

# ANBIMA Guide on AML/CFT



4th Edition - 2022



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## Glossary

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- 1.** The definitions and acronyms indicated below, when used in this guide, in their singular or plural forms, shall have the meanings ascribed to them and shall be valid specifically for the purposes of this document:
  - I.** RBA: risk-based approach.
  - II.** IRA or Internal Risk Assessment: internal risk assessment, as defined in CVM Resolution 50/21 and BCB Circular 3,978/20.
  - III.** NRA or National Risk Assessment: national risk assessment as defined in Decree 10,270/20 by the Working Group on the National Risk Assessment of Money Laundering, Financing of Terrorism and Financing the Proliferation of Weapons of Mass Destruction
  - IV.** senior management: the highest decision-making body or individuals who are members of the management and/or board that is responsible to carry out strategic issues as provided for in the AML/CFT policy.
  - V.** ANBIMA or Association: Association of Brazilian Financial and Capital Markets Entities.
  - VI.** investment advisor: name given to independent investment agents as of Law 14,317/22.
  - VII.** financial assets: are the financial assets, goods, and rights of any nature as defined by CVM and/or BCB.
  - VIII.** real estate assets: any assets by means of which the participation of FIIs in real estate developments permitted by the applicable regulation takes place.
  - IX.** assets: financial assets and real estate assets, when referred to together.
  - X.** B3: B3 S.A. - Brasil, Bolsa, Balcão (Brazilian official stock exchange).
  - XI.** BCB: Brazilian Central Bank.
  - XII.** ultimate beneficial owner: an individual or individuals who jointly own, control or significantly influence, directly or indirectly, a client on whose account a transaction is being carried out or who benefits from such transaction.
  - XIII.** BSM: Supervisão de Mercados, self-regulatory inspection, monitoring and supervision entity

maintained by B3 pursuant to the terms of Law 6,385/76.

- XIV.** BCB Circular-Letter 4,001/20<sup>1</sup>: BCB Circular Letter No. 4,001, of January 29, 2020, which discloses a list of transactions and situations that may constitute evidence of the occurrence ML/FT crimes dealt with in Law 9,613/98 and Law 13,260/16, which are to be notified to COAF.
- XV.** BCB Circular 3,978/20<sup>2</sup>: BCB Circular No. 3,978, of January 23, 2020, and its subsequent amendments, which covers the policy, procedures and internal controls to be adopted by institutions authorized to do business by the BCB, with a view to preventing the use of the financial system for the practice of ML/CFT.
- XVI.** client<sup>3</sup>: individual or legal entity, investment fund, investment club or NRI on behalf of which asset transactions are carried out.
- XVII.** COAF: Council for Financial Activities Control, Brazil's National Financial Intelligence Unit.
- XVIII.** staff members: employees, managers, stockholders, interns and third-party suppliers.
- XIX.** counterpart: is the individual, legal entity or enterprise in the opposite position to that undertaken by the intermediary's client, in transactions of (i) asset purchase and sale, (ii) assets loans or (iii) other transactions in the stock and over-the-counter markets or in private deals.
- XX.** brokers: securities brokerage companies, entities authorized to do business by BCB pursuant to the terms of the National Monetary Council Resolution No. 5,008, of March 24, 2022.
- XXI.** CVM: Brazilian Securities Commission.
- XXII.** distributor: institution that is part of the national financial system, which is authorized to do business by BCB and CVM in the distribution of assets, pursuant to the terms allowed by the laws and regulations.

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<sup>1</sup> <https://www.bcb.gov.br/estabilidadefinanceira/exibenormativo?tipo=Carta%20Circular&numero=4001>.

<sup>2</sup> [https://normativos.bcb.gov.br/Lists/Normativos/Attachments/50905/Circ\\_3978\\_v3\\_P.pdf](https://normativos.bcb.gov.br/Lists/Normativos/Attachments/50905/Circ_3978_v3_P.pdf).

<sup>3</sup> For the purposes of this guide, which covers CVM Resolution 50/21 and BCB Circular 3,978/20, we will only adopt the term client.

- XXIII.** Decree 10,270/20<sup>4</sup>: Decree No. 10,720 of March 6, 2020, which creates the National Assessment of Risks of Money Laundering, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction's Working Group.
- XXIV.** ENCCLA: National Strategy to Combat Corruption and Money Laundering.
- XXV.** FIDC: credit rights investment fund regulated by CVM instruction No. 356 of December 17, 2001, and its subsequent amendments.
- XXVI.** FII: real estate investment fund regulated by CVM instruction No. 472 of October 31, 2008, and its subsequent amendments.
- XXVII.** FIP: private equity fund regulated by CVM instruction No. 578 of August 30, 2016, and its subsequent amendments.
- XXVIII.** Exclusive fund: is the fund intended for professional investors incorporated to receive investments from one sole quotaholder.
- XXIX.** FATF: Financial Action Task Force against ML/FT, the intergovernmental multilateral international organization whose purpose is to develop and promote AML/CFT policies and to fight ML/FT.
- XXX.** AML/CFT guide or guide: ANBIMA guide for the prevention of money laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction.
- XXXI.** NRI: non-resident investor, pursuant to the terms established by CVM Resolution No. 13, of November 18, 2020, and its subsequent amendments.
- XXXII.** institutions: financial and similar institutions authorized to do business by BCB and/or CVM, or any other legal entities that provide in the financial and capital markets, on a permanent or temporary basis, services related to fiduciary management, third-party asset management, distribution, custody, bookkeeping, intermediation and NRI representation and which are subject to the obligations related to ML/FT foreseen in CVM Resolution 50/21 and BCB Circular 3,978/20.

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<sup>4</sup> The Decree 10.270/20 is available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2020/decreto/D10270.htm](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10270.htm)

- XXXIII.** BCB normative instruction 262/22<sup>5</sup>: BCB normative instruction No. 262, of March 31, 2022, which specifies and clarifies operational aspects of the procedures established in BCB Resolution 44/20 for the carrying out of measures determined by Law 13,810/19, which provides for compliance with sanctions imposed by resolutions of the United Nations' Security Council, including the freezing of assets of individual and legal entities, as well as the national designation of persons investigated or accused of terrorism, its financing or related acts.
- XXXIV.** ML/FT: money laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction.
- XXXV.** Law 6,385/76<sup>6</sup>: Law No. 6,385, of December 7, 1976, which provides for the securities market and creates the Brazilian Securities Commission.
- XXXVI.** Law 13,260/16<sup>7</sup>: Law No. 13,260, of March 16, 2016, which deals with the crime of terrorism, terrorist organizations and the crime of financing terrorism.
- XXXVII.** Law 13,810/19<sup>8</sup>: Law No. 13,810 of March 8, 2019, which deals with the compliance with sanctions imposed by resolutions of the United Nations' Security Council, including the freezing of assets of individual and legal entities, as well as the national designation of persons investigated or accused of terrorism, its financing or related acts.
- XXXVIII.** Law 14,317/22<sup>9</sup>: Law No. 14,317, of March 29, 2022, which amends Law No. 7,940, of December 20, 1989, to modify the calculation methodology to the Inspection Fee of the

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<sup>5</sup> This Normative Instruction is available at:

<https://www.bcb.gov.br/estabilidadefinanceira/exibenormativo?tipo=Instru%C3%A7%C3%A3o%20Normativa%20BCB&numero=262>

<sup>6</sup> The law is available at: [http://www.planalto.gov.br/ccivil\\_03/leis/l6385.htm](http://www.planalto.gov.br/ccivil_03/leis/l6385.htm)

<sup>7</sup> This law is available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2016/lei/l13260.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/l13260.htm)

<sup>8</sup> This law is available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2019/lei/l13810.htm#:~:text=1%C2%BA%20Esta%20Lei%20disp%C3%B5e%20sobre,ou%20de%20atos%20a%20ele.](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/l13810.htm#:~:text=1%C2%BA%20Esta%20Lei%20disp%C3%B5e%20sobre,ou%20de%20atos%20a%20ele.)

<sup>9</sup> The law is available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2022/lei/L14317.htm](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/lei/L14317.htm)

securities markets, and Law No. 6,385/76, which revokes provisions of Laws No. 8,383, of December 30, 1991, 9,457, of May 5, 1997, 11,076, of December 30, 2004, 11,908, of March 3, 2009, and 12,249, of June 11, 2010.

- XXXIX.** Law 9,613/98<sup>10</sup>: Law No. 9,613, of March 3, 1998, which deals with the crimes of “laundering” or concealment of assets, rights and values, the prevention of the use of the financial system for the illicit activities provided for therein and creates the COAF.
- XL.** Law 12,683/12<sup>11</sup>: Law No. 12,683, of July 9, 2012, which amends Law 9,613/98, to make the criminal prosecution of money laundering crimes more efficient.
- XLI.** Complimentary Law 105/01<sup>12</sup>: Complementary Law No. 105, of January 10, 2001, which provides for the secrecy of financial institutions’ transactions and other provisions.
- XLII.** LGPD<sup>13</sup>: Law No. 13,709, of August 14, 2018, which provides for the protection of personal data.
- XLIII.** Explanatory Note to CVM Resolution 50/21<sup>14</sup>: explanatory note to CVM Resolution 50/21.
- XLIV.** Directive-Release 1/2022<sup>15</sup>: Directive-Release CVM/SMI-SIN/Nº 1/2022, of January 31, 2022.
- XLV.** Directive-Release 4/2020<sup>16</sup>: Directive-Release No. 4/2020-CVM/SMI-SIN, of December 11, 2020.
- XLVI.** PEP: politically exposed person.
- XLVII.** ML/FT: prevention of money laundering, to the financing of terrorism and to the financing of the proliferation of weapons of mass destruction.

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<sup>10</sup> This law is available at: [http://www.planalto.gov.br/ccivil\\_03/leis/l9613.htm](http://www.planalto.gov.br/ccivil_03/leis/l9613.htm)

<sup>11</sup> The law is available at: [http://www.planalto.gov.br/ccivil\\_03/ato2011-2014/2012/lei/l12683.htm](http://www.planalto.gov.br/ccivil_03/ato2011-2014/2012/lei/l12683.htm).

<sup>12</sup> This law is available at: [http://www.planalto.gov.br/ccivil\\_03/leis/lcp/lcp105.htm](http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp105.htm).

<sup>13</sup> This law is available at: [http://www.planalto.gov.br/ccivil\\_03/ato2015-2018/2018/lei/l13709.htm](http://www.planalto.gov.br/ccivil_03/ato2015-2018/2018/lei/l13709.htm).

<sup>14</sup> Explanatory Note available at: [https://conteudo.cvm.gov.br/legislacao/notas-explicativas/nota\\_resol050.html](https://conteudo.cvm.gov.br/legislacao/notas-explicativas/nota_resol050.html)

<sup>15</sup> <https://conteudo.cvm.gov.br/legislacao/oficios-circulares/sin/occ-sin-smi-0122.html>.

<sup>16</sup> <https://conteudo.cvm.gov.br/legislacao/oficios-circulares/smi-sin/oc-smi-sin-0420.html>.



- XLVIII.** AML/CFT policy or policy: document prepared by an institution and approved by its senior management with guidelines on AML/CFT in accordance with the regulation in force.
- XLIX.** service providers: are the relevant service providers, partners<sup>17</sup> and outsourced service providers<sup>18</sup>.
- L.** BCB Resolution 44/20<sup>19</sup>: BCB Resolution No. 44, of November 24, 2020, which establishes procedures for the enforcement, by the institutions authorized to do business by BCB, of the measures set by Law No. 13,810/19, which provides for compliance with sanctions imposed by resolutions of the United Nations' Security Council, including the freezing of assets of individual and legal entities, as well as the national designation of persons investigated or accused of terrorism, its financing or related acts.
  - LI.** CVM Resolution 32/21<sup>20</sup>: CVM Resolution No. 32, of May 19, 2021, which regulates the provision of securities custody services and revokes CVM instruction No. 542, of December 20, 2013.
  - LII.** CVM Resolution 33/21<sup>21</sup>: CVM Resolution No. 33, of May 19, 2021, provides for the provision of securities bookkeeping and issuance of securities certificates and revokes CVM Instruction No. 543, of December 20, 2013.
  - LIII.** CVM Resolution 50/21<sup>22</sup>: CVM Resolution No. 50, of August 31, 2021, which provides for AML/CFT within the scope of the securities market.
  - LIV.** CVM Resolution 21/21<sup>23</sup>: CVM Resolution No. 21, of February 25, 2021, which provides for

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<sup>17</sup> Partners pursuant to the terms established by BCB Circular 3,978/20.

<sup>18</sup> Partners and Outsourced Service Providers as required by BCB Circular 3,978/20.

<sup>19</sup> This Resolution is available at:  
<https://www.bcb.gov.br/estabilidadefinanceira/exibenormativo?tipo=Resolu%C3%A7%C3%A3o%20BCB&numero=44>

<sup>20</sup> This Resolution is available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol032.html>.

<sup>21</sup> <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol033.html>.

<sup>22</sup> This Resolution is available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol050.html>

<sup>23</sup> This Resolution is available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol021.html>

the professional practice of securities portfolios management.

