets (adverse media) related to infractions or crimes that the Influencer has committed or attempted to commit in the capital and financial markets; and

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<sup>49</sup> Examples of which are CVM Resolution No. 50 of August 31, 2021, and CVM Resolution No. 35 of May 26, 2021.

VI. Citation of the Influencer as a suspect in reports related to financial crimes or money laundering, terrorist financing, or the proliferation of weapons of mass destruction, produced by competent national and international authorities.

As part of this preliminary assessment, it is best practice for the Participant, within their control, to analyze the activities performed by the Influencer prior to the hiring period, with the aim of identifying any involvement in irregular practices related to the capital and financial markets.

Identifying any of these situations does not necessarily preclude hiring the Influencer. However, it is recommended that the Participant analyze the risks involved and inform the institution's senior management of this assessment, within the scope of their internal risk assessment (IRA), for any necessary reflection and authorizations, in accordance with their Compliance Policies.

## **1.2. Formal hiring**

When the Participant chooses to enter into a contractual relationship with Influencers, it is advisable to prepare a formal contracting instrument containing clauses that seek to reflect the principles outlined in this Guidance Note. It is recommended to formally notify Influencers of this Guidance Note.

In the context of the analysis prior to formalizing the contract, it is recommended that the Participant carry out an assessment and make every effort to identify any conflicts of interest between the actions of the Influencers and the activities of the Participant.

These guidelines also apply if the Investment Advisor, as the Participant's agent, chooses to directly or indirectly establish a contractual relationship with an Influencer. In this case, it is recommended that the terms of this contractual relationship between the Investment Advisor and the Influencer be reviewed and approved by the Participant, in compliance with the provisions of the applicable regulations.

### **1.3. Forms of disclosure of the contractual relationship between the Participant and the Influencer**

Broad and transparent disclosure of the existence of an onerous contractual relationship between Participant and Influencer allows investors to be aware of the existing link between them and to make their decisions duly informed, in line with the principles that guide regulated markets.

Onerous contractual relationships are those in which the parties establish benefits and advantages between themselves, which may or may not be monetary in nature. Benefits or advantages are considered any resources, consideration, or direct or indirect advantages that the Influencer obtains as a result of this contractual relationship, whether they directly involve the receipt of cash. When the Influencer mentions a Participant's service to which they had access free of charge or through the granting of a discount or advantage, it is also recommended that the Participant disclose this information.

The guidance is that everyone is aware that the Influencer was hired by the Participant under the context of an onerous contractual relationship. This information can be communicated through a notice in all the Influencer's statements, in a clear and easily visible manner, considering the characteristics of the communication vehicle used, such as character limits, for example.

It is best practice for Participants to make available on their websites a list of Influencers with whom they have an active contract to promote related products and services. This list should also include Influencers hired through digital influencer recruitment agencies or third parties, as well as those hired by an investment advisor linked to the Participant. This recommendation does not apply if the Influencer is hired exclusively to promote the Participant's brand or that of the Investment Advisor linked to them, without promoting related products and services.

Furthermore, it is advisable that the Participant pay attention to the guidelines detailed in subitems "I" to "III" below. In situations where it is not possible to follow guidelines I to III

below, for example, due to technological issues linked to the communication vehicle, the recommendation is to seek alternative ways to achieve the same informational objective as desired with the best practices contained in this Guidance Note.

These are non-exhaustive examples of ways considered appropriate for disclosing the contractual relationship between Influencers and Participants:

- I. Publication of information about the relationship, including at least the expression "Partnership" along with the Participant's name (e.g., "**ParceriaParticipanteA**");
- II. Publication of a link to the Participant's page containing information about the characteristics of the Participant's own products mentioned by the Influencer<sup>50</sup>, except when mentioning asset classes;
- III. The information about the relationship must be prominent and appear first when the post includes a set of hashtags or links.

The guidelines set out in subitems "I" to "III" above do not apply to advertising materials:

- I. published by the Participants themselves, provided that the authorship is clearly identified, even in cases where the content is reposted by third parties; and
- II. in advertising campaigns in which the Influencer does not mention the Participant's products, such as marketing and promotional activities, where the objective is merely to give visibility to the Participant's logo or to contract advertising space on the Influencer's channel, through indirect advertising.

#### 1.4. Transparency about the existence of links with asset issuers

When hiring the Influencer, it is recommended that the Participant requests information about any links the Influencer may have with asset issuers or any other Participant in the capital or financial markets, and that these links may give rise to conflicts of interest.

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<sup>50</sup> In line with ANBIMA's self-regulation applicable to the advertising of investment products, it is good practice to include a link to a page containing information about the assets covered by the advertising materials (<https://www.anbima.com.br/pt.br/pagina-inicial.htm#>).

Once this information is known, it is recommended that the contract between the Participant and the Influencer provide for its disclosure on the Participant's website and on the Influencers' social media profiles, whenever possible and in accordance with the characteristics of the communication channel used. Disclosing this information allows investors to make their own assessment of the possible bias in the opinions expressed by the Influencer.

## **2. Transactional monitoring of hired Influencers**

As provided for in the regulations of organized markets, Participants are important gatekeepers and must ensure the maintenance of market integrity, preventing irregular or atypical transactions.

It is recommended that the Participant consider the content published by the contracted Influencer as an input for the analysis of alerts generated in their transactional monitoring routine, as stipulated in their internal policy and Risk-Based Approach.

Given the informational limitations that the Participant may face in some situations involving the conduct of hired Influencers, it is recommended that the Participant, whenever deemed necessary, activate the CVM and BSM reporting channel, indicating the evidence that gave rise to the atypicality or the alert identified.

