

CVM Instruction 481 – Practical implication for Brazilian Issuers

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On December 12, The Brazilian Securities Commission (CVM) issued Instruction 481 which provides a new framework of disclosure of information and documentation related to a shareholder meeting and seeks to regulate and to increase investor participation at general shareholders' meetings of public companies. The new instruction will also regulate the proxy solicitation launched by the Board or by shareholders.

Instruction 481 will also impact the adoption of electronic voting systems to participate at a general meeting, reduce the costs of exercising the vote, enhance the level of disclosure. Companies are required to disseminate to shareholders - and to the financial community in its broader perspective. Besides all the benefits that this new regulation introduces in the Brazilian market, we want to focus attention on the decisions Brazilian companies should address in the near future, taking into consideration the new legal framework of the instruction 481.

The structure of the reimbursement model and the promotion versus the adoption of electronic proxy voting system are intended by the CMV to lower the cost of exercising shareholders voting rights and, at the same time, lower the company's expenses associated to this fundamental process of engagement with shareholders. Based on this, it becomes clear that a timely decision about the adoption of an electronic proxy voting system could reduce costs either in the case of a proxy solicitation by the company or a proxy solicitation from shareholders who hold more than 0.50%.

The immediate question for companies that may present an "impasse" can be seen as a mathematical equation – whether the cost of the implementation of an electronic proxy voting system is bigger or lesser than the 50% of the cost of a proxy solicitation – even though the last one is only an hypothetical cost to be burdened by the company.

On the other hand, this decision may have a huge impact in terms of the level of communication with the financial community, especially the international financial community. In this respect, any electronic proxy voting system – included or not included among the ones regulated by the instruction 481 – will surely increase opportunities for investors to vote at shareholders' meeting and, in most of the cases, will also contribute to speeding up the process.

Brazilian companies, in the next few weeks, may find themselves facing crucial decisions:

- 1) Should we implement an electronic proxy voting system which will facilitate investor participation at the AGM and eventually will reduce the cost of any solicitation launched by a shareholder under the instruction 481 umbrella?*
- 2) If we decide in favor of this implementation, are we, to some extent, indirectly promoting unwanted shareholder activism, which otherwise would have been 'dormant'?*



In our opinion, the answer to the first question is surely Yes. The AGM is the central corporate governance event of the year for every listed company. It is an occasion that enables companies to listen to shareholders questions, ask questions of shareholders and investors, engage in constructive dialogue about issues of concern. A listed company has therefore a responsibility to its shareholders to implement the best means to inform adequately shareholders and facilitate the exercise of the voting rights, even more if this will reduce the overall cost.

The answer to the second question is less straightforward. In our experience, we think that activism may not be impeded by the absence of communication tools. The promoters of a solicitation, with or without an online facility, will try to reach other shareholders when their support is needed. To avoid activism the company and the Board should communicate and persuade its shareholders about its strategic view, its long term plans and how they run the company operates in the best interest of the shareholders. To do this, it is in the Company's best interest to employ the best tools to communicate timely and efficiently with the market and investors.

Also, by tactically seeking the support of those "otherwise dormant" shareholders, the company is likely to gain their support. From this perspective, online or electronic systems will facilitate engagement with a larger component of the shareholder base, avoiding the risk that the AGM might be "hijacked" by activists or special interest groups.

Taking into consideration all these elements, we strongly believe that it is in the Company's interest to evaluate seriously the benefit of electronic proxy voting systems for the next 2010 AGM Campaign, as they can facilitate the exercise of the votes, increase awareness over the AGM resolutions and the rationale underlying the Company's decisions.

Despite this strong potential positive impact we recognize that there will still be other burdens and obstacles which still affect Brazilian AGMs. Both the cross border voting process and the disclosure process create difficulties and reduce awareness of the AGM matters and the exercise of the votes from international institutional shareholders.

While the adoption of an electronic proxy voting system and the increased ability to promote a proxy solicitation are very important, they cannot replace the need for a Company to identify and collect data on its beneficial owners, reach and question decision-makers, listen and understand shareholders expectations, and engage in constructive dialogue about issues of concern.

It is also fundamental to understand that communication to the investors needs to be strategically related to the circumstances and to the objectives the company is pursuing. The presence of a solicitation launched by a shareholder under instruction 481 or the implementation of an electronic proxy voting system will give rise to different scenarios which require tailored communication strategies and activities.



In the box, we have summarized the four different “typical scenarios” expected in the upcoming AGM season. Communication should be evaluated by companies in terms of their ability to effectively reach shareholders and maximize their awareness and support, eventually through a “shareholders response advisor” such as Sodali.

THE FOUR DIFFERENT SCENARIOS

A) AGM with an electronic proxy voting system and no proxy solicitation launched by shareholders

All the information and communication activities developed by the companies and its Information Agent are focused to provide shareholders with all the relevant information to ensure full awareness of the presence of an electronic proxy voting system, to stimulate investor participation, to explain and provide support for the voting process (requirements, process, deadlines, etc) and to guarantee that shareholders’ voting intentions will be translated into real electronic votes. Furthermore, the company and its Information Agent should supervise the set up of the electronic voting system (documentation provided and other information detailed) to ensure that it aligns with international facilities in order to increase the participation of international investors.

B) AGM with an electronic proxy voting system with a proxy solicitation launched by shareholders

When a proxy solicitation is in place, in addition to the abovementioned activities (A) and independently of who launches the solicitation, the information and communication activity developed by the company and its Information Agent should ensure that investors are aware of the solicitation, the rationale behind it, the acknowledgement of the documentation available and eventually of any other solicitation launched by the Board.

C) AGM without an electronic proxy voting system and no proxy solicitation launched by shareholders

All the information and communication activities developed by the company and its Information Agent should be oriented to facilitate international investors’ participation, assuring that the documentation of the AGM is received and understood, and supporting their internal voting instruction processes through the reduction of the impediments in the Brazilian cross border voting process.

Moreover, when there is no electronic voting system available, the company and its Information Agent should monitor the voting transmission process, from the voting instruction of the investors until its reception by the tabulator.

D) AGM without an electronic proxy voting system with a proxy solicitation launched by shareholders

When a proxy solicitation is in place, in addition to the abovementioned activities (C) and independently of who launches the solicitation, information and communication activities developed by the company and its Information Agent, should ensure that investors are aware of the solicitation are aware of the solicitation, the rationale behind it, the acknowledgement of the documentation available and eventually of any other solicitation launched by the Board.

About Sodali

Sodali is a global consultancy providing advice, transactional services and corporate governance expertise to listed companies. It is a member of the GWM Group, with offices and representatives in major financial centers around the world.

Sodali’s services include: preparation and conduct of shareholder meetings, bondholder campaigns, mergers and acquisitions, capital restructurings, corporate governance consulting, board evaluation and training, research on strategic issues and shareholder outreach programs.

With specific reference to Shareholder Meetings, Sodali – leveraging its knowledge of institutional shareholders, experience of where voting decisions are made and how votes are delivered to the company - helps companies anticipate, understand and deal effectively with the expectations of its shareholders, with the objective of maximizing investor participation and support to the Boards of the companies we assist.