- LV.** CVM Resolution 30/21<sup>24</sup>: CVM Resolution No. 30, of May 15, 2021, which provides for the duty to verify the adequacy of products, services and operations to client's profile.
- LVI.** CVM Resolution 62/22<sup>25</sup>: CVM Resolution No. 62, of January 19, 2022, which prohibits the practices of creating artificial conditions for the demand, offer or price of securities, price manipulation, fraudulent transactions and the use of unfair practices.
- LVII.** CVM Resolution 35/22<sup>26</sup>: CVM Resolution No. 35, of May 26, 2022, which establishes rules and procedures to be observed in the intermediation of transactions carried out with securities in regulated securities markets
- LVIII.** SISCOAF<sup>27</sup>: Financial Activities Control System, is an electronic portal with restricted access for relationships between COAF and obligated persons listed on article 9 of Law 9,613/98.

## Chapter I - Introduction

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- 2.** Brazil, a signatory to important AML/CFT conventions, approved in 1998 the first legal norm to criminalize this ML/FT. The first wording of Law 9,613/98 typified concealment in different modalities and brought precepts to the procedural and administrative spheres and created the national financial intelligence unit, COAF. Later this legal framework was changed by Law 12,683/12, which brought significant innovations to it, such as the expansion of the typical scope of coverage and the inclusion of new obligations.
- 3.** Brazil, as other several countries, has issued specific rules in order to prevent the use and

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<sup>24</sup> This Resolution is available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol030.html>

<sup>25</sup> This Resolution is available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol062.html>

<sup>26</sup> This Resolution is available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol035.html>

<sup>27</sup> <https://www.gov.br/pt-br/servicos/habilitar-se-no-sistema-de-controle-de-atividades-financeiras>

punish agents who use economic sectors<sup>28</sup>, specially the financial and capital markets, to invest in such markets illicit proceeds, as well as to conceal or disguise their nature, source, location, disposal, movement or ownership of assets, rights or amounts arising out, directly or indirectly, of an unlawful activity.

4. COAF, as well as other authorities, such as the BCB, CVM, the Federal Police, the Federal Tax Authority, the Comptroller General Office and the Public Prosecutor Office, have been systematically and progressively engaged in preventing and combating ML/FT. These authorities have increased their capacity to act, either by expanding resources or by cooperating with other bodies to enable the exchange of information and experiences.
5. The ENCCLA, created in 2003<sup>29</sup>, is one of the main articulation networks for collective arrangement and discussion with a variety of bodies from the executive, legislative and judicial branches of the federal and state levels and, in some cases, at the municipal level, as well as the Public Prosecutor's Office of different public spheres, for the formulation of public policies and solutions aimed at AML/CFT and combating ML/FT crime.
6. With particular attention, we highlight the FATF<sup>30</sup>, an intergovernmental organization whose purpose is to develop and promote national and international policies to combat the ML-FT. Created in 1989, the FATF formulates policies to encourage the necessary collaboration for legislative and regulatory reforms on the subject discussed herein. As a member of the Group since 2000, Brazil, as well as the other members of this body, follows the guidelines issued by

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<sup>28</sup> See list of economic segments registered in art. 9 of Law 9.613/98.

<sup>29</sup> More information on this network at: <http://enccla.camara.leg.br/>.

<sup>30</sup> For more information: <https://www.gov.br/coaf/pt-br/atuacao-internacional/prevencao-e-combate-a-lavagem-de-dinheiro-e-ao-financiamento-do-terrorismo/gafi#:~:text=O%20Grupo%20de%20A%C3%A7%C3%A3o%20Financeira,e%20ao%20financiamento%20do%20terrorismo.>

FATF and is submitted to periodic evaluations in order to verify the degree of adherence with which the country complies with the 40 Recommendations<sup>31</sup> and other guidelines, as well as measuring the level of effectiveness of its AML/CFT and anti-ML/FT actions.

7. ANBIMA, through this guide, ratifies its commitment to national and international entities dedicated to preventing and combating ML/FT crimes, with a view to strengthening the integrity of national financial and capital markets in relation to such aspects.

## Chapter II - Objective and Scope

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8. This guide is a recommendation for institutions and aims to contribute to the improvement of the best AML/CFT practices in the financial and capital markets. It has four versions, the first edited in 2009, the second in 2014, the third in 2020 — to contemplate the significant change that took place in the AML/CFT framework — and, finally, the current version, which seeks, after almost two years of validity of the new rules, promote the updating of the Association's recommendations on the subject, already reflecting the learning acquired since the publication of the last edition.
9. The guide seeks to cover the most important BCB CVM's AML/CFT guidelines CVM, however, each institution shall verify the requirements applicable to their respective activities. Its use is recommended for institutions that, within the limits of their attributions, provide, in the financial and capital markets, the services of:
  - I. fiduciary management.

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<sup>31</sup> <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF-40-Rec-2012-Portuguese-GAFISUD.pdf>

- II. custody.
  - III. distribution.
  - IV. bookkeeping.
  - V. third-party asset management.
  - VI. Intermediation.
  - VII. NRI representation.
  - VIII. securitization companies.
10. Third-party asset managers, fiduciary managers and securitization companies which, in the exercise of their activities, opt to distribute their own investment products pursuant to the terms allowed by CVM, shall also comply with the obligations related to the distribution activity.
11. This guide does not supersede the regulations in force, even if rules may be edited, after the beginning of its validity, which are contrary to the provisions presented herein. If there is a contradiction between the guidelines established in this guide and the regulations in force, the contradictory provisions of the guide shall be disregarded, without prejudice to the other guidelines contained therein.

## Chapter III - AML/CFT Program

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12. The implementation of an adequate ALM/CFT program has as its purview to ensure that, considering the IRA, the institution has endeavored and sought to take reasonable diligences to avoid the involvement OF its structure with criminal practices. The AML/CFT program has at its objective to provide senior management with an overview of the institution's efforts to prevent AML/CFT and, it is recommended that it contain policy, as well the respective rules, procedures and internal controls that are in writing and subject to inspection and monitoring. It is important that senior management engage and seek to ensure that the institution has

adequate resources to implement the program.

- 13.** It is recommended that the ALM-CFT program should contain at a minimum:
- I.** the institution's AML/CFT Governance, with the definition of roles, responsibilities and indications of bodies or decision-making forums, if existing.
  - II.** AML/CFT policy, senior management guidelines and other related documents (manuals, rules, etc.).
  - III.** internal risk assessment (IRA).
  - IV.** the risk-based approach (RBA) methodology.
  - V.** procedures aiming to get to know clients (“know your client procedure”).
  - VI.** monitoring, selection and analysis of transactions.
  - VII.** reporting transactions to COAF.
  - VIII.** procedures aiming to get to know staff members (“know your staff procedure”).
  - IX.** procedures aiming to get to know the institution's service providers and other partners (“know your service provider procedure”).
  - X.** capacity building, training and organizational culture procedures for staff members and service providers linked to the institution.
  - XI.** periodic evaluation of the AML/CFT program.
  - XII.** effectiveness assessment.

## Chapter IV - Governance

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- 14.** It is extremely important that senior management and the highest hierarchical level of the institution express and have an effective commitment to the AML/CFT program, ensuring that it extends to all areas, especially those that experience situations of high risk.
- 15.** The structure of the AML/CFT department depends on the size and complexity of each

institution. Many organizations have specific and dedicated AML/CFT departments for this purpose, while others focus this activity within compliance, internal controls or risk management departments. The governance structure for AML/CFT is up to each institution and shall be proportionate to the risks identified by it in its IRA. We recommend, however, that the area designated to take care of this activity be independent and autonomous, in order to avoid conflict of interests, also emphasizing that, pursuant to the terms of BCB Circular 3,978/20 and CVM Resolution 50/21, under no circumstances the AML/CFT director shall lead the routines.

16. We emphasize the importance of the institution delimiting, in a written and verifiable document, the functions, roles and responsibilities of the department and sectors focused on AML/CFT. Without prejudice to the responsibilities established by current regulations, below we list some recommendations for the institutions.

#### A. Senior Management

17. CVM<sup>32</sup> foresees that the responsibility for approving the AML/CFT policy rests with senior management.
18. BCB<sup>33</sup>, on the other hand, defined the concept more strictly, assigning the responsibility for approving the policy to the board of directors or, if inexistent, to the institution's board of executive officers.

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<sup>32</sup> CVM Resolution 50, art. 4, Par. 1, II.

<sup>33</sup> BCB Circular 3,978, art. 4, Par. 7, II.

19. CVM<sup>34</sup>, in order to clarify what is expected of senior management, warned that it is not enough for them to be aware of their duties set out in the AML/CFT rules, they shall also ensure that:
- I. is aware of compliance risks related to ML/FT.
  - II. the director in charge has sufficient independence, autonomy and technical knowledge to fully fulfill his/her duties, as well as full access to all information he/she deems necessary for the respective ML/FT risk governance to be carried out.
  - III. the systems responsible for collecting, updating and storing information related to identifying clients are adequate for the purposes for which they are intended.
  - IV. the monitoring systems for transactions and unusual situations are aligned with the institution's "risk appetite", being readily customized in the event of any change in the respective ML/FT risk matrix.
  - V. sufficient human and financial resources were effectively allocated to comply with the points described above.

#### B. AML/CFT Director

20. In accordance with BCB and CVM, the institution shall appoint a director appointed pursuant to the bylaws who will be responsible for complying with AML/CFT rules. The director may perform the role together with other activities in the institution, provided that there are no conflicts of interest among them.
21. In addition to the provisions established in current regulations, we recommend that the following points, which are mere examples and not exhaustive, form part of the responsibilities of the director appointed:

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<sup>34</sup> The material made available by CVM can be found here: [https://conteudo.cvm.gov.br/legislacao/notas-explicativas/nota\\_resol050.html](https://conteudo.cvm.gov.br/legislacao/notas-explicativas/nota_resol050.html).



- I. spread the AML/CFT culture among staff members and service providers, as applicable, inclusive by means of the adoption of periodic capacity building programs.
  - II. implement and monitor compliance with AML/CFT policy, rules, procedures and controls, as well as their respective updates, in order to ensure the effective management of related risks.
  - III. coordinate disciplinary actions with staff members and service providers who may not comply with AML/CFT procedures.
  - IV. coordinate the activities of the department responsible for AML/CFT, according to the criteria of each institution, with the AML/CFT committee or equivalent discussion forums, if any.
  - V. regularly evaluate the AML/CFT program to ensure its efficiency and effectiveness, as well as to incorporate new risk factors when applicable.
22. According to CVM<sup>35</sup>, the AML/CFT director shall have broad, unrestricted and timely access to any information related to the institution's performance, thus enabling the necessary data for the carrying out of their roles and of their teams, especially with regard to the effective management of ML/FT risks so that they can be effectively and timely used.

#### C. Committees or discussion forums on AML/CFT

23. Institutions may establish committees or equivalent forums to discuss topics related to the AML/CFT. It is recommended that this body, when created, report to senior management or the board of directors, as applicable. In being established, it is recommended - and in some cases even explicitly required - that such committees are formalized, by means of a written document, which shall indicate the departments that are part of the body, the responsibilities of each sector, frequency of meetings and the decision on the preparation of minutes of the

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<sup>35</sup> [https://conteudo.cvm.gov.br/legislacao/notas-explicativas/nota\\_resol050.html](https://conteudo.cvm.gov.br/legislacao/notas-explicativas/nota_resol050.html).

committees' resolutions.

24. The committee or equivalent discussion forums may be responsible for, among other things, assess and resolve, within the scope of the Brazilian jurisdiction, the relevance of reporting unusual and suspicious situations to COAF. It is worth mentioning, however, that this does not change the AML/CFT director's responsibilities.

#### **D. AML-CFT department or equivalent**

25. We recommend that the responsibilities of the AML/CFT department be explained in detail in the policy or equivalent document. Without prejudice to the provisions set out in current regulations, we recommend that the following points, which are only indicative and not exhaustive, form part of the responsibilities of the AML/CFT department:
  - I. spread the AML/CFT culture to the institution.
  - II. apply, maintain and update the rules, procedures and internal controls pertaining to the AML/CFT.
  - III. monitor compliance and effectiveness of the AML/CFT program.
  - IV. analyze information collected by the Institution's respective responsible teams and monitor Client's transactions and, if necessary, report to the committee or equivalent discussion forum, when such forum exists, or even to senior management and competent authorities, in accordance with the Institution's AML/CFT Policy.
  - V. develop and improve tools and systems for the monitoring of transactions or of unusual situations.
  - VI. prepare periodic training, capacity building and awareness programs for staff members and service providers, as applicable.
  - VII. interact with regulatory and self-regulatory bodies on the ML/FT topic.

#### E. All staff members

26. All institutions' staff members shall be aware of the AML/CFT policy, rules, procedures and internal controls, as well as their respective responsibilities, if applicable. We recommend that the institutions provide means for staff members to have access the rules related to AML/CFT whenever necessary.