This report contributes to fulfilling the Participant's duty to establish rules, procedures and internal controls capable of preventing the interests of its Customers from being harmed because of conflicts of interest and to ensure the integrity and regular functioning of the market<sup>51</sup>.

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<sup>51</sup> Articles 32 and 33 of CVM Resolution No. 35. Art. 32 - The intermediary must establish rules, procedures and internal controls that can prevent the interests of Customers from being harmed because of conflicts of interest. Art. 33 - The intermediary must: I – ensure the integrity and regular functioning of the market [...].

In this sense, it is recommended that the materials published by Influencers promote products and services linked to them, within the scope of the contract, be examined by the Participant, to identify, for example:

- I. possible involvement in a regulated activity without proper authorization, particularly as a securities analyst<sup>52</sup>;
- II. making statements about assets, even if unprofessional, that modify the asset's behavior pattern in the market, resulting in the creation of artificial conditions for the demand, supply, or price of assets, price manipulation, or other illicit practices.
- III. Making statements that have the potential to encourage fraudulent transactions or unfair practices;
- IV. Attempting to obtain an advantage of an irregular nature for the Influencer or third parties through biased statements about assets;
- V. Disclosure of false, incomplete, or inconsistent information;
- VI. Use of unclear or ambiguous language;
- VII. Attempting to mislead investors regarding their investment decisions;
- VIII. Commenting on trends, indicating the appropriate time or location to buy or sell, for example; and
- IX. Expressions that indicate or suggest promises of unrealistic, disproportionate, or incompatible financial results with the average investor's performance, such as terms such as "sure income," "sure gain," "guaranteed profitability."

If any of the elements listed above, or any indication of atypicality or irregularity, are identified, the Participant must take the steps defined in its Compliance rules and Policies and in current regulations, in addition to reporting to the CVM and BSM, as applicable.

### **1.5. Practices that affect the reputation of Participants, agents or markets**

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<sup>52</sup> Activity regulated by CVM Resolution No. 20



It is recommended that Participants include a clause in the contract signed with Influencers that establishes that they, in the execution of the contract, must not, in their statements, in an unfounded manner, disparage the activities of other Participants and other agents operating in the markets, such as fund administrators and managers, Investment Advisors and asset issuers, nor attribute to them the practice of illicit acts or question reputational elements such as technical capacity, ethical standards or institutional soundness of these agents.

These due diligences contribute to the fulfillment of the Participants' duty to require their administrators, employees, agents and people acting on their behalf to comply with the standards of suitability, ethics and professional aptitude determined by the regulations in force.

## **2. Reporting channel**

As a good practice, it is recommended that the Participant publicly disclose the existing ombudsman or reporting channel to receive substantiated information related to possible irregularities observed by investors, explicitly indicating that said channel can be used in the event of irregularities related to the actions of Influencers hired by the Participant.

The disclosure of this existing channel by the Participant must be clear, simple and intuitive to the public, in a non-logged in environment, containing guidelines in informal and accessible language, to enable the submission of the complaint in the most complete way possible.

To this end, it is recommended that the Participant provide the investor with information on the importance of the evidence to be presented, relating to the reported facts, such as:

I. An indication of the reported contracted influencer (name and/or social media profile username);

- II. A complete description of the facts and the irregularity committed by the contracted influencer, including, among other information, the date and time the irregularity allegedly occurred;
- III. A link to the content posted by the contracted influencer that contains the reported irregularity;
- IV. Screenshots of the content posted by the contracted influencer, in the case of a platform that keeps the content published for a limited time;
- V. Screenshots demonstrating the reposting, by third parties, of the publication subject to the complaint and the content posted by the contracted influencer; and
- VI. All information and/or evidence that may support the complaint.

The Participant must ensure the confidentiality of the whistleblower's personal data, if the whistleblower so requests, as well as highlight, in their channel, the confidential nature of the complaint.

In addition to having a reporting channel and/or ombudsman to receive information related to possible irregularities observed by investors in relation to Influencers hired by them, the Participant is recommended to highlight that any complaint may also be made directly through the CVM or BSM reporting channel, via email [denuncia@bsmsupervisao.com.br](mailto:denuncia@bsmsupervisao.com.br), WhatsApp (11-5039-7521), or by telephone (11) 2565-6200, option 2.

### 3. General Provisions

If any signs of atypicality or irregularity are identified, the Participant must communicate it to the CVM and BSM, as applicable, in addition to adopting other diligences defined in its rules and Compliance Policies and in the regulations in force, keeping a record of the evidence found and adopting timely measures with a view to mitigating the consequences of the atypicality or irregularity.

As clarified by the CVM in its Circular Letter No. 13/2020/CVM/SIN, dated November 11, 2020, it is important to note that the use of social media to express opinions about securities,

even if not professionally, by any individual or legal entity, whether an Influencer or not, may constitute an administrative offense under CVM Resolution No. 62 and subject the offender to the penalties under Article 11 of Law No. 6,385/76, if the purpose is to create artificial conditions of demand, supply, or price of securities, manipulate prices, carry out fraudulent transactions, or facilitate unfair practices in an attempt to gain an advantage for themselves or third parties. This practice may also constitute a crime against the capital markets, under Law No. 6,385/76.

This Guidance Note was jointly developed by the market, with the support and coordination of BSM Market Supervision, aiming at convergence regarding the appropriate ways of acting in the hiring of Influencers by Participants, with the objective of contributing to the financial education of investors, preserving the integrity and credibility of the market.

This document is not intended to replace or exhaust provisions contained in the current regulations, but to provide guidance, guidelines and best practices on the topic involving the hiring of Influencers by Participants and the monitoring of their performance during the relationship in order to ensure that the provisions of the contract, as well as this Guidance Note, are complied with, without prejudice to the provisions of the regulations.

