

## **LEGAL ASPECTS OF INTERNET STOCK TRADING IN BRAZIL**

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## **INTRODUCTION**

Cesare Calari, Vice-President of the Financial Sector of the World Bank states that the electronic financial services, offered online through cell phones or any other remote mechanism, has rapidly spread during the last years. This “*e-finance revolution*” occurring at the financial sector, is dramatically changing the structure and nature of the financial services all over the world<sup>1</sup>.

In fact, Internet is fomenting a technological revolution without precedents at the financial and securities markets, never seen before at these markets, and has been the theme of discussions within the academic and governmental environments all over the world. Nowadays, in Brazil, the economical and social consequences and the impacts of this new technology at the law area are being discussed with great interest, aiming the solutions and even new concepts in order to peacefully live with this new phenomenon and with all the consequences it brings to our daily life.

Therefore, this is the moment to face some legal matters that I consider important to better understand the mechanisms of buying and selling stocks via Internet, a reality made available by São Paulo Stock Exchange (BOVESPA)<sup>2</sup> and the brokerage firms. This new and efficient channel to access the Brazilian securities, is leading to a real democratization of this market in Brazil, especially among individuals.<sup>3</sup> Then, in this article I will try to answer some questions which I strongly believe will lead the readers to a brief but clear legal understanding of trading stocks via Internet, in Brazil. Here are the questions: Are stocks traded at BOVESPA markets via Internet legally valid? What is BOVESPA’s role, as a self-regulatory body of the Brazilian stock market? Must the Brazilian legislation undergo any alteration? If not, why not? If yes, which are the vulnerable points?

The structure of the Brazilian stock market will be presented in item 1. In item 2, I will be explaining the concept of Internet in Brazil and the relevant legal aspects it has risen. Finally, in item 3, I will be stating the legal and operational aspects that are directly affecting the buying and selling of stocks via Internet in Brazil.

### **1. THE STRUCTURE OF STOCK MARKET IN BRAZIL**

#### **1.1. Main rules that have been legally structuring the Brazilian capital market**

Brazilian securities<sup>4</sup> are legally oriented by the constitutional principles established in article 192 of the Federal Constitution of 1988 (CF/88) and basically structured by five federal laws, Resolutions from the National Monetary Council and Instructions from the Securities Commission.

The Article 192 of CF/88 legislates on the national financial system that should be structured in order to evenly promote the development of the Country and, at the same time, serving the interest of the community.

The above mentioned article must be ruled by a complementary law. Nevertheless, the Legislative has not issued the referred law, hypothesis where the former laws that regulated the structure of financial and capital markets were understood by the Brazilian Federal Constitution as complementary laws.<sup>5</sup>

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<sup>1</sup> Calari, C. Foreword in Stijn Claessens; Thomas Glaessner; Daniela Klingebiel. *Electronic Finance. A New Approach to Financial Sector Development?* World Bank Discussion Paper n. 431. Washington, D.C., 2002.

<sup>2</sup> The largest Stock Exchange of Latin America and the sole Stock Exchange in Brazil, where the stocks are negotiated. We are not considering "A Nova Bolsa".

<sup>3</sup> Internauts negotiate R\$24.74billion reais and hit the record of BOVESPA, in February. *Folha Online*, 07.02.2008.

<sup>4</sup> According to professor Dr. Roberto Quiroga Mosquera of Fundação Getúlio Vargas in São Paulo, in his book *Taxation on the Financial and Capital Markets. Dialética, São Paulo, 1st. Ed., p. 23*, capital market, also known as securities market is: "(...)a set of operations, carried between individuals and/or companies, consisting in the capturing of capitals in a direct way among the savers of financial resources and the borrowers of capital, in which the financial entities are intervenient at the deals, and this market is oriented by protectionism principles of the popular economy and of the stability of the financial community and under the legal system of the capital market rights."

<sup>5</sup> According to Roberto Quiroga Mosquera. *Taxation on the Financial and Capital Markets - Dialética, São Paulo, 1<sup>st</sup>. ed., p. 30.*

Law 4.595/64 rules the policies and the financial, banking, credit and regulatory institutions from financial market. It disciplines the national financial system, especially the banking and credit institutions in general. This law, among other dispositions: a) has structured the national financial system and has given concept of its agents, that is, the public and private financial institutions in general that belong to the financial market; b) has created the National Monetary Council (CMN), establishing its policies, competence and constitution; c) has created the Brazilian Central Bank (BACEN) and in the same way, established its competences, income and administration; d) has given concept to what is considered a financial institution; e) has ruled the norms of action, competence, legal way, and other norms applicable to the financial institutions; and f) has established penalties applicable to the administrators of these institutions.

Law 4.728/65 has disciplined especially the Brazilian capital market. This law has regulated the following issues, pertaining to this market: a) administrative entities responsible for the regulation from capital market and the financial market; b) constitution, organization and functioning of the Stock Exchange; c) constitution, organization and functioning of the Brokerage Firms; d) regulation of the intermediation activities, subscription and distribution of securities; e) access to the financial and securities market; f) securities feasible to be issued by participants of this market; and g) constitution of investment funds.

Law 6.385/76<sup>6</sup> that altered Law 4.728/65, still valid and that has restructured the stock market, as it is known nowadays. Before issuing this law, the stock market was regulated and controlled by BACEN (Central Bank) that, under the supervision of CMN, simultaneously controlled the financial and stock markets. According to this law, BACEN no longer regulates or controls the stock market, which was delegated to the newly-created Securities Commission (CVM), which structure and way of acting is equivalent to the *Securities and Exchange Commission (SEC)* that regulates and controls the American stock market.

CVM started to regulate the issues stated in Law 6.385/76 and in the Law of Public Companies - Law 6.404/76, observing the policies defined by CMN. CVM should also permanently monitor the activities and the services of the capital market, as stated under article 1 of the above mentioned law, such as: a) issuing and distribution of securities in the market; b) dealing, and intermediation in the securities market; c) organization, execution and operation at the stock exchange; d) the administration of portfolio and custody of securities; e) auditing of public companies; and f) services of security consultant, transmission of information related to the stock market to the people involved and the securities dealt, including stocks.

Law 6.404/76<sup>7</sup>. This law has established the general rules pertained to: a) the characteristics and nature of the public companies; b) the formation of the business organization capital; c) securities; d) the constitution of the company and to its social books; e) the shareholders; f) the divisions of the company; and g) the groups and consortium of organizations.

## 1.2. National Monetary Council (CMN)

CMN is a collegiate entity, which members are indicated by the President of the Country (article 2<sup>nd</sup> of Law 4.595/64). It is the uppermost agency of the national financial system, with the main target of formulating the currency and credit policies.