## Chapter V - Internal Risk Assessment

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27. In accordance with the regulations, institutions shall carry out IRA in order to understand their level of risk taking, identify the elements that can increase or decrease the probability of an illicit ML/FT transaction according to their own specificities, analyze them according to the consolidated process so that it can understand and classify the possible risks involved in the transaction. Therefore, reaching the conclusive step of pointing out the measures capable of mitigating the identified risks. An IRA carried out in an improper manner can increase the probability that an institution is used for an ML/FT transaction, which would imply not only a legal risk as well as an image and reputational risks.
28. It should be noted that the regulators understand that institutions shall be mature enough to understand that there is no zero risk, since the institution can, despite all its efforts, still be used or have its products and services used to commit ML/FT crimes. However, the existence of the RBA methodology and, consequently, the IRA, has as its objective to adequately model the ML/FT risks to which the institution is exposed and create adequate and proportionate AML/CFT mechanisms and controls to mitigate the most relevant risks to which the institution is subject to.
29. According to current and in force regulations, an IRA shall involve, at least, the risk categories

indicated below, segregated by regulatory body:

**I. BCB:**

- a. client's risk profile.
- b. risk profile of the institution, including the business model and geographic area in which it operates.
- c. risk profile of operations, transactions, products and services, covering all distribution channels and the use of modern technologies.
- d. risk profile of activities carried by staff members and service providers.

**II. CVM:**

- a. client's risk profile.
- b. risk profile of products and services rendered.
- a. risk profile of distribution channels and trading and recording environments in which they operate.
- b. risk profile related to the institution's relationship with other entities subject to CVM's AML/CFT regulation.

**30.** Each category shall be classified from a minimum degree of risk from low, medium and high risk. It is recommended that the IRA be documented and present, at a minimum:

- I.** The risk profile of each of the categories listed in item 29 above.
- II.** the characteristics of each of the categories that justify the adopted risk profile.
- III.** the assigned risk rating (low risk, medium risk and high risk) for each category.

**31.** The lists of terrorist activities and sanctions published by governments and international organizations can be a good starting point for analysis, and one of the assessment criteria. In exhibit VIII to this guide, there are the lists that we suggest being visited and researched within the institutions' AML/CFT program.

## Chapter VI - Risk-based approach

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- 32.** The RBA forms the core of the strategy recommended by FATF to countries, regulatory bodies and institutions<sup>36</sup>. RBA is an AML/CFT methodology used by BCB and CVM in their rules and regulations and applicable to supervised entities, containing prevention measures proportionate to the risks arising from a given economic activity.
- 33.** The adoption of the RBA is an invitation to change the culture of the market and of the regulators, in which prescriptive rules are replaced by a principled approach based on proportionality. It is up to institutions to be aware that this change in scope brings greater responsibility to senior management with regard to AML/CFT, and the criteria and metrics chosen by the institution shall be very well described, justified and appropriate to their reality.
- 34.** In accordance with FATF recommendations<sup>37</sup>, the institutions should identify, assess and understand ML/FT risks, as well as take action and apply resources with the aim at effectively mitigate them. Based on this assessment made tangible by the IRA, the institutions shall apply ML/FT prevention or mitigation measures that are proportionate to the risks mapped. This approach is an essential factor for the efficient allocation of resources throughout the AML/CFT regime and the combating of ML/FT, as well as for the implementation of adequate and consistent measures to the risks, in order to cover all FATF recommendations and its

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<sup>36</sup> The importance of applying an RBA in institutions has already been the subject of analysis by the FATF through the Risk-Based Approach Guidance for the Banking Sector and the Guidance for a Risk-Based Approach for the Securities Sector. Through these guides, the FATF explains that not only countries and regulatory bodies should use the RBA when defining the AML/CFT strategy, but also institutions when developing their AML/CFT programs so that there is the building of an effective AML/CFT system. The guides are available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Banking-Sector.pdf> and <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/RBA-Securities-Sector.pdf>

<sup>37</sup> For further information: <https://www.gov.br/coaf/pt-br/atuacao-internacional/prevencao-e-combate-a-lavagem-de-dinheiro-e-ao-financiamento-do-terrorismo/gafi>.

applicable regulations.

35. It is up to each institution to prepare its AML/CFT program taking into account the RBA and, therefore, considering its own IRA and building policies, procedures and internal controls proportionate to the risks mapped.
36. Risk is dynamic and should be monitored, tested and reassessed on an ongoing basis or whenever necessary. It is noteworthy that the environment in which each institution operates is subject to continuous changes. Thus, it is important that the review of the application of RBA in the institutions' AML/CFT programs takes place at regular intervals or whenever there is a change in the IRA. The review frequency of the RBA methodology applied to each institution's AML/CFT program is not predefined by the rules, being required that it be compatible with the deadlines defined for reviewing the IRA, the policy and the effectiveness report<sup>38</sup>.
37. It is worth noting that, despite the dynamism assumed by the RBA, there are situations in which the standard itself establishes objective and prescriptive criteria for AML/CFT. For the cases which are in compliance with sanctions imposed by United Nations Security Council resolutions, notably Law 13,810/19, the adoption of the RBA is not applicable thereof, as well as in the case of certain transactions automatic reportings as defined in art. 49 of BCB Circular 3,978/20. In such cases, a more immediate action is required, without delay, with daily reporting, reinforcing the need for constant monitoring of the institutions' activities.

## Chapter VII - AML/CFT Policy

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<sup>38</sup> It is noteworthy that the effectiveness report has a fixed frequency to be updated. CVM establishes the need for an annual review, while BCB sets that at every two years.

- 38.** An essential part of the AML/CFT program is the policy, which shall be drafted according to principles and guidelines that seek to prevent that a particular institution, and the market as a whole, will be used for the practice of ML/FT. In accordance with current regulations, the policy shall be approved, applied and widely spread by senior management to all institution's staff members, as well as its branches, subsidiaries and representative offices, if any, and to service providers, as applicable.
- 39.** It is worth noting that CVM<sup>39</sup> establishes that the institutions that are part of the securities distribution system shall apply to the investment advisors and other agents linked thereto to their respective AML/CFT policy, as well as the rules, procedures and internal controls established pursuant to CVM Resolution 50/21, as well as to monitor compliance thereof.
- 40.** It is not up to the guide to list the minimum content that shall be included in the AML/CFT policy. We recommend, however, that the institutions make reference in manuals or other equivalent documents:

  - I.** the institution's organizational structure, including its degree of autonomy and independence from business departments (front-office), in order to avoid conflicts of interest.
  - II.** the possible existence in the institution of committees or discussion forums focused on AML/CFT, informing: (i) the areas that form part of such committee or equivalent; (ii) the frequency of meetings; and (iii) the formalization or not of resolutions.
  - III.** the systems used by the institution for AML/CFT purposes.
  - IV.** the methodology adopted to assess the effectiveness of the policy, rules, procedures and internal controls adopted by the institution for the purposed of AML/CFT.
  - V.** the way in which alternative sources are checked, such as restrictive lists, search engines, databases and/or regulatory bodies for the independent verification of discrediting

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<sup>39</sup> CVM Resolution 50/21, art. 3, Par. 2.

information.

- VI.** the procedures for monitoring, identification and analysis of transactions and unusual situations and the occurrence of acts related to ML/FT, as well as the specification of other situations of reinforced monitoring adopted by the institution.
  - VII.** the procedures for reporting situations, transactions or proposed operations that contain indicia of acts related to ML/FT to competent authorities.
  - VIII.** the procedures adopted for freezing and making assets, rights and values unavailable as a result of resolutions of the United Nations' Security Council, indicating which department is responsible for making such identification, how the reporting will be made to the Ministry of Justice and Public Safety (MJSP), as well as to CVM and BCB, as applicable.
  - IX.** the way in which information is exchanged amongst the institutions' departments and of its conglomerate, when applicable.
  - X.** the way in which information is exchanged among institutions of different conglomerates, when applicable.
  - XI.** the procedures adopted for the assessment and monitoring of the AML/CFT program by internal and external auditors, if applicable, as well as by the internal controls, compliance, risk management department, or equivalent sector that is independent of the AML/CFT department.
  - XII.** the procedures to test the AML/CFT program, indicating the frequency in which the tests are carried out and the department responsible for them.
  - XIII.** the procedures adopted to deal with possible non-compliances and failures identified in the tests of the AML/CFT program and the way in which the report will be provided to senior management.
  - XIV.** the procedures adopted for the maintenance and storage of information and recording of AML/CFT analyses, according to the deadline established by the regulations current in force.
- 41.** The items listed above are recommendations for the institutions, and once adopted, it is



important that the AML/CFT policy indicates in which of the documents they will be explained in detail.

## Chapter VIII - Know your client

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- 42.** Institutions shall follow know your client procedures in order to calibrate their monitoring and avoid it being used to carry out ML/FT acts. For some specific situations in the financial and capital markets, however, there is a structural segregation of relationships and obligations that proves to be critical to the rationalization of compliance costs. In this sense, CVM Resolution 50/21, when dealing with clients of investment funds and managed portfolios, introduces the concept of “direct business relationship” as a means to rationalize the allocation of responsibilities. Thus, the institution responsible for the quotaholder of the funds or for the investor of the managed portfolios is the one which maintains a direct business relationship with them. Maintains direct business relationship with:
- I.** a fund's quotaholder: the distributor.
  - II.** the quotaholder of an exclusive fund: the distributor and the asset manager.
  - III.** the quotaholder of a fund traded on a stock exchange: the intermediary.
  - IV.** the investor of a managed portfolio: the asset manager.
- 43.** Exhibit I to this guide, which deals with the distributor's due diligence, will further detail the suggested recommendations to “know your quotaholder client”. Exhibit III, which provides for the asset manager's due diligences, will further address the suggested recommendations to know your client who is an exclusive fund quotaholder or an investor in a managed portfolio.
- 44.** The other funds’ service providers that do not have a direct business relationship with a fund's quotaholder are not responsible for collecting and recording the registration data foreseen in

Exhibit B to CVM Resolution 50/21. The client of these service providers, according to the table below<sup>40</sup>, is the fund itself, so the recommendation is that among service providers the "know your service provider" procedure shall be applied, as provided for in the chapter XII of this guide, to ensure this segregation of responsibilities does not create a AML/CFT gap that could subject institutions to other risks, including reputational.

FUND'S SERVICE PROVIDER	CLIENT
Fiduciary manager provided that it does not act in the distribution of the fund's quotas	Investment Fund
Asset manager provided that it does not act in the distribution of the fund's quotas	Investment Fund
Asset manager of exclusive investment funds or of funds that are required consult with quotaholders about investment decisions	Quotaholder
Distributor	Quotaholder
Custodian and bookkeeper	Investment Fund
Intermediary	Investment Fund and the Asset Manager

<sup>40</sup> Table extracted from Directive-Release 4/20, issued by CVM while CVM Instruction 617/2019 was still in effect, but which provide for topics that were incorporated and kept by CVM Resolution 50/21. The Directive-Release is available at: <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/smi-sin/anexos/ofsmisin0420.pdf>

## Chapter IX - Monitoring and analysis of unusual situations

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- 45.** We recommend that institutions, within the limits of their attributions, implement procedures, rules and risk-based internal controls to continuously monitor, select and analyze the transactions and unusual situations of their clients, as well as observe the unusual situations that may, after detection and respective analysis, configure indicia of ML/FT and, consequently, qualify as a suspicious situation and eligible for reporting to COAF.
- 46.** Institutions' staff members that have a direct business relationship with clients and maintain an effective relationship with them shall be aware of their cash flows so that they can detect and subsequently report any unusual activities. We suggest that staff members who maintain business relationships with clients are primarily responsible for monitoring and understanding their operations, in order to ensure that they are consistent with stated objectives and the declared source of wealth, and that such transactions possess a legitimate economic and commercial purposes.
- 47.** After a transaction being carried out, the monitoring shall be performed pursuant to the terms established by the institution. It is recommended that the relevant issues arising from this monitoring be observed and, if appropriate, communicated to the responsible department so that it can carry out a formal analysis and decide whether it is necessary to notify the competent regulator.
- 48.** We suggest to the institutions, as already required by the BCB and BSM, that the completion of the treatment of warnings arising out of the monitoring takes place within forty-five (45) days from the date of the warning being generated. Said deadline does not apply to the situations described in chapter XVI of this guide, which require immediate action by the Institution in order to make the assets affected by sanctions of the United Nations Security Council unavailable.

- 49.** Examples of clients' unusual behavior are:
- I.** public agent who opens an account in the name of a family member and begins to make large deposits that are inconsistent with the known sources of legitimate family income.
  - II.** threat to staff members, trying to dissuade them from recording the required reports.
  - III.** offer to pay a gratuity to a staff member.
  - IV.** apparent hidden purpose or unusual behavior. For example: refusal to get a higher interest rate on an account with a high outstanding balance available.
  - V.** incompatibility of the transactions with the equity situation.
  - VI.** behavioral fluctuation in relation to volume, frequency and types.
- 50.** BCB, through the BCB Circular-Letter No. 4,001/ 4,001, established an illustrative list of situations and transactions that can configure indicia of ML/FT and can be used as triggers for the selection and monitoring, as well as potential reporting to COAF.
- 51.** We recommend that the process of analyzing clients and transactions is made on a regular and timely basis, depending on the institution, and take into account, among other factors:
- I.** source and destination of funds.
  - II.** non-compliance recurrence regarding transactions historical profile.
  - III.** relationship between transfers and current market behavior.
  - IV.** discrediting news in the media and verification of restrictive lists.

## Chapter X - Monitoring and reporting of unusual situations

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- 52.** We recommend that the institutions provide in writing and through verifiable documents that staff members are required to report any indicia of an unusual ML/FT occurrence to the AML/CFT department or another equivalent department responsible for it.