Additional information can be obtained from BSM's Legal Department, by email at [bsm@bsmsupervisao.com.br](mailto:bsm@bsmsupervisao.com.br) or by phone at (11) 2565-6200, option 9.

## **Trading of securities outside the markets managed by B3**

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## Introduction

The Guidance Note aims to address procedures related to trading in securities outside the organized markets managed by B3, to be left in the current format used by BSM.

## Publication History of Notes on the Topic

External Communication	Publication date	Status
<a href="#">26/2023-BSM</a>	December 12, 2023	Current
<a href="#">001/2020-VOP-BSM</a>	October 8, 2020	Revoked

## Trading of Securities outside the Markets Managed by B3

(Published through External Communication 26/2023-BSM)

BSM Market Supervision (“BSM”), in its role of guiding and supporting the market in complying with the standards established by the regulator and market administrator B3 S.A. – Brasil, Bolsa, Balcão (“B3”), issues this updated guidance note (“Guidance Note”) that addresses procedures related to trading in securities outside the organized markets managed by B3, to leave it in the current format used by BSM, revoking External Communication 001/2020-VOP-BSM, jointly released by B3 and BSM on October 8, 2020.

Defined terms are in accordance with the BSM Glossary<sup>53</sup> or are defined in this Guidance Note.

The Guidance Note is divided into 6 (six) sections: (I) Definition of the trading practice known as a call desk; (II) Securities admitted or not to trading known as a call desk; (III) Conditions for the call desk; (IV) Execution of transactions on B3 resulting from trading, in a call desk, of combinations that derive from listed securities; (V) Example of irregular transaction; and (VI) Difference between a call desk and search for a counterparty.

### I. Definition of the negotiation practice called desk call

1.1 Call desk is an expression used by the market to designate the trading of securities outside the markets managed by B3 in which intermediaries participate, operating their own portfolio or on behalf of Customers and/or investors and in which there is competitive interaction between purchase and sale offers to define the quantity and price of the security.

### II. Securities with or without admission to trading known as call desk

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<sup>53</sup> Available at: <https://www.bsmsupervisao.com.br/legislacao-e-regulamentacao/leis-normas-e-regras>.

2.1 The securities admitted to trading on the organized markets managed by B3 are those traded through purchase and sale offers entered the trading systems offered by B3, hereinafter referred to as “listed securities”.

2.2 Combinations derived from two or more listed securities are also considered listed securities if these combinations are available for trading on the organized markets managed by B3. In these situations, trading of these securities also occurs through buy and sell orders entered the trading systems offered by B3.

2.3 There are securities, whether derivatives or not, of listed securities that are not available for trading on the organized markets managed by B3. In these cases, purchase and sale offers may be advertised in a call-to-action table, which plays an important role in providing liquidity to the trading of securities not listed on B3 and, therefore, is complementary and ancillary to the trading carried out on the organized markets managed by B3.

2.4 On the other hand, listed securities, that is, those that are traded through purchase and sale offers entered into the systems offered by B3, cannot be traded in call desks, as prohibited by CVM Resolution No. 135/2022 (“RCVM 135”)<sup>54</sup>.

2.5 2.5 Table I below presents a summary of the situations in which securities may or may not be traded on a call desk.

**Table 1 - Summary of situations that can or cannot be negotiated in a call-desk**

<b>Assets</b>	<b>Possibility of negotiation on call desk</b>
<b>Security listed for trading on B3.</b>	<b>Cannot be traded on a call table.</b>

<sup>54</sup> RCVM 135, art. 94. “Trading outside an organized market of securities admitted to trading is prohibited, except in the following cases: (...)”

<b>Assets</b>	<b>Possibility of negotiation on call desk</b>
<b>Security not listed for trading on B3.</b>	Can be negotiated on a call table.
<b>A combination of listed securities, this combination being listed for trading on B3.</b>	<b>Cannot be traded on a call table.</b>
<b>A combination of listed securities, this combination being not listed for trading on B3.</b>	Can be traded on a call table.
<b>A combination consisting of a security listed for trading on B3 and a security not listed for trading on B3.</b>	Can be traded on a call table.

2.6 It should be noted that current regulations assign to the intermediary the responsibility of informing its Customers about the regular practice for trading securities, through its RPA or NPA.

### III. Conditions for table call

3.1 Trading on call desks of unlisted securities is permitted, including combinations of listed securities not available for trading on the systems offered by B3, as described in table 1 above.

3.2 Intermediaries participating in call-desk transactions must comply with the rules set forth in CVM Resolution No. 35/2021 (“RCVM 35”), particularly those regarding the recording of orders, the handling of conflicts of interest, and compliance with best execution conditions. Additionally, the intermediary must maintain, for the statutory period, all information supporting the registration of asset combination transactions in an over-the-counter environment, in Brazil or abroad, to submit to BSM upon request.



#### **IV. Execution of transactions on B3 resulting from trading, in call desk, of combinations derived from listed securities**

4.1 In the call table, the announcement for combination trading is made by indicating the price and quantity of the combination and not by the price and quantity of the listed securities, components of the combination, hereinafter referred to as “legs”.

4.2 After defining the price and quantity of the combination in the call table, the operator will execute the orders in the organized market, observing market conditions and price tunnel rules on B3.

4.3 As the negotiation price of the combination in the call desk may be different from the sum of the execution prices of the combination legs in the organized market managed by B3, it is important that intermediaries alert their Customers to the fact that the negotiation of the price and quantity of the combination in the call desk does not guarantee the execution of transactions on B3 at prices and quantities that, added together, reach the prices and quantities of the combination negotiated in the call desk.

4.4 In this situation, the Participant must observe the trading rules of the organized market and not carry out transactions that are not in accordance with the regulations in force.