CMN main objectives are: a) to adapt the volume of means of payment to the actual needs of the national economy; b) the best use for the foreign currency resources, in order to achieve the equilibrium of the balance of payments; c) offer the perfection of the institutions and of the financial tools aiming the efficiency in resources mobilization towards productive activities; and d) coordinate the currency credit, budget, fiscal policies as well as the internal and external Brazilian public debt.

Law 6.385/76 enlarged the competencies of the CMN, and these are the new functions: a) to define the policies to be observed at the organization and the functioning of the capital market; b) to regulate the use of credit in this market; c) to establish the general orientation to be observed by CVM in the exercise of its attributions; d) to define CVM's activities to be exercised together with the Brazilian Central Bank; and e) to approve the CVM staff and its regulations. We came to the conclusion that CMN is the agency responsible for establishing the general rules of the financial and capital markets on their different aspects.

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<sup>6</sup> That Law was altered by Law 10.203/01.

<sup>7</sup> That Law was altered by Law 10.203/01.

### 1.3. Securities Commission (CVM)

It is CVM's competence to regulate Laws ns 6.385/76 and 6.404/76. It holds the power of: a) ruling over the capital market; b) monitoring the activities and services of this market at the public companies and at the ledger and documents, as well as the people related to the securities distribution system (for example: Brokerage Firms – articles 9th, I and 15); c) notifying investors, directors and other administrators of the organizations that are part of the distribution system, in order to give information, to gather information at any public agency, governmental unit or public organization. CVM holds the power of determining the re-issuing of information divulged by the public companies (see article 9th, II, III and IV); d) recording, as an entity of the register instituted by Law 6.385/76, e.g., the registration of a public company and the registration of issuing of securities; and e) instructing the capital market to restrain and verify illegal activities and non-equitable practices, as well as applying penalties (article 9th, V and VI).

It is important to clarify that up to the issuing of Law 10.303/01, CVM's competence was restricted to shares, private bonds, subscription bonus and Founder's Shares and in further legislations that had succeeded and had defined new securities. Now, it could regulate and monitor all financial assets inserted in article 2nd, IX, where securities are considered as:

*“IX – when openly offered, any other securities or collective investment agreement, which generates right to share, partnership or remuneration, inclusively when resulting of services, when the income derives from the effort of the entrepreneur or from third parties.”*

according to the American Law, that for a long time has already granted a larger and more flexible concept of securities through Howey Case, in the 40's (1946 – *Case S.E.C. v. W.J. Howey Company*). Good examples of securities, according to item IX above, are the shares of funds based on commodities products. A considerable widening of CVM's jurisdiction was verified referent to the regulation and monitoring of securities and financial assets in general, in relation to BACEN, which regulates and instructs the market of notes, local, state or federal government bonds.

## **1.4. Stock Exchange**

The advent of the Stock Exchange is intimately linked to the advent of the Brokerage Firms. Independently of the Country, the model is similar when we analyze the creation of stock exchanges in a historical perspective. The physical concentration of Brokerage Firms has formed the base of the Stock Exchange. The Brokerage Firms, which were able to mobilize the greatest number of operations, formed a closed group, inhibiting the pulverization of transactions. With the concentration of Brokerage Firms in Brazil, during the second half of the 20<sup>th</sup> Century, the Government started to be interested in the volume of deals led by these Brokerage Firms, by the quotation of the government bonds and the notes, mainly with the payment of taxes made by these Brokerage Firms.

Therefore, the Government started to regulate the Brokerage Firms' activities in order to monitor their activities. Rio de Janeiro Stock Exchange, created through Decree 6.132/1876, was defined by Decree 2.475/1897 as a place designated to operations of purchasing and selling government bonds, bank and companies' shares, securities and precious metals. Later on, Law 1.344/39 has characterized the Stock Exchange as Brokers Assembly, and Decree 10.197/39 of São Paulo State has reported the São Paulo and Santos Stock Exchange among the agencies integrant of the Treasury Department.

After that, article 1st. of Law 2.146/53 has designated them as auxiliary institutions of the public authority, monitoring the launching and issuing of securities. Then, Stock Exchange is not considered as a financial institution. It is not part of its role to intermediate the purchasing and selling of securities, but to regulate and monitor the Brokerage Firms, who are, in fact, the financial institutions.

Nowadays, the rule that regulates the constitution and functioning of Stock Exchange is Instruction CVM number 461/07. It states that the Stock Exchange could be constituted as a public company. BOVESPA that instituted the trading system via Internet, in Brazil, is a public company. The concept of the Stock Exchange as self-regulatory entity will be studied in item 3 of this article.

### **1.4.1. Electronic Trading**

Different from the open outcry (there are not open outcry at BOVESPA anymore), known through the press and TV media, where several representatives of the Brokerage Firms run and shout to buy or sell stocks, the electronic trading systems are discreet and more and more responsible for the increasing number of investors in the capital market. Among some of the electronic trading systems in the world, BOVESPA's electronic trading system is very important, based on the technological platform formerly developed by the Paris Stock Exchange (nowadays NYSE Euronext), denominated *Mega Bolsa*<sup>8</sup>, which automatically manages the tradings operated by the Brokerage Firms.

#### **1.4.2. Cash and Option markets administrated by BOVESPA**

The Cash Market is the cash purchase or sale of a given number of shares, at a price set on trading floor sessions, by electronic system. The deals in this market are closed within 3 (three) working days, i.e. the buyer and the seller deliver their shares and their money at the third working day of their deal. The prices are set by the value of the day, more precisely, at the moment of the deal.

At the Option Market the rights to buy or sell shares are traded. These are the rights of one to buy or sell to the other until a certain date, a number of shares according to pre-established prices, by paying the share price in one sole time. For these rights, the holder of a share pays a premium. Thus, one may exercise it according to the future conditions of the market. At the buying option, there is the right given to the owner of the option to buy from a certain seller, already contracted, a certain amount of a determined share at a pre-determined price, and there is even a pre-determined date.

At the selling option, there is the right from the owner to sell to the buyer, previously contracted, exercising the right of demanding that the buyer must acquire a certain amount of a specific share, at a pre-determined price and at a pre-determined date.

#### **1.5. Securities Broker Dealers (BROKERAGE FIRMS)**

According to Maria Barbara Levy, professor of Economic History at Pontifícia Universidade Católica in Rio de Janeiro (PUC/RJ):

*“The brokers run from one location to another looking for purchasers or sellers of a small variety of merchandising, currencies, stocks and securities. The scarcity of communication contributed to limit the amount and the rhythm of the deals. According to the semantical origin of the word broker, this intermediate needed to effectively run. He was the physical way of communication, the information link .”*<sup>9</sup>

The BROKERAGE FIRMS have started in Brazil as the public fund broker, at the 19<sup>th</sup> century. At 20<sup>th</sup> century the broker as an individual and as a lifetime public service was appointed by the President and this indication was referred by the Minister of the Treasury, demanding especial conditions for the exercise of this function. The Law 6.385/76 extinguished this feature of the public fund broker. Today they are defined as Brokerage Firms and may be constituted as private companies, public companies or companies with limited liabilities.

