



Board Practices & Executive Remuneration

The Brazilian Recent Experience

December 17th, 2010

Shanghai, China

Dov Rawet, CFA

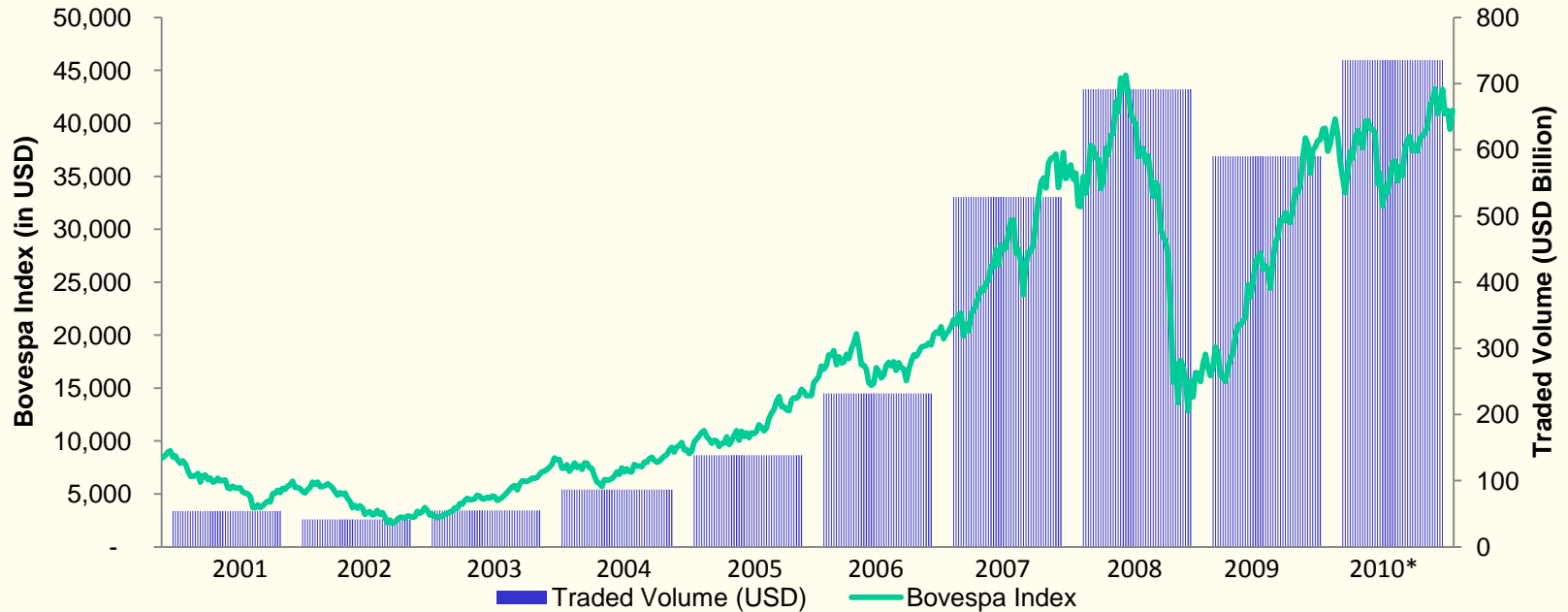
Analyst – Corporate Finance Division

CVM – Comissão de Valores Mobiliários

(Brazilian Securities and Exchange Commission)

Brazilian Market Environment

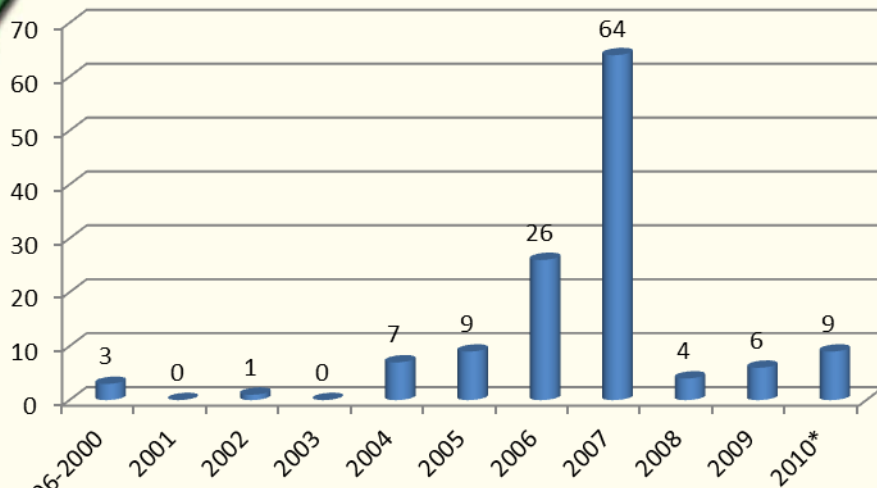
Bovespa Index (in USD)