#### **V. Example of irregular operation**

5.1 The following example deals with trading in an unlisted combination derived from listed securities. Therefore, trading in the combination is permitted on a call desk.

5.2 The negotiation of the combination in the call table generated prices for the legs that were different from the prices allowed for direct offers in the organized market managed by B3 (outside the spread), according to B3's operating rules.

5.3

5.4 At the time of execution of the direct offer on B3 for the combination price, the sum of the prices of the combination negotiated in the call table did not correspond to the market price of the combination operations, making its negotiation unfeasible, since the operations must comply with all current regulations.

## **VI. Difference between desk calling and Electronic Counterparty Search Systems offered by Participants**

6.1 The practice of an intermediary seeking a counterparty (buyer or seller) outside the B3 trading system, including through its own portfolio, for securities listed on B3, without competitive interaction between purchase and sale offers, is not considered a call desk.

6.2 The search for a counterparty, including through its own portfolio, for the operation occurs when the intermediary:

- (i) receives a buy or sell order for a quantity equal to or greater than the parameters defined by B3 for executing a direct offer;
- (ii) seeks one or more counterparties for the transaction, without there being any competitive interaction between the offers of the contacted counterparties; and
- (iii) executes one or more transactions through direct offers, in accordance with the rules defined by B3.

The search for a counterparty (buyer or seller) is a regular practice, as long as the intermediary observes the rules set forth in RCVN 35 and Supervisory Standard No. 1/2013 regarding Electronic Counterparty Search Systems Offered by Participants<sup>55</sup>.

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<sup>55</sup> Available at: <https://www.bsmsupervisao.com.br/legislacao-e-regulamentacao/leis-normas-e-regras>

# Monitoring the Certification of Professionals Linked to B3 Participants

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## Introduction

The Guidance Note addresses the monitoring by Participants of the certifications of professionals who perform activities related to the B3 markets (B3 Listed), in view of the provisions of the Professional Certification Manual, which is included in the context of the B3 Operational Qualification Program.

## Publication History of Notes on the Topic

External Communication	Publication date	Status
<a href="#">BSM-07/2024</a>	January 19, 2024	Current

## Guidance Note on monitoring the certification of professionals linked to B3 Participants

(Published through the Guidance Note 07/2024-BSM)

BSM Market Supervision (“BSM”), in its role of guiding and supporting the market in complying with the standards established by the regulator and the market administrator B3 S.A. – Brasil, Bolsa, Balcão (“B3”), publishes this guidance note (“Guidance Note”), which addresses the monitoring by Participants of the certifications of professionals who perform activities related to the B3 markets (B3 Listed), in view of the provisions of the Professional Certification Manual (“Certification Manual”)<sup>56</sup>, which is included in the context of the B3 Operational Qualification Program (“PQO”)<sup>57</sup>.

Defined terms are in accordance with the BSM Glossary<sup>58</sup> or are defined in this Guidance Note.

The Guidance Note is divided into 3 (three) sections: (i) Introduction; (ii) Participant Responsibilities; and (iii) Consultation of professional certifications with the B3 Integrated Registration System (“Sincad”).

### I. Introduction

1.1. Certification consists of a process carried out by the professional, with the objective of attesting their knowledge related to the organized markets managed by B3. This process is mandatory for professionals who work with B3 in one of the knowledge areas defined in

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<sup>56</sup> The current Professional Certification Manual was published on December 21, 2023, through Circular Letter No. 214/2023. This document sets out the procedures required for the certification and maintenance of certification of professionals linked to authorized Participants working with B3. Available at <[https://www.b3.com.br/data/files/82/91/0D/02/00D8C810719CE3C8DC0D8AA8/OC%20214-2023%20PRE%20PEC%20do%20PQO%20\(PT\).pdf](https://www.b3.com.br/data/files/82/91/0D/02/00D8C810719CE3C8DC0D8AA8/OC%20214-2023%20PRE%20PEC%20do%20PQO%20(PT).pdf)>.

<sup>57</sup> Available at <[https://www.b3.com.br/pt\\_br/b3/qualificacao-e-governanca/certificacoes/selos-pqo/roteiros.htm](https://www.b3.com.br/pt_br/b3/qualificacao-e-governanca/certificacoes/selos-pqo/roteiros.htm)>.

<sup>58</sup> Available at <<https://www.bsmsupervisao.com.br/legislacao-e-regulamentacao/leis-normas-e-regras>>.

the Professional Certification Manual<sup>59</sup>, as determined by CMN Resolution No. 4,984, of February 17, 2022<sup>60</sup>.

1.2. Certification, therefore, is an assessment of a person's technical skills and abilities to perform a specific job and is distinguished from the professional's technical qualification, which refers to the skills and knowledge necessary to perform a certain function or occupy a certain position.

## II. Participant Responsibilities

2.1. The responsibilities of Participants are expressly defined in the Certification Manual. However, it is important to emphasize that the B3 Listed Participant is responsible for continuously monitoring the implementation and validity of the certification of its professionals, and is responsible for any professionals who are working with expired or uncertified certification.

2.2 This monitoring, in order to ensure that all professionals linked to the Participants and qualified to perform their duties at B3 always have their respective certifications valid, can be carried out through an online consultation on B3's registration platform, Sincad.