Among the different operations under which they may act, we can point out: a) to operate in a location or a system maintained by the Stock Exchange; b) to intermediate securities publicly traded; c) to buy and sell securities under their own or by third parties, observing the CVM and BACEN regulations, according to their area of competence; and d) to administrate portfolio and custody of securities. Nowadays, the constitution and functioning of Brokerage Firms are ruled by CMN's Resolution number 1.655/89.

## 1.6. Shares

Shares are securities (article 2nd, I, Law 6.385/76) and so they can be traded at the Stock Exchange. The Business Corporation is basically a division of capital in equal parts denominated shares. The share represents a part or a unit of this capital. It means the contribution of the shareholder to the formation of this capital, either in money or in asset.

Modesto Carvalhosa defines shares:

*“(...) the interchangeable fraction of a social capital, representative of the rights and liabilities of the shareholder<sup>10</sup> .”*

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<sup>8</sup> *Mega Bolsa will be studied in item 3 of this article. It is one of the technological basis of the Home Broker.*

<sup>9</sup> *História da Bolsa de Valores do Rio de Janeiro. IBMEC, Rio de Janeiro, p.4.*

<sup>10</sup> *Comentários à Lei de Sociedades Anônimas. Editora Saraiva, São Paulo, 2nd. ed., p. 187.*

It is important to clarify that nowadays, the shares traded at BOVESPA are no longer represented by share certificates, but they are dematerialized, represented by balance, such as bank balance, positioned as custody at the Brazilian Clearing and Depository Corporation– CBLC, the company responsible for clearing and settlement of BOVESPA's tradings.

## **2. INTERNET AND ITS RELEVANT LEGAL ASPECTS**

Below are the instrumental considerations relating to the main issue of this study. I believe that, from there on, we will be able to deal with the purchasing and selling of shares via Internet, in a safer way.

### **2.1. Concept of Internet**

Although being known and many times pointed by jurists, lawyers and judges, it must be given concept to the word Internet, as we can misplace the object of this study. Therefore, below are some considerations about Internet.

Historically, Internet was initiated in the United States, patronized by the Ministry of Defense. At the end of the 60's a net of computers was created for scientific studies by the *Advanced Research Project Agency – ARPA*. The objective of the Ministry of Defense was to create an efficient, flexible and decentralized net communication, linking the different agencies and people related to the North-American military structure through the computer. Thus, in the case of a partial destruction of the conventional military communication structure, the continuity of communication between the electronic systems related to the Army and the transference of military data would be assured.

Steadily, the net of communication created until then was being used at the academic environment, too. It was being used to transfer scientific data and for communication among scientists. Smaller telecommunication nets were created linking more computers until the 90's, when telecommunication cables, duly connected and structured, allowed the linking between different computer nets. This way, with the union of IT resources (computers and software) and telecommunications, there was a large diffusion of computer nets and the interchange of information among them, leading to the Internet, as it is known nowadays.

I want to clarify in advance that the definition of what Internet is and the concept derived thereon, will be always linked to strictly technical terms imported from IT and from telecommunications. Even the concept stated at the rule that we will see soon, is full of terms and technical words in English. Thus, we will see these words several times, but they do not have similarity in Law.

According to Rule 4/95<sup>11</sup>, which regulates the use of the Telecommunication Public Net to provide and use the Connection Services to Internet:

*Internet: generic name designating the set of nets, transmission and commuting means, routers<sup>12</sup>, equipments and protocols<sup>13</sup> necessary to the communication between computers, as well as software and the data comprised in these computers.”*

Therefore, Internet is nothing more than a whole set of equipment and software coming from IT and telecommunications that united allow us to communicate with several individuals or companies worldwide, if we desire so. The next and natural step would be the use of Internet as a tool for the accomplishment of deals, and why not, to purchase and sell shares via Internet.

## **2.2. Concept of Document**

In general, people have the wrong notion that the document is something materialized in paper. Then, it is important to revise this notion so as the new technologies, which can support messages, facts and intentions were not disregarded.

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<sup>11</sup> Rule 4/95 was created by Administrative Rule 148, of May 31, 1995, of the Ministry of Telecommunications, which regulated the use of the means to the Telecommunication Public Net for the access to the Internet.

<sup>12</sup> Routers are equipment physically located at large enterprises, such as telecommunications and services to access Internet. The routers are responsible for the direction of data that circulate inside the communication cables between the computers as light or electric power.

<sup>13</sup> Protocols are responsible for the way the information and data in general are transported through traditional and optical fiber cables of the telecommunication companies. This way, similar to a kind of “language”, they establish, for example, the velocity and the security in which the information and the data are transported by Internet.

According to Moacyr Amaral Santos, former Minister of the Supreme Court, a document:

*“(...) in a wide sense is the thing that represents and is able to reproduce the manifestation of a thought. There is to say, a thing that represents ideas or facts. Transporting this concept to the field of legal proof, which object are facts, and in relation to which the ideas are also faced as facts, one can say that a document is a thing that represents a fact<sup>14</sup> .”*

To Giuseppe Chiovenda, document is:

*“(...) any material representation aimed to reproduce a certain manifestation of thinking (...)<sup>15</sup>”.*

We come to the conclusion that the document can never be confused with a paper. Therefore, document can be considered the way that the fact, the intentions or the thoughts are expressed, be it materialized in paper, magnetic disk or in a way of machine language, that is, the one understood solely by computers.<sup>16</sup>

Professor Newton de Lucca concluded:

*“(...) there is not, truly, an ontological difference between the traditional notion of a document and the new notion of electronic documents. These last ones will effectively be the real representation of a fact, but not in a graphic way. Therefore, the difference will only be in the support of the real way to be used, and not represented by paper but by diskettes, rigid disk, tapes or magnetic disks, etc<sup>17</sup> .”*

### **2.3. Separation between means and message**

Starting at a correct notion of document, we can clearly observe that today the message can be expressed by any means, provided it turns to be perceptible to the human senses. Message is not linked to the paper in a non-dissociable form. The civilization has structured itself based on material or physical things (examples: gold and diamonds). Until then, the values were linked to something “real”, physic and tangible. Professor Dr.