- 53.** It is important that the institution has mapped what should be done in such situations, the responsibility of the AML/CFT department, notably the responsible director, and how, if applicable, reporting to COAF shall take place. According to the regulation, the reporting to COAF shall be made to:
- I.** <sup>41</sup>: within 24 hours, counting from the conclusion of the analysis that characterized the atypicality of the transaction, the respective proposal as unusual, or even the detected unusual situation, as a suspicion that shall be reported to COAF.
  - II.** **BCB**: the institutions shall report suspicious ML/FT transactions or situations to COAF. The decision to report the transaction or situation to COAF shall<sup>42</sup>:
    - a. be substantiated based on the information contained in the dossier mentioned in art. 43, Par. 2, of Circular BCB 3,978/20<sup>43</sup>.
    - b. be recorded in detail in the dossier mentioned in art. 43, par. 2.
    - c. occur until the end of the analysis period referred to in art. 43, par. 1.

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<sup>41</sup> CVM Resolution 50/21, art. 22, Par. 3. Art. 22. The persons mentioned in items I to IV of art. 3 of this Resolution shall, in accordance with the provisions of this section and through a reasoned analysis, report to COAF all situations and transactions detected, or proposed transactions that may constitute serious indications of ML/FT. (...) Par.3 The reporting addressed in the chapeau shall be made within 24 hours, counting from the conclusion of the analysis that characterized the transaction, the respective proposal as unusual, or even the detected unusual situation, as a suspicion that shall be communicated to COAF.

<sup>42</sup> BCB Circular 3.978/20, art. 48. Art. 48. The institutions referred to in art. 1, shall report to COAF the transactions or situations suspected of money laundering and terrorist financing.

<sup>43</sup> BCB Circular 3.978/20, art. 43: Art. 43. The institutions referred to in art. 1 shall implement procedures for analyzing selected transactions and situations through the monitoring and selection procedures referred to in art. 39, with the aim to characterize them or not as suspicious of money laundering and terrorist financing.

Par. 1 - The period for the carrying out of the analysis procedures of the selected operations and situations cannot exceed the period of forty-five days, counted from the date of the selection of the transaction or situation.

Par. 2 - The analysis mentioned in the chapeau shall be formalized in a dossier, regardless of the notification to COAF referred to in art. 48.

- 54.** The good faith notification reports will not result in civil or administrative liability for the notifying party. The notification reports made are confidential and should be restricted to staff members involved in the analysis procedure. All records that substantiate the notification or the decision not to carry it out shall be filed for a period of five years.
- 55.** In the event that there are no transactions that give rise to notification to COAF during the calendar year, the institution shall attest its non-occurrence at intervals and in the manner established by regulatory and supervisory bodies.
- 56.** The following (non-exhaustive) list contains some examples of potential warnings: It is important to note that potential alerts resulting from the monitoring of transactions and unusual situations do not, by themselves, qualify the client, staff member and/or service provider as a suspect of having committed ML/FT crimes. In some cases, there may be plausible reasons that justify such actions, a possibility that should always be taken into account when analyzing them prior to the reporting:

  - I.** reluctance to provide information about the client's identity, such as its address, business activity or source of funds / wealth, beneficiary(ies) and control or purpose and nature of the business relationship.
  - II.** documentation, physical or electronic, that appears to be suspected of forgery or other forms of manipulation.
  - III.** opening of several accounts for no reason or without business purpose.
  - IV.** assets transferred to/from accounts in countries that apparently pose a higher LM or FT risk or transfers among countries with no link to the client or to its legitimate businesses.
  - V.** listlessness to commission fees and other transaction or contract costs, the account's realized gains or return on investment.
  - VI.** fund transfers to a philanthropic entity whose purpose is unknown or unclear.
  - VII.** quick and unexplained in and outflows of funds in the account.

## Chapter XI - Know your staff

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- 57.** It is recommended that institutions, when implementing the “know your staff member” procedure, consider the ML/FT risk of the activities carried out, the position staff members hold, including their professional history, in order to verify whether the employee is involved in financial crimes, money laundering or other similar crimes, among other information, depending on the institution’s size and structure.
- 58.** We recommend that institutions pay attention to the behavior of staff members, in order to detect and subsequently report possible unusual activities, such as actions and conduct that are not compatible with their standard of living, remuneration or past behavior. Depending on the activity, we recommend that the institution adopt procedures for monitoring the economic and financial situation of the staff member, regularly updating their registration information, personal investments, among other data, respecting the privacy and confidentiality protected by the laws and regulations.
- 59.** We also highlight the importance of the institution not to apply its know your staff member procedure only at the time of hiring. We recommend that employees receive training periodically, as stated in chapter III of this guide, which may have different periods depending on the risk of ML/FT that the staff member's activity represents. Institutions shall adopt timely measures so that their staff members are aware of ML/FT regulations applicable to their activity.
- 60.** We suggest being part of the know your staff member procedure, the requirement to have knowledge and understanding of, sign and adhere to the institution's code of ethics and conduct, as well as the monitoring by the institution of staff member's behavior and the performance presented in training relating to AML/CFT.

## Chapter XII - Know your service provider

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- 61.** It is worth noting that, as established in the glossary of this guide, the service providers dealt with herein are those considered relevant, as well as partners<sup>44</sup> and outsourced service providers<sup>45</sup>. The regulations issued by BCB and CVM do not define who should be considered partner, relevant service provider and/or outsourced service providers, being up to each institution to assess who should belong to such categories in light of their AML/CFT routines.
- 62.** An important guideline to be followed by institutions when hiring their service providers is to verify that they have AML/CFT policies and practices compatible with those that the institution would adopt instead. Any asymmetries in risk appetite between institutions (contracting and contracted) shall be analyzed on a timely basis.
- 63.** We recommend that the procedure adopted by institutions to know their service providers is implemented in accordance with the activity being hired, the ML/FT risk it entails and the purpose of the relationship with the third party, in order to prevent doing business with people who may raise concerns of this nature. It is important that the institution considers, in this process, the principle of reasonableness and applies common sense.
- 64.** The Institutions, when defining their internal procedures, may apply ANBIMA's due diligence questionnaires available on the association's website, use their own questionnaires, or even improve them by adopting other due diligence procedures they deem necessary, including visits.

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<sup>44</sup> Partners pursuant to the terms required by BCB Circular 3,978/20.

<sup>45</sup> Outsourced Service Providers as required by BCB Circular 3,978/20.



- 65.** After knowing the service provider, and observing its IRA, the contracting institution shall classify it according to its risk level.
  
- 66.** As an example, here are some criteria that can be taken into account by institutions in order to evaluate their service providers:

  - I.** the geographic area in which the service provider is domiciled.
  - II.** if the service provider:

    - a. has a business relationship with government employees or public bodies;
    - b. is a public agency or has been recommended or referred to the institution by a government employee or public agency; or
    - c. it is an entity not subject to supervision, like real estate consultants, especially in the case of structured funds.
  - III.** whether the market sectors in which the service provider is active present ML/FT risks.
  - IV.** the history of convictions and investigations, judicial and administrative, of providers, their managers and representatives.
  - V.** unusual fee structure or payment method, such as requirements for cash payment, payments to entities other than the service provider itself, payment to accounts held in countries other than the country in which the third party is domiciled or where the services are rendered.
  
- 67.** Based on the service provider's risk classification, the monitoring and procedures for new due diligences will be more or less rigorous according to the established level of risk. We suggest that due diligence on service providers is not only carried out at the time of the contracting, but that the institution implements procedures for monitoring and for new due diligence, according to the risk of each service provider.

## Chapter XIII - Training and capacity building

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- 68.** It is recommended that institutions have training and capacity building processes for their staff members that are put in writing, documented and adequately kept, so to reassure that they are aware of the regulations applicable to AML/CFT and know how to proceed in the event of a suspicious or unusual situations.
- 69.** As established by applicable regulation, training shall be carried out in clear and accessible language and shall be compatible with the roles performed, with the sensitivity of the information to which they have access, as well as the risk attributed to the activities carried out by staff members, as defined in the IRA. It is important that the training and capacity building of staff members be carried out at the minimum frequency as established by the institution, or whenever the rules and guidelines are updated and at a frequency consistent with the risks mapped.
- 70.** With regard to the application of the training and capacity building program, the supervisory bodies indicate that:
- I.** **BCB**<sup>46</sup>: shall be offered to the institutions' staff members, including the staff members of correspondents in the country in which they provide services on behalf of the institutions.
  - II.** **CVM**<sup>47</sup>: shall be offered to staff members, service providers and investment advisors.
- 71.** As already mentioned in this Guide, it is worth noting that CVM does not define who are

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<sup>46</sup> BCB Circular 3,978/20, art. 3, I, "g".

<sup>47</sup> CVM Resolution 50/21, art. 7, II.

considered to be the relevant service providers<sup>48</sup>, and each institution is responsible for this assessment, taking into account the ML/FT present at each case.

- 72.** As an example, the service providers who are subject to supervision, such as investment fund service providers may receive different treatment depending on the IRA of each institution, as they are also obliged to follow all AML/CFT regulations current in force. In these cases, a “know your service provider” procedure that, for example, details the diligence applied at the time of hiring and the analysis of how the staff members of that service provider are trained may be sufficient to meet the requirement of the applicable rules. On the other hand, service providers not subject to supervision, such as real estate consultants, who play a significant role in the management of FII resources, may deserve special attention from institutions.
- 73.** We recommend that the parameterization of the service provider's risk level be carried out in the IRA. Based on the results presented in this assessment, the institution may, for example, adopt a customized approach to service providers not subject to supervision in terms of training and capacity building.

## Chapter XIV - Institutions' diligence

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- 74.** Regulators and self-regulators are concerned with the cost of compliance with the rules for the client and for market entities and seek to mitigate it whenever this can be done without prejudice to the achievement of their objectives and the fulfillment of their legal mandates. In this sense, the due diligence expected from each institution subject to the AML/CFT rules, within the limits of their activities, risk appetite and their respective IRA, are included in the

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<sup>48</sup> B3, in its operational report, defines relevant service providers as those contracted to perform critical business processes and services that process and store clients' data, including trading through third-party platforms.

exhibits to this guide.

75. We recommend that institutions, regardless of whether or not they have a direct business relationship with clients, assess prior to the commencement of their activities whether they want to maintain a business relationship with investment funds and/or managed portfolios' service providers (know your service provider procedure), especially considering the risk of AML/CFT.

## Chapter XV - Exchange of Information

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76. For the purposes of AML/CFT, the institutions subject to CVM Resolution 50/21 may not, in the regular exercise of their activities, raise any form of restriction of access by the director responsible for the norm and his/her staff members regarding quotaholders' information grounded on a possible confidentiality regime (legal, commercial, among others), or other legal restrictions, such as events within the scope of the LGPD or arising from rules that regulate the need to segregate activities (*Chinese wall*) among the departments of the institution itself.<sup>49</sup>
77. According to CVM<sup>50</sup>, investment fund's service providers shall, in order to comply with AML/CFT rules, especially in higher risk transactions and situations, use information sharing - including ones covering direct and indirect quotaholders when necessary - amongst investment fund's service providers, notably fiduciary managers, asset managers, custodians and distributors.

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<sup>49</sup> This issue was addressed by CVM in the Explanatory Note to the CVM Resolution 50/21.

<sup>50</sup> The information can be found at: <https://conteudo.cvm.gov.br/legislacao/oficios-circulares/sin/occ-sin-smi-0122.html>.

- 78.** According to this Independent Governmental Agency, Complementary Law 105, as well as Law 9,613/98, Law 13,260/16, Law 13,810/19 and LGPD, shall be read together and under the premise of its systematic and teleological application thereof. Complementary Law 105/01, in the context of an investment fund and a managed portfolio, cannot be invoked to prevent the adoption of all necessary procedures for the implementation of the ML/FT prevention and combating system. The aforementioned laws coexist and shall be harmonized, and thus, respected amongst themselves and interpreted in order to achieve their maximum effectiveness. It is also important to emphasize that this inter-institutional exchange of information shall necessarily only involve the 2nd line areas directly responsible for complying with AML/CFT rules.
- 79.** In the wake of best practices and seeking to prevent and combat illicit ML/FT, CVM, through Directive-Release 01/2022, clarified that, in the opinion of the Independent Governmental Agency, the exchange of information protected by secrecy according to Complementary Law 105/01 between investment funds' service providers, including the asset manager and the fiduciary manager which are not classified as a financial institution, is permitted and is in line with the spirit and purpose of the aforementioned law and other rules applicable, in particular the regulations issued by CVM, and, naturally, the confidentiality obligations provided for in CVM Resolution 21/21<sup>51</sup> shall be observed
- 80.** CVM also recalls that within the scope of Decree 10,270/20, and considering the proximity of the new mutual evaluation of Brazil by FATF, it was made available to all persons under supervision, on May 21, 2022, at SISCOAF, (i) the first AML/CFT National Risk Assessment

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<sup>51</sup> This Resolution is available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol021.html>

(NRA)<sup>52</sup>, (ii) its respective executive summary<sup>53</sup>, (iii) the national risk assessment – methodology and (iv) facts and cases – collection of ML/FT typologies<sup>54</sup>.

- 81.** In this sense, CVM reinforces that the institutions’ senior management and the directors responsible for CVM Resolution 50/21 shall access and analyze these documents, especially the National Risk Assessment, for the purposes of drafting their internal risk assessments and the parameterization of their risk matrices and monitoring systems. The conclusion of this analysis shall be available for CVM supervision, or even for self-regulation, when applicable.