## III. Consultation of Professional Certifications with Sincad

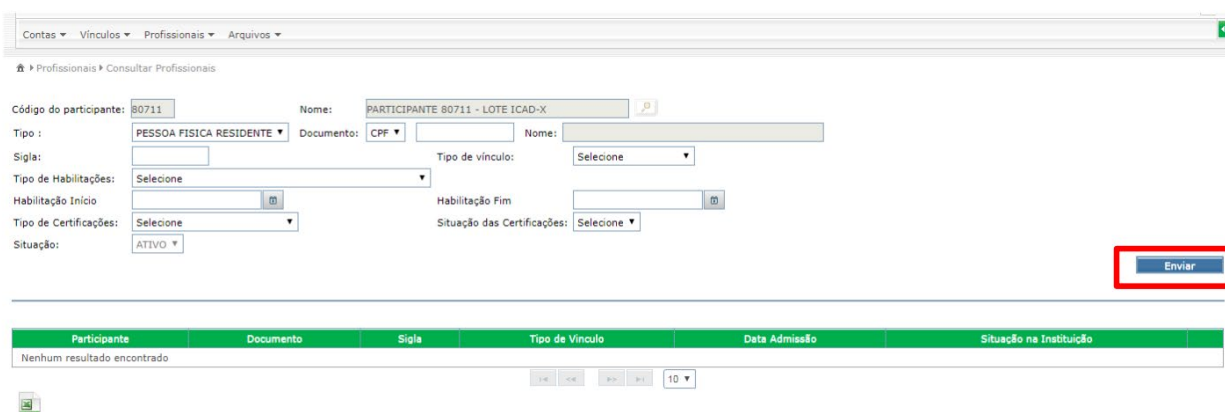
3.1. Consultation of professionals linked to the Participant in Sincad is carried out through the Professionals > Consult Professionals menu, following the following steps:

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<sup>59</sup> These are: Operations, Commercial, Compliance, Risk, Back Office, Customer Registration, Custody, and Settlement.

<sup>60</sup> Available at:  
<<https://www.bcb.gov.br/estabilidadefinanceira/exibenormativo?tipo=Resolu%C3%A7%C3%A3o%20CMN&numero=4984>>.

- a) a) After identifying the Participant, click the Submit button to access the results containing all professionals registered with the Participant. You can also search using the available filters, such as the professional's CPF (Individual Taxpayer Registry);



- b) The search result will be displayed on the Sincad screen and will allow:

Click on one of the results, on the “+” button on the right side of the record, so that the Professional’s information (Personal Data, Professional Data, Addresses/Telephone Numbers, Certifications and Qualifications) is displayed on the same screen for consultation only; and/or

- (i) Generate an Excel report with the information presented by clicking on the Excel icon on the left of the screen, below the search result.

> Profissionais > Consultar Profissionais

Código do participante: 80711 Nome: PARTICIPANTE 80711 - LOTE ICAD-X

Tipo : PESSOA FISICA RESIDENTE Documento: CPF 705.481.972-10 Nome: TESTE PROFISISIONAIS

Sigla: Tipo de vínculo: Selecione

Tipo de Habilitações: Selecione








Habilitação Início: Habilitação Fim:

Tipo de Certificações: Selecione Situação das Certificações: Selecione

Situação: ATIVO

Enviar

Participante	Documento	Sigla	Tipo de Vínculo	Data Admissão	Situação na Instituição
80711	705.481.972-10	00U	AGENTE AUTONOMO	11/09/2019	ATIVO

- 3.3.** BSM expects that, through this consultation, the Participant will act diligently, preventively and immediately in the event of identifying a qualified professional with expired certification, preventing irregular situations from materializing and establishing a timely action plan to regularize such situation.



# **Guidance Note on the Content and availability of the Operating Rules And Parameters or Operating Standards and Parameters**

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## Introduction

The guidance note addresses the content and availability of the Operating Rules and Parameters (“RPA”), also known as Operating Standards and Parameters (“NPA”), in view of the current regulations and guidelines of the Brazilian Securities and Exchange Commission (CVM) and the rules of B3.

## Publication History of Notes on the Topic

External Communication	Publication date	Status
<a href="#">BSM-17/2024</a>	July 1, 2024	Current

## **Guidance Note on the content and availability of the Operating Rules and Parameters or Operating Standards and Parameters**

(Published through the BSM External Communication BSM-17/2024)

BSM Market Supervision (“BSM”), in its role of guiding and supporting the market in complying with the standards established by the regulator and the market administrator B3 S.A. – Brasil, Bolsa, Balcão (“B3”), publishes this guidance note (“Guidance Note”), which addresses the content and availability of the Operating Rules and Parameters (“RPA”), also referred to as Operating Standards and Parameters (“NPA”), in view of the current regulations and guidelines of the Brazilian Securities and Exchange Commission (CVM) and the rules of B3.

Defined terms are in accordance with the BSM Glossary<sup>61</sup> or are defined in this Guidance Note.

The Guidance Note is divided into 3 (three) sections: (I) Introduction; (II) Content of the RPA/NPA; and (iii) Availability and Disclosure of the RPA/NPA.

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<sup>61</sup> Available at: <https://www.bsmsupervisao.com.br/legislacao-e-regulamentacao/leis-normas-e-regras>.

## I. Introduction

1.1. CVM Resolution No. 35/2021 (“RCVM 35”), which addresses the procedures to be observed in the intermediation of transactions involving securities, establishes the need for intermediaries to adopt and implement adequate and effective rules to comply with the provisions of this Resolution, and these rules will be verified through the implementation of internal procedures and controls.

1.2. Specifically, RCVM 35 also establishes the Participant's duty to create rules, procedures and internal controls over the execution of orders and potential conflicts of interest.

1.3. According to RCVM 35, the market management entity in which the intermediary is authorized to operate and the respective self-regulatory entity must establish the minimum content of the rules, procedures and internal controls that the Participant must create.

1.4. B3, through the B3 Trading Operational Procedures Manual (“MPO”)<sup>62</sup> and the Operational Qualification Program Roadmap (“PQO Roadmap”), defined the minimum content required for Listed Segment Participants, which must be reflected in their RPA/NPA.

1.5. The RPA/NPA is understood as the document describing the operating model and the rules, procedures and internal controls adopted by the Participant when carrying out transactions in the organized markets managed by B3<sup>63</sup>.