Professor Marco Aurélio Greco, calls our attention to the change in this paradigm:

*“(...) Means and messages at the human history have always coexisted, starting from the occurrence of a communicative relation. The great change verified during the last years was that the information (message) has acquired its own value, independently of the physical support in which it is transmitted. This change leads to delicate legal problems related to the actions taken from a long distance or through electronic equipment<sup>18</sup> .”*

It is my understanding that this change of paradigm does not and will not reach the Law, when it refers to transmission of messages, as the supporting means could be physical or not. Contracts are a good example, as they are not confused with their supportive means (example: paper), and could be inclusively verbal. An example of this statement is the buying and selling of shares at the Stock Exchange outcry. Since the creation of the Stock Exchange, the deals were verbally expressed. Investors send verbal orders to the traders to make purchase and selling transactions of shares. The traders execute this purchase and selling transactions, according to the intention of the investor.

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<sup>14</sup> *Primeiras Linhas de Direito Civil. São Paulo, editora Saraiva, 2nd. vol., 1997, 18th edition, p. 385.*

<sup>15</sup> *Instituições de Direito Civil, São Paulo, editora Saraiva, 1965, p. 127.*

<sup>16</sup> *That is the binary language, a specific language used to create software to be used in computer.(example: Windows operational system).*

<sup>17</sup> *Lei & Internet – Aspectos Legais Relevantes, São Paulo, editora EDIPRO, 1st. ed., p. 44.*

<sup>18</sup> *Transações Eletrônicas. Legal Aspects, São Paulo, Revista de Direito Bancário, do Mercado de Capitais e de Arbitragem n. 8, 2000, p. 60 and next.*

When treating with Contract, Professor Orlando Gomes explains that:

*“In practice, the word Contract is used in distinct meanings, to designate legal bilateral trades as a generator of obligations or the instrument to formalize, as a deed, a private written of style, a simple missive or a receipt. At the current language, this synonymous is generalized in a way that the layman supposes that there is not any contract if the agreement of intentions is not reduced to writing. The contract is celebrated either in this way or verbally. It is not the written way that creates the contract, but the liaising of two convergent declarations of intentions, issued with the proposition of constituting, ruling or extinguishing a legal patrimonial relationship of mutual convenience between the declarants”<sup>19</sup> (g.n.).*

The conclusion is that the Contract is not the paper. This is only the means of manifesting the intention of the parts. We can have several Contracts in one sole physical instrument, be it in paper or not. Therefore, the Contract has never been confused with the paper or with its support.

People that have always been concentrated in the materiality of instruments representative of the parts interests are facing today the complete dematerialization of the legal relationships. They are progressively dismissing the physical support (example: paper). It is worth mentioning that the Copyright Law, where the work is more important than the supportive means, the image rights and the moral damage, for instance, clearly demonstrate that Law deals with abstract concepts.

Nowadays, what occurs is a distancing between the message and its support. That one starts to have its own life. Internet and technology are carrying the abovementioned concepts to its utmost degree of application in our day to day living. The concepts that were strictly theory used solely to better situate lawyers and judges, are now raised when Internet and Law are the issues being studied or discussed.

The diskette and the *hardware* are simple supports, the means being used to pass the message, the reflection of human intention. Then, the database, the financial record of bank operations and the shares, representatives of the capital of the business corporation, which are dematerialized (bank records) start to have their own value, above the physical mean.

Another important consequence is that the proof of facts will not be confused with the documents identifiable with the paper or any other physical mean. The investigation will start to play a fundamental role in the elaboration of proof of facts. Finally, we can conclude that the message can be created, treated, stored and transmitted independently of the supportive mean.

## 2.4. Electronic Contracts and the Proof of Execution

Today, we buy different kinds of goods and we pay through credit or magnetic cards. The magnetic cards are being used as electronic checks for the purchasing and selling of any kind of goods and for the contracting of any kind of services.

By accessing Internet and visiting a bookstore *website*<sup>20</sup> that exposes its books, one can choose the most enjoyable book, and through a series of clicks and insertion of the numbers of the credit card in specific fields, created for the payment of the goods, the purchase and sale contract is executed, the same way of a purchasing of a book in the bookstore physically installed on any street or Shopping Mall. One can also access the website of a Bank and contract the services of administration of resources or the application of investment funds. In the essence of these transactions there are the purchase and sale contracts, electronically executed.

Semy Glanz, Associate Justice of the Supreme Court of the Rio de Janeiro State, defines the Electronic Contract:

*“Electronic Contract is the one executed by the means of a computer program or any appliance with those programs. The signature is not required or a codified signature or password is required<sup>21</sup> .”*

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<sup>19</sup> *Contratos, São Paulo, editora Forense, 17th ed., p. 9.*

<sup>20</sup> *English word that means place or localization. This word is used mainly to designate the place without physical existence, where information and products of a certain store can be visualized. These information and even the products are visualized on the computer screen. Many sites or websites include illustrations representative of the goods.*

<sup>21</sup> *Contratos Eletrônicos, São Paulo, Revista de Direito Bancário, do Mercado de Capitais e de Arbitragem n. 7, 2000, p. 15 and next.*

The definition given by the Associate Justice Semy Glanz requires some explanations. Computer Program would be those commands written under a certain machine language which inserts instruction at the computer for the fulfillment of specific activities, such as operational systems, word processor, spreadsheets and programs to navigate through the Internet. The codified signature or password is the one elaborated by the means of cryptograph system.<sup>22</sup>

Olivier Iteanu, lawyer, responsible for the course of Information Technology at the French School from Paris Bar Association (*Ecole Française des Barreux*), defines the Electronic Contract:

*“The contract of electronic trade could be defined as a matching of an order of goods or services, expressed in an audiovisual way, through an international net of telecommunication and an acceptance susceptible of being manifested through interactivity<sup>23</sup> .”*

According to article 82 of the former Brazilian Civil Code dated 1916 and to article 104 of the recent Code, issued in 2002, the validity of a legal action requires a capable agent, a licit object and a prescribed form or non-defense by law. The article 129 of the former Code and the article 107 of the recent Code establish that the validity of declaration of intention shall not depend on a special form, or when otherwise expressed by law.

Based still on the Brazilian Civil Code of 1916, which regulates the legal actions, the article 1.086, at the beginning of the 20<sup>th</sup> century, regulated the trades carried through long distance. The contracts executed by telegraphic mail became perfect with the express acceptance of the acceptor, which letter was delivered to the proponent.

Besides, the Brazilian Civil Code of 1850, states in article 127 (revoked by the recent Civil Code) that the contracts by letter were considered concluded and obligatory provided that the party that receives the proposition delivers a letter of acknowledgement, accepting the proposed Contract without any condition or reserve.

In fact, we conclude that there is no legal impediment to the execution of the so called Electronic Contracts. That is, there is no impediment to the execution, as long as it is possible to prove: a) the existence; b) that the agent was qualified; and c) that the object was licit. Nevertheless, is it safe to execute a Contract through Internet?