## Chapter XVI - Assets’ freeze

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- 82.** It is important to highlight the obligation of the institution to comply, immediately and without prior notice to the sanctioned persons, with the measures established in the sanctioning resolutions of the United Nations’ Security Council or deliberations of its sanction’s committees that determine the unavailability of assets, of any amounts, held, directly or indirectly, by individuals, legal entities or enterprises, pursuant to the terms of Law no. 13,810/19, without prejudice to the duty to comply with court orders that declare the unavailability also provided therein.
- 83.** We recommend that institutions include, in their policy or in another written document, mentioned in the policy, who the service provider responsible for blocking assets is and how

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<sup>52</sup> [https://www.gov.br/coaf/pt-br/centrais-de-conteudo/publicacoes/avaliacao-nacional-de-riscos/3-2\\_relatorio-avaliacao-nacional-de-risco.pdf/view](https://www.gov.br/coaf/pt-br/centrais-de-conteudo/publicacoes/avaliacao-nacional-de-riscos/3-2_relatorio-avaliacao-nacional-de-risco.pdf/view)

<sup>53</sup> [https://www.gov.br/coaf/pt-br/centrais-de-conteudo/publicacoes/avaliacao-nacional-de-riscos/sumario\\_executivo-avaliacao-nacional-de-riscos.pdf/view](https://www.gov.br/coaf/pt-br/centrais-de-conteudo/publicacoes/avaliacao-nacional-de-riscos/sumario_executivo-avaliacao-nacional-de-riscos.pdf/view)

<sup>54</sup> <https://www.gov.br/coaf/pt-br/centrais-de-conteudo/publicacoes/avaliacao-nacional-de-riscos/casos-e-casos-tipologias-edicao-especial-anr-2021.pdf/view>

the direct and permanent monitoring of the resolutions determining the unavailability of assets foreseen by the United Nations' Security Council will be carried out, as well as eventual information to be observed for their adequate compliance thereof. To this end, institutions shall customize and implement specific internal controls so that a possible block is implemented without delay, without prejudice to the fulfillment of other duties related to this topic.

- 84.** Pursuant to BCB Resolution 44/20, compliance with the determinations of unavailability provided for by the United Nations' Security Council shall take place regardless of any reporting to the BCB and immediately after the institution becoming aware that the client or its ultimate beneficial owner is on the sanctions list of established by Law 13,810/19. Thus, it is recommended that the freezing of assets shall be carried out even before the reporting is sent to the supervisory bodies and the Ministry of Justice and Public Security.
  
- 85.** CVM establishes that the following entities shall be duly communicated<sup>55</sup>:
  - I.** CVM.
  - II.** MJSP.
  - III.** COAF.

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<sup>55</sup> CVM Resolution 50/21, art. 27, Par. 3, II. Art. 27. The persons mentioned in items I to IV of art. 3 shall comply, immediately and without prior notice to the sanctioned persons, with the measures established in the sanctioning resolutions of the UNSC or deliberations of its sanction's committees that determine the unavailability of assets, of any amounts, held, directly or indirectly, by individuals, legal entities or enterprises, pursuant to the terms of Law No. 13,810 of 2019, without prejudice to the duty to comply with court orders that declare the unavailability also provided for in said law. (...) Par. 3 The persons mentioned in items I to IV of art. 3 shall adopt the procedures below, without the need of the CVM notification mentioned in item I of art. 10 of Law No. 13,810 of 2019: II – immediately report the unavailability of assets and the attempts to transfer them related to natural persons, legal entities or entities sanctioned by resolution of the UNSC or by designations of its sanctions committees, pursuant to the terms of art. 11 of Law No. 13,810, of 2019: a) to the CVM; b) the MJSP; c) to COAF;

- 86.** BCB establishes that the following entities shall be duly reported<sup>56</sup>:
- I. The BCB, through the BC Mail system and specifically addressed to the Deati/CSNU folder.
  - II. The MJSP, through the institutional email csnu@mj.gov.br.
  - III. COAF.

## Chapter XVII - Periodic evaluation of the AML/CFT program.

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- 87.** We recommend that institutions set up monitoring and control mechanisms in order to ensure the implementation and adequacy of the AML/CFT program. This can be done through the effectiveness assessment described in the following chapter, or through tests, applied at intervals to be defined by the institution.
- 88.** It is worth noting that the BCB requires that the control mechanisms of the AML/CFT policy, rules and procedures be subject to tests by the institution's internal audit. CVM<sup>57</sup>, in its turn, points out in its rule that if the obligated subjects have an internal audit in their functional structure, their analyzes and assessments of the adequacy and effectiveness of the institution's rules, procedures and internal controls shall be made available to CVM. However, it is important to emphasize that the due work of the 3rd line does not replace or confuse with the duties stipulated by the regulators in relation to the 2nd line.

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<sup>56</sup> BCB Resolution 44/20, art. 4 and BCB Normative Instruction 261/22, arts. 3 and 4. Art. 4 BCB 44/20: Art. 4 The institutions referred to in art. 1 shall immediately report the unavailability of assets and the attempts to transfer them related to natural persons, legal entities or entities sanctioned by resolution of the United Nations' Security Council or by designations of its sanctions committees, pursuant to the terms of art. 11 of Law No. 13,810, of 2019, to: I - Central Bank of Brazil, through the BC mail system; II - Ministry of Justice and Public Security; and III - Financial Activities Control Council (Coaf), in the form used to carry out the reportings provided for in art. 11, item II, of Law No. 9,613, of March 3, 1998.

<sup>57</sup> CVM Resolution 50/21, art. 8, Par. 7.



## Chapter XVIII - Effectiveness Assessment

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- 89.** One of the great novelties of the AML/CFT rules is the effectiveness assessment, which shall be carried out by the institutions in relation to compliance with the policy, rules, procedures and internal controls on the topic. The effectiveness assessment requires an understanding of the institution's entire AML/CFT program and is a self-criticism, being the time for the institution to assess where it has failed, or even where it could not adequately mitigate its risks, and where processes are not being effective, as well as seek corrections and improvements through action plans. Senior management is expected to be committed to the results of this analysis and to following up on the proposed action plans.
- 90.** CVM requests that the effectiveness indicators be included in the IRA report itself, which has to be filled annually, with an indication of the effectiveness of the adopted recommendations. It should be noted that the IRA report shall be prepared by the director responsible for the AML/CFT and that it has a similar objective to the effectiveness report established by BCB.
- 91.** BCB, in turn, requires that the institutions draw up a specific report that shall assesses the effectiveness of compliance with the policy, rules, procedures and internal controls pertaining to AML/CFT. This report, which shall be made annually, with a base date of December 31, may be prepared by other departments that are foreseen in the institution's AML/CFT governance structure, not being a private activity of the director responsible for the AML/CFT structure or the department exclusively responsible for putting into practice the institution's AML/CFT program. Thus, it is possible that a sector of the governance and internal controls department be responsible for preparing this effectiveness report, as far as it is neutral to evaluate the effectiveness of the AML/CFT program and this situation and responsibility are duly established in the policy.

92. We suggest that institutions clearly indicate, in a written and verifiable document, which metrics and criteria are adopted by them for the effectiveness assessment. These indicators are considered by regulators to be of extreme importance in terms of the AML/CFT rules and its implementation and maintenance.

## CHAPTER XIX - Final provisions

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93. The update of this guide was carried out by ANBIMA's legal advisors with the help of several professionals who are part of the association's bodies, as well as law firms and consultancy firms.

## Exhibit I - Distributor's Due Diligence

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1. According to CVM<sup>58</sup>, whether due to specialization or due to the division of competences existing between the different investment funds' service providers, the distributor is the one who will maintain a direct commercial relationship with the investment funds' quotaholder client, being its responsibility the collection of registration information, maintenance of the registration and adoption of the measures provided for in its policy to control and monitor the risk of ML/FT in relation to its activities.
2. BCB did not introduce in its rules the concept of direct business relationship in relation to investment funds as established by CVM. However, the recommendations described below also cover, where applicable, BCB Circular 3978/20.

### A. Know your client

3. The procedure to get to know the client is the backbone of the combat against ML/FT, for it allows the distributor to gain access to clients' data and identify distinct levels of risk, incompatibilities, inconsistencies and suspicious transactions. It is important that institutions, in addition to collecting and systematizing client data, have processes that regularly allow verification and validation of client information gathered. We recommend that the distributor keep in a written document an outlook of the sources of information being used for the collection, verification and validation of registration information, and that it classifies them according to their degree of reliability.
4. Observing the legal restrictions, we emphasize that the verification and validation of

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<sup>58</sup> <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/smi-sin/anexos/ofsmisin0420.pdf>.

information can be carried out between different departments of the institution, and internal data integration and communication systems can be developed to allow that information provided and/or gathered, even if from different departments and for other purposes, is compared. As an example, we can mention the duty to verify the adequacy of products, services and transactions to client's risk profile, provided for in CVM Resolution 30/21<sup>59</sup>, the routines relating to the duties of compliance with CVM Resolution 62/22<sup>60</sup> and of CVM Resolution 35/21<sup>61</sup>. Note that this information should not be analyzed in isolation, but in the context of the totality of the data that has already been collected.

5. In accordance with AML/CFT rules, the distributor shall implement procedures aimed at getting to know its clients, including procedures that ensure due diligence in their "identification", "characterization" and "classification".

## B. Client's identification

6. Institutions shall adopt their own identification procedures to allow to verify and validate client's identity. The information required for identification and verification may vary depending on the client type, its risk profile and the type of product or service sought.
7. The supervision authorities have different requirements for client's Identification, as follows:
  - I. BCB<sup>62</sup>: In the client's identification procedure shall be gathered, at least:

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<sup>59</sup> The resolution is available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol030.html>.

<sup>60</sup>The resolution is available at <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol062.html>.

<sup>61</sup>The resolution is available at <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol035.html>.

<sup>62</sup> BCB Circular 3.978/20, art. 16, Par. 2. Art. 16 Par. 2: Art. 16. The institutions referred to in art. 1 shall adopt identification procedures that allow verifying and validating the client's identity. (...) Par. 2 In the client identification process, there should be gathered at least:

- a. the full name and tax registration number in the Individual Taxpayer's Registry (CPF), in the case of a natural person; and
  - b. the trading or business name and the registration number in the National Register of Legal Entities (CNPJ), in the case of a legal entity.
- II. CVM: The minimum information is included in exhibit B to CVM Resolution 50/21.
8. Also, according to the CVM<sup>63</sup>, CVM Resolution 50/21 improved the “know your client” procedure by determining, in addition to the procedure of identifying and collecting registration data, continuous due diligences aimed at collecting supplementary information and specially the identification of their respective ultimate beneficial owners.
  9. Clients’ identification information is declared by the clients themselves and shall be submitted by the institutions to a registration data validation process, despite the obligation that clients have to declare the truth. In the midst of this validation, there is the need to periodically consult the register of impeded persons maintained by CVM. It should be noted that, if the minimum information required by CVM Resolutions is not gathered, the institution shall use its best efforts, not only to validate the data provided by clients, but also to obtain any missing information. If the institution still does not have all the information required, this situation does not prevent the start or maintenance of the business relationship. However, this exceptional situation of incomplete information shall be addressed in the institution's respective AML/CFT policy, including:
    - I. enhanced monitoring.

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I - full name and registration number in the Individual Taxpayers Registry (CPF), in case of natural persons; and II – the trading or business name and the registration number in the National Register of Legal Entities (CNPJ), in the of legal entities.

<sup>63</sup> <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/smi-sin/anexos/ofsmisin0420.pdf>.

- II. more careful analysis of the eventual warnings.
- III. assessment of the director responsible for CVM Resolution 50/21, subject to verification, as to the interest in maintaining this relationship with the client.

### C. Client's characterization

10. BCB<sup>64</sup>: According to BCB Circular 3,978/20, institutions shall adopt procedures that allow the characterization of their clients through the collection, verification and validation of information that is compatible with the client's risk profile and with the nature and the purpose of the business relationship. Characterization procedures shall include the collection of information that allows:
- I. identify the place of residence in the case of a natural person.
  - II. identify the location of the head office or branch, in the case of a legal entity.
  - III. assess the client's financial capacity, including income, in the case of an individual, or revenue, in the case of a legal entity.
11. CVM: CVM does not provide in CVM Resolution 50/21 the client's characterization as an independent due diligence step, thus from the client's identification the next one is its classification.

### D. Client's classification

12. The institution shall classify the risk of its clients based on its IRA and its RBA. The classification assigned will determine which measures will be applied to mitigate the risks, and it shall

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<sup>64</sup> BCB Circular 3978/20, arts. 18 and 19. Available at:  
<https://www.bcb.gov.br/estabilidadefinanceira/exibenormativo?tipo=Circular&numero=3978>

monitor the evolution of the relationship over time, in order to incorporate, in a timely manner, significant changes in the original classification criteria.