Source: Economática

*until November

Number of IPOs in Brazil

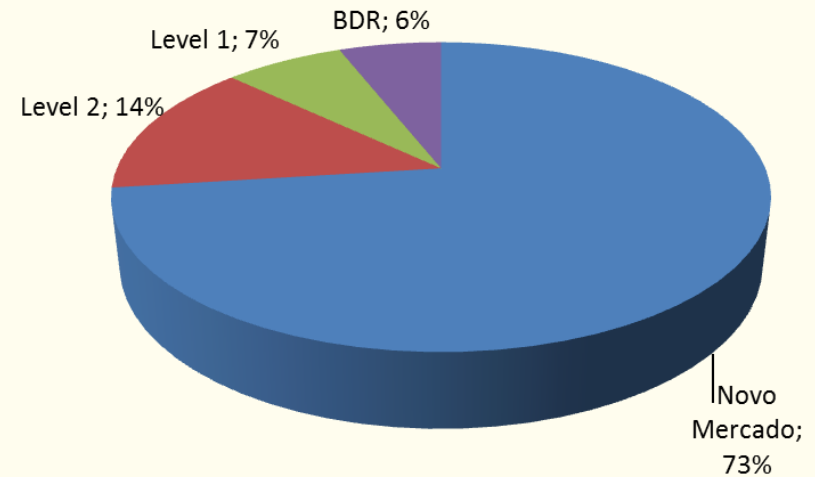


Source: BM&FBOVESPA

*until October

IPOs by CG Listing Segment

(since 2004)



Source: BM&FBOVESPA

Participation of Corporate Governance listing segments at Bovespa (Oct/10)

- 35% of total listed companies
- 67% of market capitalization
- 74% of traded value

Brazilian Market Environment

- **Few public companies with dispersed ownership**
- **Average board of directors size is less than 8 members, with on average 2 independent directors**
- **More than 60% of listed companies do not have any board committee**
- **Separation of the roles of Chairman and CEO is a common practice**
- **Brazilian institutional investors have begun participating more actively in shareholders meetings**

Board Composition

- **Corporations Law No. 6404 – 1976**
 - Minimum 3 members; maximum 3-year term, reelection permitted
 - 1 member elected by non-voting shares; 1 member elected by non-controlling voting shares (2001)
 - Maximum 1/3 of board members could be officers
- **CG Listing Segments rules – 2001 (reviewed in 2010)**
 - Minimum 5 members; maximum 2-year term (unified), reelection permitted
 - At least 20% of the Board composed by independent directors
 - Separation of CEO and Chairman – 2010 (to take effect in 3 years)
- **New CVM's Regulation (Instructions No. 480 and 481) – 2009**
 - Previously to the shareholders' meeting where the election of directors will take place, the company must disclose:
 - Profile of nominees, including age, occupation, academic and professional background, experience in other boards, any relationship with the company, controlling shareholders or management team, as well as any administrative or judicial penalties
 - Annually, the company must disclose (in the "Reference Form"):
 - Profile of directors and officers (the same information described above)
 - Administrative structure – including committees
 - Evaluation criteria of directors, officers, and committees
 - Board procedures

Board Duties

- **Corporations Law No. 6404 – 1976**
 - Fiduciary Duties – Care and Diligence, Loyalty, Inform
 - Handling of conflicts of interest
 - Liability of directors for their actions
- **CVM Regulation & Best Practices Code**
 - Mandatory Standards
 - Instruction CVM No. 358 (2002) – Disclosure of material events, negotiation with the company's shares by the management
 - Voluntary Standards
 - Legal Opinion CVM No. 35 (2008) – fiduciary duties in mergers and incorporations involving the controlling firm and its controlled entities
 - IBGC - Brazilian Institute of Corporate Governance's Best Practices Code – 1999 (reviewed in 2009)
- **New CVM's Regulation (Instruction No. 480) – 2009**
 - Directors and officers duties
 - "Reference Form": disclosure of rules and practices regarding related party transactions (including past transactions)

- **Corporations Law No. 6404 – 1976**
 - Aggregate or individual annual compensation is subject to shareholder approval
 - Remuneration should be based on general parameters
 - Stock-options plan is subject to shareholders approval
- **CVM Regulation & Best Practices Code**
 - Instruction CVM No. 323 (2000) – considers abusive a stock-options plan where the moment of the exercise or disposal of the options is under the beneficiaries' sole discretion
 - Best Practices Code – 1999 (reviewed in 2009)
 - Both the amount and the policy for remuneration setting should be approved by General Meeting
 - Guidance on how remuneration should be structured – aligning incentives with those of the firm
- **New CVM's Regulation (Instructions No. 480 and 481) – 2009**
 - Improving transparency on remuneration policy:
 - Segregation between board of directors, executive board, and fiscal council
 - Compensation components: fixed, variable, post-employment benefits, share-based remuneration
 - Highest, lowest, and average compensation – per board
 - Before shareholders' meeting: disclosure of the above information – remuneration proposal
 - Detailed information about share-based compensation plan
- **Resolution CMN/BACEN No. 3921 – November 2010 (to take effect in 2012)**
 - Regulates the remuneration policy for financial institutions' managers
 - Sets limits and constraints for variable compensation
 - Compensation committee is mandatory for public financial institutions

Current and Future Steps

- **Evaluate the effects of the new transparency rules and the measures to facilitate shareholders participation in General Meetings**

- **Executive Remuneration - Deepening the understanding on several issues:**
 - **Characteristics of stock-options plans**
 - **Alternative models of share-based compensation**
 - **Remuneration suitability – board of directors vs. executive board**
 - **Discounts for employees to acquire the company's shares**

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