We can note that the Brazilian Civil Code, in the former edition of 1916 or in the recent one, allude to the express acceptance of the acceptor and to the delivery of the letter. It is clear that at the end the 19th century and the beginning of the 20th, the legislators, as well as the contractors could not imagine another support to the messages or the Contracts but the paper. Nowadays, the parts could get legally connected by any other means, but these means are difficult to be proven. This is the question.

We conclude that the legislation has never prohibited the execution of the Electronic Contract, but we have to prove its existence and we must answer the abovementioned question. Then, the banks and the securities agencies, for example, must be certain that they are contracting with a qualified person, individual or representative of a company, as the other party. As for the licit object, it cannot be prohibited or cannot attempt against moral or be of indecent assault.

Finally, as for the form, a Contract cannot be executed through other means but those foreseen by law. As for this point, I want to point out that the purchase and sell of a real estate has to be done through a deed and registered at the Register of Deeds.

In other words, I state that the crucial question of the transaction of purchasing and selling of goods is the proof, be it shares or not. An e-mail could be altered or modified without causing perceptible alterations. On the other hand, the paper brings itself the proof of alteration or falsification. In contracts executed in paper, the message remains overlaid, as well as the signatures are handwritten. The paper, which physically represents the contract, is the documentary proof, required in any trial of legal litigation.

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<sup>22</sup> Decree 3.587/2000 that establishes the rules for the Infrastructure of Public Key of the Federal Executive – ICP-GOV, defines cryptography as a discipline, which regulates the principles, means and methods of transforming data, in a way to protect the information against non-authorized access of its context.

<sup>23</sup> *Internet et le Droit*. Paris: Eyrolles, 1996, p. 23-27. This is the text in French:

“Le contrat du commerce électronique peut se définir comme la rencontre d’une offre de biens ou de services qui s’exprime sur un mode audiovisuel au travers d’un réseau international de télécommunications et d’une acceptation que est susceptible de se manifester au moyen de l’interactivité” (*op. cit.*, p. 27).

The answer remains at the technical investigation. Article 332 of the Brazilian Civil Process Code does not adopt an enumeration as for the kind of proof, so the investigation is perfectly admissible:

*“(…all the legal means, as well as morally legal, although not specified hereto, are able to prove the truth of facts on which the action or the defense is being based.”*

Nevertheless, even to prove an action through technical investigation, some careful steps must be taken. If not, we will be facing evidence, but not proof.

#### **2.4.1. Digital Signature**

Ruy Rosado, the former Minister of Higher Court of Justice, explains that <sup>24</sup> :

*“The consumer must be aware that a modern system exists, and has been adopted in other countries, denominated cryptography. Only through cryptography it is possible to control the authenticity and the truth the information inserted in the clauses of the electronic document.”*

*(…)*

*Without the use of the cryptographic signature, it is not possible to obtain an electronic document with a legal proving force.”*

Based on Minister Ruy Rosado’s statement, there will always be the possibility of the business being cancelled due to the other party’s objection. For him, the “contracts” executed every day in Brazil by Internet have the same legal weight of a verbal proof. The solution of the proof, in relation to the Electronic Contracts, would be the digital signature, based on the so called cryptography, which could drastically reduce the risks inherent to the authenticity of the contractor or to its identification.

Through cryptography it is possible to codify a message using symbols, impossible to be understood by others that do not detain the conversion code, which could turn the message understandable again. This conversion code is known as key that could be public or private. The public key is known by the address and the private key is known solely by the emitter of the message.

In this way, only the person responsible for the digital signature can make the message understandable or visible again. The holder of the public key will not have access to the private key, being able to read the message, as it is being sent. This system guarantees the integrity of the messages and legal transactions executed through the Internet.

Nowadays, there is a bill at the Congress, largely based on the OAB/SP bill, waiting to be voted. If approved, this bill will follow the international trend, where the concept of digital signature is based on cryptography known as asymmetric, based on the concept of public and private keys<sup>25</sup>.

Cryptography could solve several legal problems as it guarantees the truth about the information and data that are transmitted through the Internet. It could be useful for the protection of privacy, intellectual propriety, financial and trading information, involving issues of national and public security.

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<sup>24</sup> *Lecture held by former Minister Ruy Rosado of higher Court of Justice at the 3rd Meeting of District Attorneys in 2000.*

<sup>25</sup> *According to Decree 3.587/20, issued by the Executive:*

*“Digital signature: Mathematical transformation of a message by the use of a mathematical function and asymmetric cryptography of the result with the private key of the signing entity.*

***Private Key:*** *Key part of a pair of keys kept in secret by its owner in order to create signatures to encrypt and decrypt messages with the correspondent Public Keys.*

***Public Key:*** *Key part of a pair of cryptographic keys which is divulged by its owner and used to verify the digital signature created with a correspondent private asymmetric key, or depending on the cryptographic algorithm, to encrypt and decrypt messages.*

***Asymmetric Cryptographic System:*** *System that generates and uses a pair of safe keys, consisting of one private key for the creation of digital signatures or encrypting or decrypting cryptographic messages and one Public Key for the verification of digital signatures of encoded messages.”*

Even Ruy Rosado understands that the digital signature based on the cryptographic system has legal validity and is equivalent to the written signature, as it is known. Besides, the Government has stepped ahead the Congress and has adopted the communication by electronic means among the different departments of the Government, the cryptographic system and the digital signature. Therefore, we have two strong evidences that the tendency of the jurisprudence and legislative, at least at the beginning of the 21st century, will be the adoption of the digital signature, based on the cryptographic system.

## **2.5. Comparative Law**

We will have a brief incursion in other countries' legislation that has already ruled over questions related to Internet:

- **UNCITRAL Model Law on Electronic Trade**
- **(United Nations Commission on International Trade Law)**

The crescent utilization of electronic means of communication has led to the necessity of a set of rules so as the commercial activities conducted by these means gain the necessary legal credibility, as the e-mail and the interchange of data through the digital information net for the accomplishment of these activities. Thus, in 1996, UNCITRAL has created a Model Law to be used by the Countries interested in regulating the electronic trade.

The Model Law aims to regulate any kind of commercial activity carried through electronic means. The text of the Model Law uses ample terms in order to make it sufficiently flexible for the rising of new technologies. This Model Law mentions the trade relations, but could be the base for other kind of relationship, as the governmental bureaucracy. The contracts executed by electronic means should, according to the Model Law, be electronically signed in order to be valid. This signature should identify the person, linking to a document or an action, and furnish a confident proof of consent by delivering the document.

### **• United States**

Preliminarily the State of Utah has published the most complete law about electronic signature. The Law in this State has compared the effects of a certified digital signature to a common signature, handwritten. In October 1, 2000, the *Electronic Signatures in Global and National Commerce Act* took effect in the United States, granting the same legal status of an ink and paper signature to the electronic signature, in a federal ambit, containing rules to notarize and authenticate electronic documents.