- 13.** The following are criteria that can be considered by the institution to classify its clients:
- I.** business relationships involving PEPs or non-profit organizations.
  - II.** business relationships with clients and/or ultimate beneficial owners or third parties domiciled in a high-risk country, as listed by FATF.
  - III.** financial institutions trading with offshore products.
  - IV.** clients that act in businesses classified as high-risk in the institutions' RBA.
  - V.** activities with indicia of being unusual that the Institution is aware of.
  - VI.** transactions reports that have been deemed unusual that the Institution is aware of.
  - VII.** inquiries from government authorities, such as notifications concerning ML/ FT illicit.
  - VIII.** transactions with evidence and in violation of economic sanctions programs.
  - IX.** transactions with relevant volumes and amounts that are non-compatible with client's source of income or that differ from those historically observed.

#### **E. Client's data**

- 14.** The records of the clients shall contain the minimum requirements set out in the regulations in force, without prejudice that the institution considers other information depending on the client's risk rating.
- 15.** The items commented below come from CVM recommendations provided for in the Directive-Release No. 4/20<sup>65</sup> and applicable to the distributor.
- 16.** The AML/CFT policy shall necessarily address, among other topics, the setting of criteria and

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<sup>65</sup> <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/smi-sin/anexos/ofsmisin0420.pdf>.

frequency for updating the records of active clients, being duly observed the maximum interval of five (5) years. The records of low-risk clients, according to the institution's classification, shall be adjusted according to the frequency determined in the respective AML/CFT policy, observing the deadline set in art. 4, III, of CVM Resolution 50/21, which shall be counted from the date of registration or the last registration update.

- 17.** The records of high-risk clients, also according to the institution's classification, shall be updated according to the frequency determined in the institution's AML/CFT policy. CVM understands that it is a good practice to take advantage of information gathered both for the investment profile and for registration purposes.
- 18.** The new minimum information required in the client's registration by CVM Resolution 50/21, namely, "spouse's or partner's CPF number" and "CNPJ of the company at which he/she works", are applied to all individuals, national or non-residents ("NRI"). In the case of NRI, equivalent information in the respective jurisdiction of origin shall be collected.
- 19.** Specifically in lower risk situations, both in terms of customer risk and the transmission of orders, or even, in line with the risk appetite adopted by the institution in its AML/CFT policy, it will be possible to admit the execution of trades without minimum information being available. However, in these cases, a specific routine shall be foreseen and evidenced so that eventual missing information can be diligently gathered at the first opportunity and on a priority basis.
- 20.** Additionally, in cases where the client has more than one employment relationship, the information from the corporation that is most relevant in relation to that client's income shall be considered. It is important to note here that such treatment is of a data gathering nature, that is, it will not exempt the institution obliged to collect, in situations of greater risk, supplementary data within the scope of the continuous due diligences.
- 21.** Regarding the minimum information related to the "mother's name", we understand that in



situations in which it is not possible to obtain such info, or even if its gathering is not applicable, such data can be met with "parental data registration" and the respective name of the father.

- 22.** Art. 18 of CVM Resolution 50/21 determines that the institutions responsible for the collection of registration information shall only start any business relationship or continue the existing relationship with the client if the steps included in the identification procedure are completed, which include 'identification of the ultimate beneficial owner' and 'know your client'. Thus, CVM Resolution 50/21 imposes a duty of diligence on the institution, and it is up to it, whenever demanded by CVM or the self-regulator, to demonstrate that it has used the best efforts in its power to obtain the complete identification of the client, including the ultimate beneficial owner. Despite what has been said, the decision to initiate, maintain or terminate a relationship with clients remains within the scope of the institution itself, in light of its RBA and risk appetite, including reputational risk, if applicable. In other words, it will be up to the institution to adequately justify in the light of its RBA and IRA, and to demonstrate the due diligence employed, to promote the complete identification of its clients, in cases where the information obtained is below the minimum content required by the rule, or it is incomplete.
- 23.** Notwithstanding what was said above, in such situations it is essential to effectively apply routines aiming at reinforced monitoring of transactions or unusual situations for such client, as well as conducting a more careful analysis of the possible alerts generated with a view to a possible notification to COAF, always pursuant to the terms of art. 22 of CVM Resolution 50/21.

#### **F. Investment Advisor**

- 24.** If the institution has investment advisors (autonomous investment agents) linked to it, it will be obliged to make them to adhere to the AML/CFT policy of the distributor or intermediary

on whose behalf it is carrying out the distribution. If the investment advisor is linked to more than one intermediary or distributor, it shall adhere simultaneously to the AML/CFT policy of all those to which they are linked, even if there are variations in content, rigor and flexibility among them.

25. Considering that the investment advisor maintains direct contact with investment fund quotaholders, it is their obligation to maintain internal procedures to ensure permanent compliance with the AML/CFT policy of each intermediary and/or distributor to which it is linked, as well as to report to the respective intermediary the proposals or occurrences of unusual transactions or situations, within the limits of their attributions. The intermediary or distributor's AML/CFT policies, as the case may be, shall reflect this obligation of investment advisers.

#### **G. Distribution on behalf of**

26. In the distribution on behalf of, the distributor remains responsible for the quotaholder client, as it is the service provider which maintains a direct business relationship with it. In this case, even the fund's fiduciary obligations applicable to the fiduciary manager become the distributor's and the quotaholder client is identified before the fund's other service providers exclusively by means of a code.
27. Despite the considerations made above, the funds' other service providers which have an indirect relationship with the client are not exempt from AML/CFT due diligences in the distribution on behalf of. As a general rule, it is recommended the application of the “know your service provider” procedure, provided in chapter XII of this guide. Depending on the RBA, some service providers may want to know who the quotaholder client and the fund's ultimate beneficial owner are, and this questioning is legal. In these cases, there is no pre-determined procedure, and it is up to the service providers to assess, in accordance with their RBA, and to

decide whether or not to proceed without knowing who the ultimate beneficial owner of the fund is, be the fund exclusive or not.

#### H. Distribution of quotas to quotaholders that are exclusive funds (investor fund and invested fund)

28. According to the CVM<sup>66</sup>, the rule, in this aspect, is addressed to the institution responsible for the client in case the quotaholders are exclusive investment funds (investor fund buying quotas of other funds). Therefore, exclusive fund's distributor shall adopt due diligence measures aimed at identifying the investor funds' ultimate beneficial owner, be it Brazilian or foreign, resident or non-resident.
29. In this case, however, the distributor is not expected to play the same role in the collection of registration information, and it is recommended to verify the participation interest of the exclusive investor fund in the fund that receives the investment. Ownership of 25% or more of the quotas by the investor fund is the threshold that makes CVM to assume the existence of significant influence of such fund in the invested fund. It is also important that the distributor assess the possible occurrence of situations of higher risk, detailing them in its RBA.
30. In the event that an exclusive fund is found to hold 25% or more of the quotas of the invested fund, we recommend that the distributor of this fund uses its best efforts to obtain information from the quotaholder of the exclusive fund, up to the ultimate beneficial owner. To this end, the distributor of the invested fund may contact the distributor of the exclusive fund, without prejudice to other measures that it deems pertinent to obtain the necessary information. In these cases, it is recommended that due diligence efforts be recorded in writing, contemporaneously with their occurrence, in order to produce documentary support

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<sup>66</sup> CVM and ANBIMA live held on 6/7/2020. <https://www.youtube.com/watch?v=fGsa1RuQPqI>.

capable of demonstrating what was done to obtain such information. It is noteworthy that the difficulty, impossibility or lack of knowledge of the ultimate beneficial owner shall always be supported by evidence that the institution has taken reasonable steps in order to promote the correct identification of the quotaholder and its ultimate beneficial owner. In any case, the fund distributor that receives the contribution of an investment fund has the duty to identify whether or not it is an exclusive fund.

## Exhibit II - Fiduciary Manager's Due Diligence

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1. The fiduciary manager's AML/CFT responsibility, within the limits of its attributions, includes the fiduciary management services of:
  - A. investment funds.
  - B. managed portfolios, if applicable.

### 1.A. Due diligences of funds' fiduciary manager in light of CVM Resolution 50/21

2. For the purposes of the application of CVM Resolution 50/21, the fiduciary manager investment funds' client is the fund itself since the fiduciary manager does not have a direct business relationship with quotaholder clients. In this vein, and with a view to avoiding compliance costs disproportionate to the benefits produced, the fiduciary manager may fail to register the fund's quotaholder clients, as provided for in exhibit B to CVM Resolution 50/21. Notwithstanding this, it is incumbent upon the fiduciary manager, according to its RBA, to carry out due diligences on the distributor and, in the case of exclusive funds, also on the asset manager, in order to certify that they have adequate procedures to perform the obligation to know and monitor such clients with whom it maintains a direct relationship.
3. In commonly verified cases in which the fiduciary manager also distributes the investment fund quotas, the provisions of exhibit I of this guide shall be observed concomitantly with the provisions of this exhibit II.
4. Without prejudice to the inspection that it shall carry out on the service providers hired on behalf of the fund pursuant to the terms provided for in CVM Resolution 21/21, we recommend that the fiduciary manager, for the purposes of CVM Resolution 50/21, perform due diligences in the fund's service providers in order to verify which AML/CFT program is adopted by them

and apply the "know your service provider" procedure provided for in chapter 12 of this guide.

5. It is worth noting that the information on the investment fund's quotaholder clients that the fiduciary manager receives because they are indispensable for the fulfillment of their duties, such as the quotaholder's name and address for sending the meeting notice, are not sufficient by themselves to set up this a direct business relationship between the fiduciary manager and the quotaholder client.
6. Notwithstanding the foregoing, it is good practice for the fiduciary manager to, in the context of its RBA process, and to the extent that is reasonable in light of the spheres of action proper to other fund service providers, make use of the information that it may obtain in the exercise of its activities, to monitor, analyze and, as the case may be, communicate situations governed by CVM Resolution 50/21, with a view to identifying situations that require greater attention or special due diligence (for example, identification of PEPs and non-profit organizations).

#### **A. Due diligences of managed portfolios' fiduciary manager in light of CVM Resolution 50/21**

7. For the purposes of applying CVM Resolution 50/21, in the case of managed portfolios the fiduciary manager's client is the asset manager that hired him. The direct business relationship with the client investing in the managed portfolio is maintained by the asset manager, which, therefore, will be obliged to obtain the registration information provided for in exhibit B to CVM Resolution 50/21.
8. Without prejudice to the inspection obligations provided for in CVM Resolution 21/21, we recommend, specifically for the purposes of CVM Resolution 50/21, that the fiduciary manager takes steps to know the AML/CFT processes adopted by the asset manager and by the custodian if the managed portfolio also has custodian.

9. As with investment funds, we recommend that the fiduciary manager, in the context of its RBA process, make use of the information that it may obtain in the exercise of its activities to monitor, analyze and, if applicable, communicate situations governed by CVM Resolution 50 /21, with a view to identifying situations that require further attention or special due diligence (for example, identification of PEPs and non-profit organizations).

**B. Monitoring by the fiduciary manager of assets allocated to investment funds and managed portfolios**

10. It is recommended that the fiduciary manager monitors, for AML/CFT purposes, the assets acquired by investment funds and managed portfolios, when applicable. This monitoring shall be carried out within the limits of the fiduciary manager's attributions and according to its own RBA.
11. We emphasize that some assets may require special attention in the fiduciary managers' RBA, as in the case of structured funds (FIDC, FII and FIP) and virtual assets.

## Exhibit IV - Asset Manager's due diligences

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1. The asset manager is subject to CVM Resolution 50/21. As a result, depending on what is under its management and with whom it is dealing, it shall have to comply with different obligations, as detailed below:
  - I. **Asset manager vs. quotaholder client or investor client:**
    - a. asset manager of an investment fund with multiple quotaholders.
    - b. asset manager of an exclusive fund.
    - c. asset manager who also acts as a distributor of quotas of its own funds.
    - d. asset manager of managed portfolios.
    - e. wealth manager.
  - II. **Asset manager vs. acquired assets:** with regard to making investment decisions in the different modalities listed above, the asset manager may acquire assets for funds or managed portfolios.

### I.A. Asset manager of an investment fund with multiple quotaholders

2. In the case of an investment fund with multiple quotaholders, asset manager's client is deemed to be the fund itself. In this case, an assumption is established, due to the very nature of the investment vehicle, that the asset manager does not maintain a direct business relationship with the quotaholder client, unless the asset manager is also the distributor of the fund's quotas. Thus, the asset manager shall only gather the fund's registration data foreseen in exhibit B to CVM Resolution 50/21. Even if the asset manager registers the investment fund at the brokers in which it chooses to deal with, the registration being made in this case is of the fund, not of its quotaholders.



### I.B. Asset manager of an exclusive fund

3. In the case of an exclusive investment funds, the asset manager's client is deemed to be the fund's quotaholder itself. In this case, an assumption is established, due to the nature of this type of structure, that the asset manager maintains a direct business relationship with the quotaholder. Even in the face of this assumption, it is not up to the asset manager to collect all registration information provided for in exhibit B to CVM Resolution 50/21, an obligation that falls on the distributor. The asset manager shall keep the records of this information in accordance with its RBA and know the quotaholder's ultimate beneficial owner up to the natural person.
4. We recommend that the asset manager seeks, in order to avoid the imposition of compliance costs on the quotaholder, and except in the cases of secrecy provided for by the regulation, to obtain the information relating to the quotaholder from the distributor, as provided in chapter XV of this guide, which deals with the exchange of information between institutions. In the event that the distributor refuses to supply this information to the asset manager, even if sharing channels between internal control structures are offered, it shall document and evidence its attempt thereto, and shall seek to obtain the information it needs from the quotaholder itself directly and/or through reliable public sources.
5. In these cases, observing its IRA and RBA, we recommend that the asset manager apply to the distributor of the exclusive fund the know your service provider procedure provided for in item 13 of this guide.

