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ALERT

REAL ESTATE INVESTMENT FUNDS^(*)

On October 31, 2008, the Brazilian Securities Exchange Commission (“CVM”) issued Rule No. 472 (“ICVM 472”) which introduced significant changes in the regulation of Real Estate Investment Funds (“FII”, similar to the US REIT – Real Estate Investment Trust) by updating and modernizing the rules applicable to the FII, in line with CVM Rule No. 409, dated August 18, 2004 (“ICVM 409”), and CVM Rule No. 400, dated December 29, 2003 (“ICVM 400”). ICVM 472 revoked CVM Rule No. 205, dated January 14, 1994 (“ICVM 205”), the former CVM rule applicable to the FII.

The main innovations and changes may be summarized as follows:

More expeditious filing with the CVM

CVM’s authorization for the FII’s organization and commencement of its operation and the filing with the CVM of the subsequent issues of the initial public offering of shares will now be granted automatically within five (5) business days as of the date of the filing of the respective requests for the authorization for the FII’s organization and for registration with CVM of the public offering of the FII’s shares, provided that all documents required under ICVM 472 are submitted to the CVM.

Any new placement of shares will be subject to the subscription or total cancellation of the previous placement.

The registration of first offering of shares with the CVM will be subject to the prior examination by the CVM within twenty (20) business days from the date of filing by the applicant pursuant to article 8 of ICVM 400.

Partial placement of shares

In accordance with article 30 of ICVM 400, the partial placement of the FII’s shares is permitted if the FII Regulation establishes a minimum subscription amount. In the event of a specific real estate project underlying the FII’s shares, such minimum amount must be sufficient to enable the completion of the real estate project.

If the minimum amount so established is not reached, then the FII’s administrator will be required to split the funds received by virtue of the subscriptions made in proportion to the shares paid in by

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São Paulo: Av. Paulista, nº 1294 - 2º Andar - Cerqueira César - 01310-915 - SP. Tel: +55 (11) 3141-9100 / Fax: +55 (11) 3141-9150
Rio de Janeiro: Av. Almirante Barroso, nº 52 - 22º Andar - Centro 20031-000 - RJ. Tel: +55 (21) 2156-7500 / Fax: +55 (21) 2220-3182
Brasília: SCN, Quadra 05 - Bloco A – Sala 1217 - T. Norte - CEP 70715-900 - DF. Tel.: +55 (61) 3033-3390 / Fax.: +55 (61) 3033-2855
Campinas: Av. José de Souza Campos, 900 Sl 65, 13092-110 - Campinas, SP Tel.: +55 (19) 3512-5600 / Fax: +55 (19) 3512-5605
Washington, D.C.: 1725 I Street, N.W. - Suite 300 - 20006 - USA. Tel: +1 (202) 331-2492 / Fax: +1 (202) 331-2493
Shanghai: 5/F Standard Chartered Tower, 201 - 200120 Shanghai, China Tel.: (+86) 21 6182 6801 / Fax: (+86) 21 6182-6777
Düsseldorf: Kaiserswerther Str. 199 40474 Düsseldorf Tel.: +49 (0) 211 687-857-78 / Fax: +49 (0) 211 687-857-79

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the investors. If it happens in the initial public offering of shares of the FII, the administrator must also liquidate the FII.

Expansion of the list of investments FII is allowed to make

ICVM 472 expanded and improved the list of investments permitted to the FII¹. For instance, now investments in shares of other FII, certificates of real estate receivables (CRI), and in shares of credit investment funds (FIDC) have been allowed; *provided that*, investments in shares of a FIDC will be condition on such FIDC adopting an investment policy that exclusively provides for the activities allowed to FII, *provided that* the issuance and trading of shares of such FIDC must have been registered with the CVM. The expansion of the investment list makes the FII portfolio management more flexible and dynamic, thus giving the fund's administrator a wider range of investment possibilities with the use of the fund's assets.

Purchase of encumbered real property

The FII now may purchase real properties encumbered by collateral (more specifically, '*in rem*' guarantees), *provided that* such collateral has been created before the respective real property was acquired by the FII.