## • Brazil

In Brazil, some normative acts regulating specific questions about Internet were already published. Nevertheless, we still do not have a uniform and wide regulation ruling the electronic transactions or the electronic trade, as a whole. These are the most important projects in Brazil:

Decree 3.587 of 09.05.00 - This Decree establishes the rules for the Infrastructure of Public Keys for the Executive – ICP-Gov. The Government followed the same history of other countries in the standardization of information interchanged by electronic means between the different sections of the federal administration. This Decree is directed to the federal public institutions, ruling the interchange of information, by electronic means, among these entities and among them and the individuals and companies in general.

Provisory Act 2.200-2 rules the certification of electronic signature. Nevertheless, this Administrative Act centralizes the power of certification of electronic signature at the Federal Government, preventing the specialized companies to act (example: *Verisign*). It is not used by the Stock Exchange and I do not know if it is used by Brazilian financial institutions as it contains technical vices and as it is highly centralizer, which turns the certification of any electronic signature highly expensive<sup>26</sup>.

Instruction CVM 380/02 establishes the rules and procedures to be observed in the operations at the Stock Exchange and at the market organized by the Internet and other provisions. This instruction is detailed under the item 3 of this article.

### **3. TRADING STOCKS VIA INTERNET IN BRAZIL – HOME BROKER**

Notwithstanding the legal doubts raised as for the probative value of the electronic documents executed via Internet, the fact is that it already is a reality within our homes and a powerful tool for the worldwide economy, once the legal trades via Internet are less onerous to the investors. In other words, Internet has considerably diminished the costs of the Stock Exchange operations. According to the World Bank, the low cost of transactions via Internet has substantially enlarged the competition between the Brokerage Firms which are forced to cut costs in order to render better services at a lower cost, with the objective of retaining their participations in the market.<sup>28</sup>

In the United States, according to research carried out by the *Internet Consulting Firm*, Massachusetts, there were more than 20 million opened accounts aimed to the online businesses. According to the *Forrester Research* of Cambridge, Massachusetts, the number of accounts aimed to online businesses at the capital market is expected to raise up<sup>29</sup>.

Therefore, Brazil could not stand aside of the benefits originated by Internet. Different from the United States, where the small and medium investor has an active participation at the American capital market, the Brazilian capital market has a reduced number of small and medium investors, especially individuals. Economists, specialized journalists and Brazilian and international opinion makers have long stating that this market could be the driving force of the Brazilian economy, as a large and healthy source of financing for the Brazilian companies.

The Brazilian capital market should be democratized, accessible to the small and medium investor. The opening of new channels of access to the stock market is one of the several solutions that the institutions responsible for this market could originate, aiming to diversify the conservative profile of our market. Those markets were of low cost and easily assimilated by part of the investors.

In this sense, BOVESPA, which has as a social target, among other activities, the maintenance and organization of a system adequate to the execution of stock purchase and sell operations, permanently with all the necessary facilities to an immediate and efficient execution and visibility of those operations, has created and developed the *Home Broker* program, responsible for the arising and for the development of stocks purchase and sell operations via Internet, in Brazil.

### **3.1. Constitution of the *Home Broker***

In 1998, BOVESPA's Administrative Council has developed the *Home Broker Program*, aiming the destination of financial, technical and human resources to their Brokerage Firms, in order to create automated systems at their headquarters, based on the conception and technology existing at the moment, so as those systems could be hosted in safe websites<sup>30</sup>.

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<sup>28</sup> *Stijn Claessens; Thomas Glaessner; Daniela Klingebiel. Electronic Finance. A New Approach to Financial Sector Development? World Bank Discussion Paper n. 431. Washington, D.C.,2002, p. 20.*

<sup>29</sup> *Dave Pettit & Rich Jaroslovsky. The Wall Street Journal Online's - Guide to Online Investing. Three Rivers Press, New York, Updated Edition, p. 12.*

<sup>30</sup> *At the Broker's net environment there are: a) equipment protecting from undesirable accesses; b) servers, consisting of specific IT equipment that enables the functioning of the Home Broker. This equipment is responsible for the connection with BOVESPA's computers, mainly with Mega Bolsa; and c) the Home Broker itself, software and hardware which enable the purchasing and selling of shares through the Internet.*

The technology of safe websites at Internet would allow a totally automated relationship between investors/clients<sup>31</sup> and its Brokerage Firms. The investor should have access to the positions of the portfolio, the quotation and analysis of the financial and capital markets. Besides, he could place purchase or sell orders through the computer for the immediate or programmed execution at BOVESPA's electronic trade system, known at the Brazilian stock market as *Mega Bolsa.*, automatically and without contacting the Broker's trading stand, but still under its control.

Due to the referred technology, the Brokerage Firms could rationalize their electronic trade system, which would reduce their operational costs. As a consequence of this process, initially provoked by BOVESPA, the Brokerage Firms could attend, in a more effective and adequate way through the *Home Broker*, the small and also the medium investors, especially the great niche practically unexplored until then, that is to say, the individuals, enlarging the base of investors and consequently the liquidity of the Brazilian stock market.

In March 1999, the *Home Broker*, the Broker's automated attendance system, was launched, allowing the Clients to place stocks purchase or sell orders at the cash (standard or fractional) and options markets managed by BOVESPA, through their personal computer at home or at work, for the immediate or programmed execution. Therefore, Brazil has today a modern channel of relationship between the investors and the Brokerage Firms, much like the Home Banking services provided by the Banks.

### **3.2. Operational Aspects of the *Home Broker***

The orders input by the investors in their computers go through the Broker's information system (the Broker's *Home Broker*) and are delivered to the electronic trade system of BOVESPA, known as *Mega Bolsa*<sup>32</sup>.

*Mega Bolsa* was implemented in 1997 by BOVESPA. Its technological basis is the same of the Paris Stock Exchange (actual NYSE Euronext). It consists of a set of *software* and *hardware* that were linked, forming the technological basis of the electronic trade system. This system manages and controls the information input by the Brokerage Firms, automatically registering all the operations executed by them according to the order of their clients. The offer and the closing of the deals are automatically executed by *Mega Bolsa*.

The differential of the *Home Broker* remains in the possibility of the investor, on its own and under the Broker's control, to input stock purchase and sell orders through its computer, which will go through the Broker's automate system (*Home Brokers*), where it is enrolled. After the electronic checking of the operational limit granted by the Broker to the investor (the maximum value that the investor can apply) and of

the existing guarantees, these orders are directly delivered to *Mega Bolsa*. These orders may or may not be executed, depending exclusively on the existing offer, on the other end. Once closed the deal, *Mega Bolsa* transmits a message to the investor with a copy to the Broker, which updates the investor's position, informing about this transaction through an electronic message.