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<sup>62</sup> Item 1, section VIII, of Chapter II of the MPO: “Without prejudice to the provisions of the B3 trading regulations, the full trading participant and the trading participant are responsible for: (...) VIII - developing rules and operating parameters, containing, at least, the procedures indicated in Annex I of this manual of operational trading procedures;”

<sup>63</sup> Concept described in the PQO Roadmap.

1.6. BSM, in turn, in its Supervisory Standards and Guidance Notes, establishes content that the Participant must indicate in its rules, procedures and internal controls, including in its RPA/NPA.

1.7. It is considered good practice for Participants who broker transactions in B3's organized over-the-counter market to use RPA/NPA, adapting the minimum content established by B3 to this type of market. The Over-the-Counter Participant must also comply with the provisions of RCV 35 and the Over-the-Counter Regulation regarding the creation of rules, procedures, and internal controls.

## II. RPA/NPA Content

2.1. Annex I to the MPO and the PQO Roadmap, in item 1, establish the minimum content that the RPA/NPA must contain:

- a) Registration;
- b) Types of accepted orders;
- c) Order receipt times;
- d) Order issuance/receipt methods, including accepted instant messaging services;
- e) Related Person and Private Portfolio Transaction Policy;
- f) Order expiration date;
- g) Order rejection and cancellation procedures;
- h) Order registration;
- i) Execution, non-execution, and confirmation of orders, including those received through home brokers or other trading platforms, and alternative channels available to Customers;
- j) Transaction distribution, including rules on brokerage and tripartite transfer;

- k) Transaction settlement;
- l) Risk control;
- m) Asset custody;
- n) Order recording system;
- o) Method of communicating changes to RPA/NPA to Customers; and
- p) Continuous monitoring of the procedures adopted by the Participant for the know your customer (KYC) process.

2.2. The content of the RPA/NPA must also contain rules on the treatment to be given by the Participant in the case of competing orders, and must make clear how Customer orders will have priority over the operations of their own portfolio and those of people linked to the Participant, including in the offer of facilitation services.

2.3. The RPA/NPA must also include the way in which the Participant reverses transactions entered the Error Account<sup>64</sup> and the Operational Error Account<sup>65</sup>, informing the prioritization criteria for carrying out this type of transaction.

2.4. Under Annex I of the MPO, RPAs/NPAs must observe the following principles when conducting the Participant's activities:

- a) Probity in conducting activities;
- b) Care for market integrity, including Customer selection and the requirement to deposit collateral;
- c) Training to perform activities;

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<sup>64</sup> According to the concept set out in the PQO Roadmap: "Account automatically created by the B3 Clearinghouse, for Full Trading Participants and Settlement Participants, which receives transactions not allocated to Clients in the manner and within the established timeframe, due to an operational error."

<sup>65</sup> According to the concept set out in the PQO Roadmap: "Account automatically created by the B3 Clearinghouse and used by Full Trading Participants and Settlement Participants to reallocate transactions due to operational errors."

- d) Diligence in fulfilling orders and specifying Customers;
- e) Diligence in monitoring Customer positions in custody, with periodic reconciliation between: (i) executed orders; (ii) positions recorded in statements and transaction reports provided by the custody service provider; and (iii) positions provided by clearinghouses;
- f) Obligation to provide Customers with information necessary to fulfill orders;
- g) Adoption of measures to prevent transactions in situations of conflict of interest and ensure equitable treatment of their Customers; and
- h) Providing Customers with timely documentation of transactions.

2.5. The Participant, as a good practice, may address, in its RPA/NPA, other internal procedures and rules that affect the way it carries out the intermediation of operations for its customer.

2.6. It is important that the Participant be aware that their RPA/NPA must take into account the nature, size, complexity, structure, risk profile, business model, volume operated, access channels offered, products and services operated, types of customers served and complexity of the operations performed, so that the rules reflect their reality and particularities.

2.7. The content of the RPA/NPA must be complete and prepared in clear, concise language that is easy for the Customer to understand, with updated information, according to the operation and services offered by the Participant, using concepts and terms in line with the regulatory and self-regulatory standards in force.

### **III. Availability and Disclosure of RPA/NPA**

3.1. According to RCVM 35, the Participant's written rules must be available to its administrators, employees, operators and other agents who perform intermediation or operational support activities, investment advisors who provide services to the intermediary and other professionals who maintain, with the intermediary, a service provision contract directly related to the intermediation or operational support activity.

3.2. Such rules must also be available to BSM, including the versions in effect for the last 5 (five) years and, if requested by customers, must also be made available. It is recommended that the Participant inform in the RPA/NPA how customers can request previous versions of the document.

3.3. RPA/NPA must be made available to the customer before the start of their operations, in an easily accessible location, on the world wide web page, in applications and in other electronic relationship channels managed by the Participant and offered to customers.

3.4. When there are changes to the RPA/NPA, the Participant must communicate them to all customers before the new document comes into effect, highlighting such changes. It is recommended that this communication occur up to 7 (seven) days before the RPA/NPA comes into effect.

3.5. Communication must be made in the manner indicated in the RPA/NPA. On the effective date, the RPA/NPA must be available in the access locations mentioned above.

3.6. The document containing the RPA/NPA must inform the start date of its validity, in addition to being an integral part of the Participant's intermediation contract with its customer.



3.7. It is important to note that BSM, in its supervision and inspection processes, verifies whether RPA/NPA comply with the duties established by CVM and the self-regulation rules of B3 and BSM.

# **Transfer of securities and financial assets deposited with change of ownership**

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## Introduction

The Guidance Note aims to address best practices for the processing, evaluation and validation of requests for the transfer of securities and financial assets deposited with a change of ownership, considering current regulations, especially the CVM rules and guidelines.