### I.C. Asset manager which distributes quotas of its own funds

6. This is the hypothesis in which the asset manager simultaneously performs two distinct functions, namely, asset management and distribution of their own funds. Given the

accumulation of these two functions, even if it is a case of an investment fund with multiple quotaholders, the asset manager shall be responsible for the quotaholder client, with whom it will maintain a direct business relationship. Thus, the asset manager shall cumulatively comply with the provisions of this exhibit for the asset management function and the provisions of exhibit I to this guide for the distribution activity.

#### **I.D. Asset manager of managed portfolios**

7. In the case of managed portfolios, the asset manager's client is considered to be the investor who owns the resources comprising the managed portfolio, with whom the asset manager maintains a direct business relationship. In this scenario, it is also up to the asset manager to collect the registration information provided for in exhibit B to CVM Resolution 50/21 and to know the ultimate beneficial owner up to the natural person.

#### **I. E. Wealth manager**

8. The asset manager's client, in this case, is the owner of the wealth, regardless of its being funds, managed portfolios or other assets, with whom the asset manager maintains a direct business relationship. In this scenario, it is also up to the asset manager to collect the registration information provided for in exhibit B to CVM Resolution 50/21 and to know the ultimate beneficial owner up to the natural person.

#### **II. Manager purchasing assets for the funds and/or managed portfolios**

9. According to CVM<sup>67</sup>, the asset manager shall have AML/CFT procedures applicable to the acquisition of assets for the funds and managed portfolios. From this perspective, depending

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<sup>67</sup> CVM Resolution No. 50/21. Art. 20, II. Available at:  
<https://conteudo.cvm.gov.br/legislacao/resolucoes/resol050.html>

on the situation, it is possible that the asset manager should focus its AML/CFT on the issuer of the asset, on its counterpart in the transaction, on the intermediary or distributor of the asset, its bookkeeper, among other agents involved therein. AML/CFT controls aimed at analyzing assets shall also be described in the institution's IRA and RBA, so that some assets and agents become the object of special attention.

**10.** In this regard, it is recommended that the assets manager considers at la minimum the parameters below, if applicable to the actual case:

- I. type of issuance:** the type of issuance or the trading format of the asset directly influence in the ML/FT risk classification and its monitoring. As an example, the situations listed below since they refer to assets subject to a series of regulatory obligations, exempt the asset manager from additional due diligences with regard to AML/CFT:
  - a. assets that have been the object of initial and secondary public offerings registered in accordance with the rules issued by CVM.
  - b. assets that have been the object of public offerings with restricted efforts, exempt from registration in accordance with the rules issued by CVM.
  - c. assets issued or traded by a financial institution or similar entity.
  - d. assets issued by issuers of securities registered before CVM.
  - e. assets of the same economic nature as the ones listed above, when traded offshore, provided that (a) they are admitted for trading in stock exchanges, commodities and futures, or registered in a registration, custody or financial settlement system, duly authorized in their respective countries of origin and supervised by a local authority recognized by CVM, or (b) the existence of which has been validated by a third party duly authorized to perform custody activities in countries that have signed the Treaty of Asuncion or in other jurisdictions, or supervised by a local authority duly recognized by CVM.

- II. agents involved:** except for the events listed above, since the type of issuance determines the need to carry out additional due diligences, we recommend that the asset manager to adopt, based on the relationship established with the agents involved in the issuance, distribution, intermediation, among others, and of its IRA and RBA, the following procedure:
- a. request the agent's AML/CFT policy in order to verify its processes and controls.
  - b. carry out a due diligence for AML/CFT purposes (know your service provider procedure).
  - c. request information in order to get to know the ultimate beneficial owner, when applicable.
- III. type of asset:** the type of asset to be acquired by the asset manager for the fund or managed portfolio may require different degrees of due diligence depending on its greater or lesser complexity, the asset structure and the manager's own RBA. We recommend that asset managers provide in a document mentioned in the policy, made in writing and subject to verification, which due diligences will be undertaken, for AML/CFT purposes, prior to the acquisition of assets. Below, we seek to bring some examples of assets and respective controls recommended for AML/CFT, but without the intention of exhausting them, given that it is expected that the asset manager which works with specific types of assets is more familiar with the particularities that deserve special attention and can justify the AML/CFT controls that it chooses to implement in each case.
- a. virtual assets:** for the acquisition of virtual assets, pursuant to the terms allowed by current regulations, we recommend that asset managers observe, as appropriate and at a minimum, the CVM Directive-Release No. 11/2018/CVM/SIN<sup>68</sup>, as well as the

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<sup>68</sup> <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/sin/anexos/oc-sin-1118.pdf>.

Manual of Good Practices in AML/CFT for Brazilian Exchanges<sup>69</sup> and the Code of Conduct and Self-Regulation<sup>70</sup> published by ABcripto (Brazilian Association of Cryptoeconomy) on its website, without prejudice to new guides or best practice recommendations to be published by the industry or regulatory bodies.

- b. FIDC:** it is recommended that the asset manager, in accordance with its RBA, seek to identify any specific ML/FT risks in the structure of each transaction and build adequate due diligence and monitoring mechanisms. In this context, it is recommended that it maintains risk verification procedures in the credit origination process and in the structure's participants, including, when applicable, assignors, originators and drawees, and it is advisable that it adopts proportionate criteria in its analysis, examples of which are: financial representativeness or more or less significant concentration in one or more assignors, originators and/or drawees. Special attention should be paid to situations in which the same agent, or a group of agents related or linked to each other, is present at various ends of the transaction (for example, an exclusive quotaholder who is also the originator of the credit) or perform functions that depend on or suffer interference from each other. Likewise, it is recommended to carry out due diligences with special emphasis on persons subject to the adoption of control mechanisms pursuant to the terms of art. 9 of Law 9,613/98 (i.e., factoring companies, investment consultants and financial institutions that act as “bank intermediaries” of operations originated by non-financial companies).
- c. FII:** it is recommended that the asset manager carries out prior due diligence specifically aimed at AML/CFT purposes, especially in relation to identification and

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<sup>69</sup> <https://blconsultoriadigital.com.br/wp-content/uploads/2020/08/Manual-de-Boas-Pr%C3%A1ticas-em-PLDFT-para-Exchanges-brasileiras-.pdf>.

<sup>70</sup> <https://www.abcripto.com.br/autorregulacao-abcripto>

knowledge of its counterpart. Such diligences include, for example, the reputational checks necessary to detect possible entries in national and international restrictive lists of the company or asset that is intended to be acquired, also paying special attention to the presence of unregulated third parties, such as specialized consultants.

- d. **FIP:** it is recommended that the asset manager carries out a prior due diligence to the investment in the target company, in order to identify any signs of ML/FT. Such diligence can be carried out directly by the asset manager, or by hiring a company or specialized firm, and may cover, for example, the analysis of the corporate structure of the target company, detection of entries in restrictive lists or negative media - either in relation to the company itself, as well as to its main shareholders and fiduciary managers – or by other means that appear to be adequate to the peculiarities of the actual case. The analysis of the transactions' counterpart is also a key factor in this approach. It is also recommended that special attention be paid to structures in which the same party, or a group of related or linked parties, occupy different ends of the transaction, or perform roles that depend on or suffer interference from each other.

#### **II.B. Manager of an exclusive fund allocating resources into other funds (investor fund and invested fund)**

- 11.** This is the situation in which the asset manager of an exclusive fund, in the exercise of its activities, decides to acquire quotas of another fund, which may or may not be pulverized, for example. In most cases, the exclusive fund's asset manager will enter in direct contact with the pulverized fund's asset manager to proceed with the allocation. In this process, we recommend that the pulverized fund's asset manager enter in contact with its distributor for it to proceed with registration of the exclusive fund.
- 12.** The distributor of the pulverized fund will register the exclusive fund, and, observing its IRA,

RBA and relevance of the participation interest in the equity of the pulverized fund - whether or not it will be assumed the existence of significant influence<sup>71</sup> -, it may ask the asset manager of the exclusive fund who the ultimate beneficial owner, up to the natural person, is. The fact that the investor fund is an exclusive fund does not, by itself, entail the responsibility of the pulverized fund's (invested fund) distributor for identifying the ultimate beneficial owner up to the natural person.

13. In the situations in which the exclusive fund's asset manager decide not to inform the distributor of the pulverized fund who the ultimate beneficial owner is, it is possible to check with the distributor what additional steps are required to proceed with the allocation, for example: know your service provider procedure, pursuant to chapter 12 of this guide, answers to specific questions indicating whether the quotaholder is a non-resident investor with a structure that makes it difficult to identify the ultimate beneficial owner, whether the ultimate beneficial owner is a PEP or a non-profit association, and also, adoption of the provisions of articles 16 and 17, Par. 1, of CVM Resolution 50/21 .
14. The decision to proceed with the allocation is up to each institution, observing its IRA and RBA.

### II.C. Monitoring of the acquired assets

15. We recommend that the asset manager monitors continuously and as appropriate, the operations carried out by its investment funds and managed portfolios, in order to identify any unusual situations that may constitute signs of ML/FT. Specially, we recommend that attention be paid to the monitoring of unusual situations involving fund's transactions, with an emphasis on:

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<sup>71</sup> CVM Resolution 50/21, art. 2 IX - significant influence: situation in which a natural person, whether the controller or not, actually exerts influence on decisions or holds more than twenty-five percent (25%) of the capital stock of legal entities or of investment funds and other entities' net equity in the cases dealt with in items II to V of art. 1 of Exhibit B, without prejudice to the use of the simplified registry referred to in Exhibit C;

- I. recurrence or concentration of gains or losses.
- II. pattern change in terms of business volume and operating means.
- III. variation of the prices of assets traded by the funds in comparison to the fair market prices.



## Exhibit IV - Custodian's due diligences

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1. The custodian's AML/CFT responsibility, within the limits of its attributions, includes the custody services rendered to:
  - A. investment funds.
  - B. managed portfolio hired by the asset manager.
  - C. managed portfolio hired by the investor.
  - D. issuers<sup>72</sup> of non-book-entry securities<sup>73</sup>.

### A. Custodian services to investment funds

2. For the purposes of the CVM Resolution 50/21, the client of investment funds' custodian is the investment fund since the custodian does not have a direct business relationship with the quotaholder client. It is not up to the custodian to register the funds' quotaholder clients foreseen in exhibit B of CVM's AML/CFT rule. According to CVM Resolution 50/21, the custodian shall obtain only the fund's registration data information (name, CNPJ, identification of its fiduciary and asset managers and dates of registration updates)<sup>74</sup>.
3. For AML/CFT purposes, we recommend that the custodian, subject to its RBA, apply to the fiduciary manager, which hired the fund's service providers, or even to the asset manager in

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<sup>72</sup> CVM Resolution No. 3221. Art. 2, par. 3 For the purposes of item II of par. 1, it is deemed to be the issuer, other institutions that, as holders or creditors of the securities, are responsible for their distribution to the market.

<sup>73</sup> CVM Resolution No. 3221, art. 2, Par. 1, II. Art. 2 The securities custody service shall be provided by legal entities authorized by CVM pursuant to the terms of this Resolution. Par. 1. The securities custody services may be provided: (...) II – for issuers of non-book-entry securities pursuant to item II of § 2.

<sup>74</sup> CVM Resolution 50/21 exhibit B, art. 1, IV. Available at:  
<https://conteudo.cvm.gov.br/legislacao/resolucoes/resol050.html>

the case of an exclusive fund, the know your service provider procedure provided for in chapter 12 of this guide. It is also worth emphasizing the need for alignment with the asset manager when referring to a FIDC, especially with regard to the underlying asset.

4. Notwithstanding the foregoing, we recommend that the custodian, in the context of its RBA process, and also, based on the principle of reasonableness applicable to the proper spheres of activity of each service provider, carry out, according to the information held by it in the performance of its activities, the monitoring, analysis and eventual notifications under the aegis of CVM Resolution 50/21, in order to enable the identification of situations that require greater attention and the adoption of special due diligences (for example, identification of PEPs and non-profit organizations).
5. Conceptually, the provision of custody services to investment funds does not need to be necessarily associated with the provision of services of assets' bookkeeping. In cases, albeit quite common, in which the provision of custody services is performed together with asset bookkeeping, the custodian will hold additional information about the prices of the assets in the fund's portfolio, in which case such monitoring may proportionally gain in quality.

#### **B. Custodian services to managed portfolio hired by the asset manager**

6. For the purposes of the CVM Resolution 50/21, the custodian's client is the asset manager, since the custodian does not maintain a direct business relationship with the client who is the investor of a managed portfolio. In this case, we recommend that the custodian, observing its RBA, apply to the asset manager the know your service provider procedure provided for in chapter 12 of this guide.
7. Notwithstanding the custodian's direct business relationship be with the asset manager, it is recommended that the custodian, in the context of its RBA procedures, examines the

provisions applicable to participants having direct business relationships with clients, so it identifies any additional steps that are proportional to the risks and that should be adopted, under the principle of reasonableness, and considering the provisions of CVM Resolution 32/21. Such provisions may include, for example, obligations imposed by entities managing organized markets and entities operating the financial market infrastructure to their participants that act as custodians.