According to Chapter VII, item 7.1.1 of the Operational Proceedings Manual of BOVESPA, *Home Broker* is:

*"(...) the system of automated attendance of the Broker, integrated with the trading system of BOVESPA and that allows the clients of the Broker to place assets purchase and sell orders at the markets authorized by BOVESPA."*

### **3.3. Legislation and *Home Broker***

By reading item 2 of this article, one can come to the conclusion that the document cannot be confused with paper, and moreover, that there is a difference between the message and the supportive means, so the legal vinculum between the parts is not necessarily materialized in paper.

In the beginning of the 20th Century, when the typing machines were created, jurists and judges in general have questioned the legal validity of the contracts and documents produced by the typing machine, as they were not handwritten. But, the history has shown that we were facing a new machine that could produce a document with the same legal value of a Contract or even a handwritten document. Therefore, the existing laws, and let me say, the ones that still exist (example: Brazilian Trade Code – issued in 1850), were not altered to cope with that machine.

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<sup>31</sup> For the effects of this item 3, the words "investor" and "client" will have the same meaning. Therefore, there will not be any distinction when used in this text.

<sup>32</sup> Note: "*Home Broker*" and "*Mega Bolsa*" are trademarks of BOVESPA, registered at the Trademark National Institute in Brazil (INPI) and at several trademark institutions around the world.

Based on the concepts obtained on item 2 of this article and on the brief comment above, we can conclude that the Internet, much like the typing machine cannot be confused with the message. We are now in the beginning of the 21<sup>st</sup> Century and similar discussions among lawyers, judges and jurists are still occurring in a similar way.

In fact, Internet is astounding due to its inherent technology and the huge amount of information that it transmits. No doubt it has provoked, and will continue provoking, great transformations within the human relationship. Nevertheless, it is nothing more than a new means, a new tool that could and should be used by the financial institutions in the development of new products for its clients and investors in general, provided the question about the electronic signature be regulated and that the verification and self-regulatory institutions (BOVESPA, CVM and BACEN) monitor the acting of the financial agencies under their jurisdiction, so as the popular economy and the financial system were not put to a risk.

In this sense, I understand that the existing rules and regulations that nowadays regulate the capital markets could be applied in the same way to regulate the stock purchase and sell via Internet, especially at the operations executed by the *Home Broker*.

The existing laws are perfectly applicable. Eventual legal lacks could be fulfilled with specific rules inherent to the capital market. Those rules should emanate from CVM and BOVESPA, the institution empowered to self-regulate and function as an auxiliary institution to CVM, ruling and monitoring the acting of the Brokerage Firms. Without injuring the laws of the referred market presented in item 1, below is a brief draft of the main rules that interfere directly in BOVESPA's acting, at the Brokerage Firms and at the investors at the ambit of trade via Internet.

**• Resolution CMN 1.655/89**

This Resolution approves the regulation that disciplines the constitution, organization and functioning of the securities Brokerage Firms. Its article 2 grants to the Brokerage Firms several attributions, such as: a) the possibility of operating in a place or in an electronic system maintained by the Stock Exchange; and b) to render intermediation and assistance or technical assistance services in operations and activities at the financial and capital markets.

Article 11 of the Regulation attached to the Resolution establishes that, at the operations executed at the Stock Exchange in behalf of its Clients and/or other Brokers with which it has been or it is still operating, the Brokerage Firm is responsible for a) its settlement; b) the legitimacy of the securities delivered to sell or purchase; and c) the authenticity of endorsements in securities and legitimacy of the procurement or documents necessary for its transference.

The rule expressed in article 18 clarifies the police power that BOVESPA can exercise over the Brokerage Firms when stipulating that they are subject to permanent monitoring of the Stock Exchange and to BACEN and CVM, according to their respective competences.

The Resolution being commented hereby gives the outline at the legal ambit so as the Brokerage Firms could act in the intermediation of the businesses carried out with shares through Internet. Article 2 allows the Brokerage Firms to operate in a system maintained by the Stock Exchange and article 11 establishes the responsibilities of the Brokerage Firms at the market and at its clients, when dealing at the Stock Exchange.

In any moment the outcry or the physical spaces are mentioned. Then, one can conclude that the spaces for trade could inclusively be the so called virtual spaces. Therefore, the operations via *Home Broker* are reached by this rule, and the responsibilities established on Resolution 1.655/89 remain for the Brokerage Firms that render services via Internet.

#### • **Resolution CMN 2.025/93**

This Resolution consolidates the rules referring to the opening, maintenance and transaction of deposit accounts. According to Article 3 of this Resolution, the information contained at the application form, as well as all the elements of identification of the investor or the prospect client, should be compared with the competent documentation. Besides, the Manager of the Brokerage firm should be responsible for the correct information when compared with the original documents.

It is important to clarify that this Resolution disciplines the opening of a current or deposit account, currently maintained, for example, at Multiple Banks. These accounts could be transacted by checks and by its means it is possible to obtain financing and loans. Nevertheless, the dispositions in articles 12 and 14 of the Regulation attached to Resolution 1.655/89, establish respectively that: a) it is disallowed to the Brokerage Firm to execute operations that could characterize, at any way, the concession of financing, loans or advancements to their clients, inclusively through cession of rights, except in the hypothesis of operations of margin account and all other foreseen at legislation in force; and b) that the current account opened by the Brokerage Firm, could not be transacted by checks, for the effect of registering the operations on behalf of their clients.

#### • **Resolution CMN 2.817/01**

This Resolution rules upon the opening and transaction of deposit accounts exclusively through electronic means, as well as upon the use of that instrument of communication. Preliminarily, we clarify that Resolution 2.817/01 does not revoke Resolution 2.025/93 above. Resolution 2.817/01 rules the client's application when executed by facsimile, telephone, Internet or any other electronic means. <sup>33</sup>

Based on the dispositions of the Resolution 2.817/01, the Brokerage Firm is dispensed of comparing the application data furnished by the client with the original documents, such as ID card or Individual Taxpayer Register at the moment of the fulfillment of the application form or the opening of the account for the execution of the stocks purchase and sell operations carried through facsimile, telephone or via Internet (example: *Home Broker*).

Nevertheless, this concessions established by CMN are conditioned to 2 (two) requirements: a) that the clients (individual or companies) were resident and located in Brazil; and b) the referred clients have already another account at the Brokerage Firm, previously opened under the terms of Resolution 2.025/93, in which case it should register at the application form, the information referent to the former account; or they – the Clients – have already a cash deposit account or a savings account in another financial institution opened under the terms of the Resolution 2.025/93. Therefore, the Brokerage Firm must obtain from its client, through the application form enabled through electronic means, the identification of the financial institution, the agency and the cash deposit account or savings accounts existent at the referred institution.