## Publication History of Notes on the Topic

External Communication	Publication date	Status
<a href="#">BSM-04/2025</a>	February 18, 2025	Current

## Transfer of securities and financial assets deposited with change of ownership

(Published through the BSM External Communication BSM-04/2025)

BSM Market Supervision (“BSM”), in its role of guiding and supporting the market in complying with the standards established by the regulator and the entity managing the organized securities market B3 S.A. – Brasil, Bolsa, Balcão (“B3”), issues this guidance note (“Guidance Note”) to address best practices for handling, evaluating, and validating transfer requests for securities and financial assets deposited with a change of ownership, in view of current regulations, especially the rules and guidelines of the Brazilian Securities and Exchange Commission (“CVM”) and B3.

Defined terms are in accordance with the BSM Glossary<sup>66</sup> or are defined in this Guidance Note.

The Guidance Note is divided into four sections: (I) Applicable Rules; (II) Transfer of Securities with Change of Ownership; (III) Transfer of Deposited Financial Assets with Change of Ownership; and (IV) General Provisions.

### I. Applicable rules

- 1.1. CVM Resolution No. 32/2021 (“RCVM 32”), which addresses the provision of securities custody services, establishes duties for the Custodian regarding the processing of custody movement instructions received from investors.
- 1.2. Under RCVM 32, the Custodian must, among other obligations, take all necessary measures to identify the ownership of the securities to ensure their integrity and certainty regarding the origin of the instructions received, as well as ensure the

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<sup>66</sup> Available at: <https://www.bsmsupervisao.com.br/legislacao-e-regulamentacao/leis-normas-e-regras>.

regular movement of securities held in custody, in accordance with the instructions received from the investor or from persons authorized by contract or mandate<sup>67</sup>.

- 1.3. CVM Resolution 33/2021 (“RCVM 33”), which addresses the provision of bookkeeping services, establishes the Bookkeeper's duties as the recording and control of information related to the ownership of registered securities, as well as the processing of movement instructions received from the security holder or from persons authorized by contract or mandate<sup>68</sup>.
- 1.4. Nos termos da RCVM 33, o Escriturador deve, dentre outras obrigações, elaborar relatórios periódicos aos investidores e às autoridades regulatórias, contendo registros de movimentações e de eventuais transferências de titularidade dos valores mobiliários, respondendo pela legitimidade e pela veracidade dessas informações<sup>69</sup>.
- 1.5. Within the Listed Segment, both Custodians and Registrars must comply with RCVM 32 and RCVM 33, respectively, as well as the provisions of then Manual of Operational Procedures of the Variable Income Central Depository and the Regulations of the B3 Central Depository.
- 1.6. In the Over-the-Counter Segment, the Custodian and the Bookkeeper must observe, in addition to RCVM 32 and RCVM 33, the rules established in the B3 Over-the-Counter Regulation and respective standards manuals, which address the registration of the transfer of ownership of Registered and Deposited Assets.
- 1.7. The obligations set forth above also extend to the Issuer in cases where it promotes the registration of securities issued by it<sup>70</sup>.
- 1.8. In addition to the obligations to be observed when handling requests for transfer of ownership of securities, the same diligent approach is expected of the

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<sup>67</sup> Art. 13, items I and II, of RCVM 32.

<sup>68</sup> Art. 2nd incised II and III, of RCVM 33.

<sup>69</sup> Art. 21, incisos III e VI, da RCVM 33.

<sup>70</sup> Art. 26, of Law 6,404/76 (“Corporation Law”) and Art. 58, item VII, of the B3 Issuer Regulation.

Custodian and the Bookkeeper regarding transfers of ownership of financial assets, in compliance with the provisions of CMN Resolution No. 4,593 (“RCMN 4,593”).

## **II. Transfer of Securities with Change of Ownership**

### **2.1 Due Diligence Expected from Custodians**

2.1.1. Regarding the request for transfer of securities with change of ownership, it is recommended that the custodian of origin:

- (i) analyze and validate the reason for the transfer of ownership indicated;
- (ii) assess whether the reason complies with the documents submitted by the investor to support the request;
- (iii) interact with the investor when additional information is required or if the reason indicated does not comply with the documentation provided; and
- (iv) verify the consistency of the price and verify it with proof of the date of acquisition of the securities subject to the transfer.

2.1.2. All documents and information related to securities transfer requests must be kept by the Custodian for the period established in current regulations.

2.1.3. By adopting these measures, the Custodian acts diligently in fulfilling its obligations and mitigates the possibility of irregularities and fraud in securities transfer requests with a change of ownership.

### **2.2 Due Diligence Expected from Bookkeepers**

2.2.1. It is the duty of the Registrar or the Issuer, if a bookkeeping service is not contracted, to ensure that records relating to transfers and establishment of rights over the registered securities are supported by legally valid documents<sup>71</sup>.

2.2.2. It is recommended that procedures for recording and controlling information regarding the ownership of these securities include the analysis and validation of information regarding transfers of ownership.

2.2.3. Considering the duty to properly maintain accounting records, to accurately record ownership transfers, the Bookkeeper or Issuer, if applicable, must adopt analysis criteria sufficiently capable of detecting any atypicalities in the book's "input" and "output" transactions, evaluating not only the conformity of the prices of these transactions, but also their dates, which may indicate irregularities in the transfer.

2.2.4. Considering that the Bookkeeper or Issuer, if no bookkeeping service is contracted, is responsible for the legitimacy and veracity of the records of the transactions made and the ownership of the securities<sup>72</sup>, this Participant must act diligently in fulfilling its obligations in order to mitigate the possibility of irregularities and fraud in requests for transfer of securities with a change of ownership.