Limit to risk concentration

Paragraph 5 of article 45 of ICVM 472 clearly states CVM's concern with limiting the risk of the FII to a few issuers. As mentioned above, article 45 of the ICVM significantly expanded the list of investments permitted to the FII. However, such Paragraph 5 establishes that the FII that predominantly invest in securities must comply with the limits of investment per issuer and type of financial assets as provided in ICVM 409². The FII's administrator will be subject to the rules of disqualification and re-qualification also set forth in ICVM 409³.

However, such limitation does not apply to the following investments: (i) shares of equity investment funds (FIP) which adopts an investment policy that exclusively provides for activities allowed to the FII; (ii) shares of stock investment funds which invest exclusively in civil construction or in the real estate market; (iii) shares of other FII; (iv) CRI, and shares of a FIDC which adopts an investment policy that provides for activities allowed to the FII, *provided that* the issuance and trading of shares of such FIDC must have been registered with the CVM.

¹ Article 45 of ICVM 472.

² Articles 86 and 87 of ICVM 409.

³ Articles 88 to 91 of ICVM 409.

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Appraisal report for the payment of shares with real properties and related rights

The appraisal report of the real properties and related rights used for the payment of FII's shares still remains mandatory, pursuant to article 12, main paragraph, of ICVM 472.

The approval of the appraisal report for an existing FII is now incumbent upon the shareholders' meeting (no longer the responsibility of the FII's administrator), as previously provided in ICVM 205. Although the administrator is no longer responsible for the approval of the appraisal report, the administrator must take all precautionary steps and act with high standards of diligence to ensure that the information contained in the report is true, consistent, correct and sufficient, being liable for any omission in the discharge of its duties, pursuant to Paragraph 1 of article 12 of ICVM 472.

The appraisal is to be prepared by a specialized firm, rather than by three (3) experts, as previously required by ICVM 205.

Required information to be included in the FII prospectuses

ICVM 472 introduced Attachment III-B to ICVM 400. This attachment establishes the minimum required information that must be stated in the FII prospectuses, including the investment policy, description of the real properties comprising the FII assets, FII operational data, identification of the persons responsible for the analysis and selection of the investments in real estate developments, and information on the possibility of partial placement of the FII's shares (as mentioned herein above).

Mortgage Companies

The mortgage companies are now allowed to manage the FII pursuant to article 28 of ICVM 472. The other institutions also allowed to manage the FII, as previously provided in ICVM 205, have been unchanged.

Communication between the investors and the administrator via e-mail

The utilization of electronic mail for communications between the administrator and the investors (shareholders) has been authorized, subject to the prior consent of such investors. Such innovation was introduced as a means to render the communication between the administrator and the investors more expeditious and efficient, so that the latter may become aware of the decisions made by the administrator and are given an opportunity to express their opinions to the administrator in a faster and more efficient manner.

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Charges on the FII

In line with the provisions concerning the charges on funds under ICVM 409, article 47 of ICVM 472 established the provisions applicable to charges on the FII.

The great innovation introduced by ICVM 472 is to allow the administrator to establish that portions of the management fee may be paid directly by the FII to the service providers that have been retained by the FII.

FII for qualified investors

ICVM 472 provides for the organization of FII aimed exclusively for qualified investors⁴. Such FII is provided with greater structuring flexibility as compared to other FII and may, as long as it is allowed in its Regulation: (i) admit the utilization of bonds and securities for the payment of its shares, *provided that* specific and precise criteria for the adoption of such procedures are established in the FII Regulation; (ii) waive the preparation of a prospectus; (iii) waive the publication of notices of the beginning and ending of the placement of shares by the FII; (iv) waive the preparation of an appraisal report for the purposes of payment of shares with assets and rights, without prejudice to the capacity of the shareholders' meeting to manifest itself on the value ascribed to such assets and rights; and (v) provide for the existence of shares with special rights or characteristics as to the priority in the payment of the regular income, in the reimbursement of the shares' amount or in the payment to the shareholders of remaining amounts due to the FII's liquidation.

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() This Alert has been prepared by Maria da Graça Pedretti and Marcelo Cosac, partners in charge of the banking law and capital markets department of Felsberg, Pedretti, Mannrich e Aidar Advogados e Consultores Legais.*

⁴ Chapter XII of ICVM 472.