#### **C. Custodian services to managed portfolio hired by the investor**

8. The custodian's client is the investor in the managed portfolio, by whom it is contracted and with whom it maintains a direct business relationship. In this context, we recommend that the custodian apply, where applicable, the provisions of exhibit I of this guide, which deals with the distributor's due diligences.

## Exhibit V - Bookkeeper's due diligences

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1. The bookkeeper's AML/CFT responsibility, within the limits of its attributions, encompasses bookkeeping services rendered to:
  - A. quotas of investment funds.
  - B. securities issued by corporations.

### A. Bookkeeping of investment funds' quotas

2. For the purposes of the CVM Resolution 50/21, the bookkeeper's client is the investment fund since the bookkeeper does not have a direct business relationship with the quotaholder client. According to CVM Resolution 50/21, the bookkeeper shall obtain only the fund's registration information (name, CNPJ, identification of its fiduciary and asset managers and dates of registration updates)<sup>75</sup>.
3. For AML/CFT purposes, we recommend to the bookkeeper, subject to its RBA, that it subjects the fiduciary manager, which hired the fund's service providers, or even the asset manager in the case of an exclusive fund, the know your service provider procedure provided for in chapter 12 of this guide.
4. In relation to the quotaholder, the bookkeeper shall maintain, for the carrying out of its activity, the identification information required by CVM Resolution 33/21 (identification, characterization, legal nature, domicile and tax regime of the security holder, or, whenever applicable, the identification of the central depository holding the security in a centralized

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<sup>75</sup> CVM Resolution 50/21 exhibit B, art. 1, IV. Available at:  
<https://conteudo.cvm.gov.br/legislacao/resolucoes/resol050.html>

deposit).

5. Notwithstanding the foregoing, we recommend that the bookkeeper, in the context of its RBA process, and also, based on the principle of reasonableness applicable to the spheres of activity of each fund's service provider, carry out, according to the information held by it in the performance of its activities, the monitoring, analysis and eventual notifications under the aegis of CVM Resolution 50/21, in order to enable the identification of situations that require greater attention and the adoption of special due diligences (for example, identification of PEPs and non-profit organizations).

#### **B. Bookkeeping of securities issued by corporations**

6. For the purposes of the application of CVM Resolution 50/21, the bookkeeper's client is the company issuing the securities, by whom it is hired and with whom it maintains a direct business relationship.
7. In relation to the holder of the security, the bookkeeper does not maintain a direct business relationship with it. In order to carry out its activity, pursuant to CVM Resolution 33/21, the bookkeeper shall obtain the minimum identification information provided for in the rules (identification, characterization, legal nature, domicile and tax regime of the holder of the security, or, when applicable, the identification of the central depository that holds the security in a centralized custody deposit) and, therefore, it is not up to the bookkeeper to carry out the due diligences to obtain the registration data related to the know your client procedure for securities' holders.
8. Notwithstanding the foregoing, we recommend that the bookkeeper identify, in the context of its RBA procedure and of the drafting an AML/CFT policy and based on the principle of reasonableness as well, any additional due diligences that are proportionate to the risks and that should be adopted in situations that require greater attention, such as:

- I. transfer of assets before the bookkeeper, without the participation of an intermediary. In this scenario, the bookkeeper shall monitor the trading aggregate amounts in order to identify those that are discrepant in relation to amounts known by the market in general, however, it is not up to the bookkeeper, within the limits of its duties, to develop procedures (e.g. price tunnel) for the identification of any discrepancies in trading amounts and/or assessment of the declared financial capacity contained in the documentation.
- II. other situations involving changes of ownership.
- III. creation of liens and encumbrances.
- IV. change between bookkeeping environment and centralized deposit.
- V. additional due diligences relating to issuers classified as PEP and holders of securities classified as PEP or non-profit organizations.
- VI. type of monitoring of the transactions carried out, when applicable, in view of the limitations to access registration data and the possibility of obtaining additional information by the institutions that have a direct relationship with clients.

## Exhibit VI– NRI Representative’s due diligences

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1. In order to carry out the registration in light of CVM Resolution 50/21, we recommend that the Brazilian intermediary hire a foreign intermediary who will be responsible for the registration of the NRI as established by the rules of its jurisdiction of origin. The terms, conditions and obligations of this contractual relationship are governed by aforementioned rule, and the minimum content of the register is defined by the regulations issued by the entities that manage organized markets and the providers of financial market infrastructure. We recommend that the agreement’s provisions shall foresee that the foreign intermediary will be responsible for registering the NRI pursuant to the terms of the regulations in effect in its country.
2. It is important to note that the use of the register does not release institutions from their AML/CFT obligations, which are applicable, even if part of the AML/CFT processes are delegated to the foreign intermediary hired for such purposes.
3. For the NRI risk assessment, it is suggested that ANBIMA’s self-regulatory rules, available at the association’s website, are duly observed.
4. Element to be taken into account in the NRIs’ ML/FT risk assessment is the risk assigned by the institution to the foreign intermediary. For example, a foreign intermediary that maintains a collective account structure (omnibus account) assessed as being of a low ML/FT risk may have passengers (NRIs) classified as low, medium or high ML/FT risk, according to the AML/CFT criteria of the institution. If the foreign intermediary holding the collective account (omnibus account) is classified as being of a high ML/FT risk, it is recommended that passengers (NRIs) are also classified as high risk - such an assessment may be reviewed in relation to certain investors (passengers), if the institution has elements capable of supporting a different assessment, which shall be duly substantiated and documented.

5. For cases in which the due diligences performed to identify the ultimate beneficial owner are applicable and have proved unsuccessful, even if temporarily, the following can be considered of a high ML/FT risk:
  - I. entities incorporated in the form of trusts or other fiduciary vehicles<sup>76</sup>.
  - II. companies incorporated with bearer titles.
  - III. individuals residing abroad.
  
6. It is worth clarifying that this high ML/FT risk assessment can be changed by the institutions, if they have collected information that allows them, within the scope of their respective RBA and AML/CFT, to conclude that the ML/FT risk could be revisited. Again, it is recommended to the institutions that the assessment be substantiated, approved by competent bodies and properly documented.
  
7. In order to define the necessary due diligence for the identification of the ultimate beneficial owner, the Institutions may take into account normative instructions issued by other supervisory entities, among them, the Brazilian Tax Authority.

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<sup>76</sup> CVM Resolution 50/21, Art. 15.: In situations where it is necessary to carry out due diligences aimed at identifying the ultimate beneficial owner of entities constituted in the form of a trust or similar vehicle, efforts shall also be made and evidenced to identify: (...)



## Exhibit VII – Securitization Companies’ due diligences

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1. Pursuant to CVM Resolution 50/21, securitization companies are also obligated persons and shall have AML/CFT rules, procedures and internal controls. In securitization activities, however, there are several peculiarities that need to be taken into account for the AML/CFT program to be effective.
2. CVM Resolution 50/21, for example, defines a client as an investor, but, as a rule, securitization companies do not have any access to investors, nor do they act in the collection of funds in the capital markets - except for cases in which they also act as distributors, within applicable regulatory limits.
3. In securitization transactions, however, securitization companies have great contact with the credit originating party, which may include one or several debtors, assignors and even a borrower of funds that may or may not coincide with such parties.
4. The ML/FT risk in securitization activities, therefore, is very much related to the nature of the debt and the elements that make up the backing of the receivables certificate or the issued debenture, so this is one of the main risk factors that shall be taken into account by a securitization company in structuring its AML/CFT program.
5. This exhibit, therefore, seeks to reflect the main specificities of the securitization companies and is in addition to the material prepared by the Brazilian Association of Real Estate and Agribusiness Securitization Companies (ABSia)<sup>77</sup>.

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<sup>77</sup> ANBIMA is not responsible, under any circumstances, for the content provided in the material prepared by the Brazilian Association of Real Estate and Agribusiness Securitization Companies

#### A. Securitization Companies' Internal Risk assessment: partners and transactions risks

6. As a result of a securitization company's IRA, it shall be able to structure a methodology to classify its partners (debtors, assignors and other intermediaries in the credit chain) as minimally as of a low-risk, medium-risk or high-risk for ML/FT, being allowed to develop a more complex methodology.
7. It is essential that the securitization company develops mechanisms to evaluate its partners within each stage of the transaction, so, for example, in an issue with a leading institution responsible for the distribution, it needs to make sure that this partner will be responsible for the adequate performance of the stages of get to *know your client*, as it will be the main agent to have contact with investors. For this point, therefore, we recommend that securitization companies apply to service providers the know your service provider procedures provided for in chapter 12 of the guide.
8. The risk assessment of the partners that originate the credit is also a relevant point, which is not to be confused, however, with the transaction's ML/FT risk assessment, since a partner considered to be low risk can still seek a structured transaction that may show signs of ML/FT.

#### B. Legality of source of resources underlying the transactions

9. The main element when evaluating the transaction ML/FT risk is the assessment of the legality of the source of the resources that underly the transactions.
10. In the case of real estate resources, it is necessary to assess whether the asset has any type of impediment recorded in the its documentation, as well as to understand whether there is a risk that the real estate transaction in question is somehow: (i) fraudulent; (ii) carried out in order to avoid the payment of taxes; (iii) carried out economic purposes; and/or (iv) involved in any activity that shows signs of criminal offenses.

11. In the case of resources originating from agribusiness, the fungibility of the assets transacted can be a factor that makes it difficult to identify the origin. Thus, it is always important to differentiate between tracked and untracked products, as these present greater risks of ML/FT, since when there is a link between a rural product and its origin, it is easier to validate the legality of its production.
12. In both cases, it is recommended to seek specific declarations on the lawfulness of the origin of the assets, rights and values used by the debtor and/or assignor in the operation that backs up the issuance.

#### C. Credit risk and ML/FT Risk

13. Although the ML/FT risk assessment is not to be confused with the transaction's credit risk assessment, securitization companies can make use of credit information and the transaction's legal opinion hired to support its ML/FT risk assessment.
14. On the other hand, it is important to remember that a high risk of ML/FT may also affect the credit risk of the transaction, because: (i) if it is identified that the assets may have some involvement with the ML/FT crime, they may be subject to specific precautionary measures provided for in Law 9,613/98 and even subject to forfeiture decreed by a criminal judge; (ii) if it is identified that the assets may be involved in terrorist financing actions, they may be subject to immediate freezing measures, pursuant to the terms of Law 13,810/19.

#### D. Securitization of obligated persons

15. A last point of attention concerns the nature of the activities that underlie securitization transactions. The securitization company shall pay attention to whether or not its partners are required to also have AML/CFT programs.

- 16.** It is recommended that it carries out independent investigations into the nature of its partners' business objectives, because activities such as "real estate promotion or purchase and sale of real estate" and commercialization of "high-value goods of rural or animal origin" are also activities that subject its performers to AML/CFT duties.
  
- 17.** When working with a debtor or transferor who is an obligated person, it is recommended that the securitization company seeks to ensure that its partners have adequate mechanisms in place to fulfill their AML/CFT duties.

## Exhibit VIII - Advisory Lists

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The following are some lists that we recommend that institutions search regularly in their AML/CFT program.

1. <https://register.fca.org.uk/s/> - UK Financial Conduct Authority (FCA).
2. <https://sanctionssearch.ofac.treas.gov/> - US Office of Foreign Assets Control (OFAC).
3. <https://www.fincen.gov/msb-state-selector> - US Financial Crimes Enforcement Network (FINCEN)
4. <https://ec.europa.eu/transparencyregister/public/consultation/search.do?locale=pt&reset=> - Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)
5. <https://www.worldbank.org/> - World Bank
6. <https://siscoaf.coaf.gov.br/siscoaf-internet/pages/cadastroPO/tipoPO.jsf> - Police and regulatory authority agencies of each local jurisdiction, slave labor lists
7. <http://www.portaltransparencia.gov.br/download-de-dados/ceaf> - Registry of Expulsions from the Federal Administration (CEAF)
8. <http://www.portaltransparencia.gov.br/sancoes/ceis?ordenarPor=nome&direcao=asc> - Registry of Disreputable and Suspended Companies - CEIS
9. <https://servicos.ibama.gov.br/ctf/publico/areasembargadas/ConsultaPublicaAreasEmbargadas.php> - Environmental embargoes of acquisition origin (IBAMA)
10. <http://www.portaltransparencia.gov.br/sancoes/cepim?ordenarPor=nome&direcao=asc> - Prevented Private Non-Profit Entities (CEPIM)
11. <http://www.portaltransparencia.gov.br/sancoes/cnep> - National Register of Punished Companies (CNEP)
12. <https://www.interpol.int/How-we-work/Notices/View-Red-Notices> - INTERPOL
13. <http://www.fazenda.gov.br/assuntos/atuacao-internacional/prevencao-e-combate-a-lavagem-de-dinheiro-e-ao-financiamento-do-terrorismo> - Other international AML/CFT organizations

14. <https://www.un.org/securitycouncil/content/un-sc-consolidated-list> - United Nations Council
15. [https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc(fatf_releasedate)) - FATF List
16. <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=16002>.  
- Federal Revenue rules containing countries, jurisdictions, dependencies or locations with favored taxation and subject to privileged tax regimes
17. <https://www.listadevedores.pgfn.gov.br/> - list of debtors with active debt from the Union and FGTS