2.2.5. For example, it is important to establish controls regarding the withdrawal of securities from the central depository, with subsequent transfer of ownership in the Registrar's ledger and new deposit in the central depository. In these cases, the Registrar must ensure that the transaction is justified and was not undertaken to circumvent regulatory restrictions applicable to regulated markets. When the withdrawal and deposit transactions are controlled by the same Custodian, the Custodian must also act as a gatekeeper for ensuring the regularity of the transfer.

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<sup>71</sup> Art. 21, item III, of RCVM 33.

<sup>72</sup> Art. 21, item VI, of RCVM 33.

## 2.3 Reasons for Transfer

2.3.1. Below are examples of situations, not exhaustive, that may give rise to the transfer of securities with a change of ownership, along with the steps recommended for custodians, registrars, or issuers (when applicable) to analyze and validate the reason for the request with the corresponding documentation submitted by the investor. It is also recommended that the recommendations and best practices in Annex I of Circular Letter No. 8/2019-CVM/SMI be observed<sup>73</sup>.

- (i) Donation: Analysis of the submitted donation agreement to verify whether the information on the investors (donor and donee) and assets corresponds to that indicated in the request;
- (ii) Inheritance: Analysis of the submitted documentation (formal distribution document, extrajudicial inventory deed, or court order) to reconcile the information on the assets and quantities indicated therein with the positions held in custody, as well as to verify the proportionality of the distribution in relation to the heirs requesting the transfer;
- (iii) Corporate succession: Analysis of the documentation supporting the corporate succession presented to verify whether the reason for the request is supported by such documentation, as well as whether the information on the clients (transferor and transferee) and the assets subject to the request corresponds to that indicated therein;
- (iv) Private sale: analysis of the motivation indicated in the request together with the supporting documentation presented, with the objective of confirming the application's compliance with the hypotheses provided for in the current regulations, especially in the case of open-end investment fund shares, with CVM Resolution No. 175/2020 ("RCVM 175")<sup>74</sup>, which prohibits, for the funds listed in Article 1<sup>75</sup> of its Normative Annex I, from carrying out transactions outside organized markets, except in the cases of: (i) public distributions; (ii) exercise of preemptive rights; and (iii) conversion of debentures into shares, exercise of subscription bonuses, payments and redemptions in assets, and trading of

<sup>73</sup> Available at: <https://conteudo.cvm.gov.br/legislacao/oficios-circulares/smi/oc-smi-0819.html>

<sup>74</sup> Art. 33, sole paragraph, items I and III, of Normative Annex I, of RCVM 175.

<sup>75</sup> Equity Investment Funds, Exchange Rate Investment Funds, Multimarket Investment Funds and Fixed Income Investment Funds.



shares linked to a shareholders' agreement, and in cases where the CVM has granted prior and express authorization. The purpose of this due diligence is to identify this constant regulatory prohibition and prevent the transaction from taking place. It is important to emphasize that, generally, shares in open-ended investment funds can only be moved in the circumstances described in the RCVM 175<sup>76</sup>.

(v) Transfer between Non-Resident Investors (“NRIs”): analysis of the motivation indicated in the request together with the supporting documentation presented, with the aim of confirming that the request qualifies under the circumstances provided for in current regulations, especially CVM Resolution No. 13/2020<sup>77</sup>, which allows the transfer of positions between NRIs from abroad, provided that they arise from: (i) merger, spin-off, incorporation, incorporation of shares, and succession “causa mortis”; (ii) other corporate transactions that do not result in a change in the final asset holders or in a change in the total financial assets and securities owned, directly or indirectly, by each of the investors involved in the transaction; and (iii) in cases where the CVM has granted prior and express authorization. The purpose of this due diligence is to identify this prohibition contained in the regulations and prevent an irregular transfer from taking place.

(vi) Court Order: Verify the term, validity, and other information contained in the Court Order, including whether the assets indicated in this document are available and have not been used to provide collateral.

(vii) Payment of Club or Investment Fund Shares: Assess the correspondence between the provisions of the Club/Investment Fund Bylaws/Regulations, verifying the availability of the assets subject to payment and the viability of this transaction.

### III. Transferência de Ativos Financeiros Depositados

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<sup>76</sup> Art. 16, of RCVM 175.

<sup>77</sup> Articles 20 and 21 of RCVM 13.

### 3.1 Due Diligence Expected from Custodians

3.1.1. To comply with the obligations established in current regulations, the Custodian is expected to conduct procedures related to the transfer of deposited financial assets, with a change of ownership, including sufficient analysis to verify any improprieties or inconsistencies in the records of these assets<sup>78</sup>, as well as prohibitions set forth in current regulations.

3.1.2. It is recommended that these procedures also include measures for interaction between the institutions involved when additional information is required or impropriety or inconsistency is identified in the records of transfers of financial assets<sup>79</sup>.

## IV. General provisions

4.1. BSM expects the Participant, as the market gatekeeper, to act diligently in fulfilling its duties, especially in protecting the interests of investors and ensuring the regular movement of deposited securities and financial assets, preventing irregular situations from occurring.

4.2. In this sense, in accordance with the guidelines and obligations established in the CVM rules, the Participant must follow the procedure for reporting atypicalities to the BSM and the CVM, pursuant to CVM Resolution No. 50/2021 ("RCVM 50")<sup>80</sup>.

4.3. Additionally, when applicable, the Participant must, based on their well-founded analysis, notify the Financial Activities Control Council (COAF) of any situations that may constitute serious indications of ML/FTP, as established by RCVM 50.

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<sup>78</sup> Arts. 9 and 10, of RCMN 4,593.

<sup>79</sup> Art. 8, items I, II and III, of RCMN 4,593.

<sup>80</sup> Art. 22, §3, of RCVM 50.

## Version History

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