The confidence of the Brokerage Firm in the veracity of the data enabled by the client should rely upon the former financial institution, which has opened the first enrollment as stated under the terms of Resolution 2.025/93. Therefore, the financial institutions, in this case the Brokerage Firms, should have the means to check between them the information given by the client. But, it is not so, as the present Resolution has not ruled upon the relationship between the financial institutions, so as they could effectively check the veracity of the information<sup>34</sup>.

Then, I understand that, unless the Central Bank rules by circular-letters the referred verification of information, this Resolution does not solve the problems related to the falsification of documents or incorrect information in the application form of the new client. Therefore, I understand that the Brokerage Firms should elaborate a previous application form, observing the dispositions of Resolution 2.025/93 when the clients express the intention to purchase or sell stocks through the Internet.

#### **• Instruction CVM 08/79**

This Instruction prohibits several practices harmful to the capital market. These practices were illicit and can turn the market discredited. Therefore, even online operations are subject to this rule. According to it, the creation of artificial conditions of demand, offer or price of securities, the manipulation of price, the execution of fraud operations and the use of non-equitable practices are prohibited to administrators and shareholders of public companies, intermediates or investors and to other participants of the capital market<sup>35</sup>.

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<sup>33</sup> For this Resolution, electronic means are the Internet, the self-attendance terminals, the telephone or other long distance communication means put in use by the institution for the purpose of relationship with its clients.

<sup>34</sup> We clarify that the financial institutions in general, and among them the Brokerage Firms, are bound to secrecy currently ruled by Complementary Law 105. Therefore, the Banks are prohibited to disclose information about their clients to other financial institutions without previous consent of the client, making more difficult the relationship between the financial institutions as for the interchange of information.

<sup>35</sup> According to this Instruction, the concepts are:

“a) artificial conditions of demand, offer or price of securities - those created resulting from negotiations through which its participants or intermediates, by an action or omission provoke, directly or indirectly, alteration on the flow of securities purchase and sell orders;

b) manipulation of prices at the capital market - the utilization of any process aimed, directly or indirectly to inflate, maintain or deflate the quotation of securities, inducing third parties to purchase or sell; c) fraud operation at the capital market – that one using tricks and artifices with the objective of inducing or maintaining third parties in error, aiming to obtain illicit advantages of patrimonial nature for the parties in the operation, for intermediates or third parties;

d) non-equitable practice at the securities market – the one resulting directly or indirectly, effective or potentially, a treatment for any of the parties, in dealing with securities, reaching a position of unevenness when compared with other participants of the operation. ”

Through the Instruction CVM 08/79, CVM and BOVESPA have the legal tools to inhibit harmful practices to the good and healthy functioning of the capital market, notably when the stock purchase and sell operations are carried through the *Home Broker*.

Dr. Ilene Patrícia, CVM's Prosecutor, notes:

*“Recent modifications introduced either at the Law that created CVM (n. 6.385/76), or at the Law of the Business Corporations (Law 6.404/76) through Law 9.457/97, have enhanced the powers of the Governmental Agency, as well as the administrative penalties that CVM can apply, after the trial at the administrative process. Such penalties should be applied independently of the location, of environment of the deal, be it virtual or electronic, at the outcry or the After-market at the counter (SOMA) that has already the SOMAtrader.”<sup>36</sup> (g.n.).*

Notwithstanding the creativity of the market for the creation of new illicit that could be created for Internet, which problem of identification of the parts is inherent, we could conclude that this Instruction could be applied in several situations where the illicit is configured, by the means of Internet or not. In the case different illicit were created, I understand that this rule is flexible enough for CVM and BOVESPA to apply the proper administrative penalties (Chapter 24 of the BOVESPA Operations Regulation).

#### • **Instruction CVM 14/80**

This Instruction rules the operations of the option market administrated by the Stock Exchange. This Instruction is also applicable to the operations carried through the *Home Broker*. According to the article 9 of this Instruction it is the Stock Exchange responsibility to create a control system for the operations with options – Chapter 10 of the of the Operational Regulations of BOVESPA – which enables, at any moment, the verification of the accomplishment of the determinations of the Instruction, among them the obligation of the Brokerage Firms to execute contracts of option with its clients, so as they could operate in this market.

This article demonstrates the self-regulatory power of BOVESPA's activities. It is clear that, inclusively in this market, the Stock Exchange have the power to regulate and manage the Brokerage Firms. In order to complement this understanding, we clarify that the investors nowadays can buy and sell stocks at the market of option administrated by BOVESPA, via *Home Broker*. Even though enabled through *Home Broker*, this market is still bond to the dispositions contained in this Instruction and mainly in the Operational Regulations of BOVESPA.

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<sup>36</sup> *Direito & Internet – Aspectos Relevantes. EDIPRO, São Paulo, 1st. ed., p.193 and 201.*

• **Instruction CVM 168/91**

This Instruction rules over the special proceedings of the Stock Exchange in the case of auctions, for example. The observation of the rules by the Brokerage Firms is very important, especially because it has to be very clear at the Brokerage Firm's website that if certain parameters related to the amount of securities and prices – established by BOVESPA – were exceeded, the deals should be submitted to auction with a fixed term.

Therefore, the text of this Resolution should be shown very clearly at the Brokerage Firm's site at the Internet, so as the investor is aware that in some cases the stocks he intends to buy could be submitted to an auction or that the trades in which his stocks are being involved could be submitted to an auction.

• **Instruction CVM 301/99**

The main objective of this instruction is to discipline the identification, the enrollment, the register, the operations, the communication, the limits and the administrative responsibilities of the financial institutions verified by CVM, among them the Brokerage Firms and its administrators as for the crimes of "laundry" or hiding of goods, rights and values as per Law 9.613/98. Besides, the Brokerage Firms should maintain record of all transaction involving securities which value is equal or superior to ten thousand reais, in a way that allows the communication to CVM. This record should be done also when an individual or company, identified at the enrollment foreseen at the Instruction, would execute within the same month operations with the same person, conglomerate or group, which value in total exceeds the abovementioned limit.

• **Instruction CVM 380/02**

This is the most important rule of the whole article, as it specifically rules the operations executed at stock exchanges and markets organized by the means of Internet. This rule is directly applicable to trading stocks executed through the *Home Broker*. Preliminarily, I point out that this Normative Instruction, emanating from CVM, contemplates recommendations made by the *International Organization of Securities Commissions – IOSCO*.

According to the Word Bank, the level of industrialization of a Country or how developed is the legislation related to the transactions executed via Internet are not important, as the Government agencies should focus primarily in minimizing new risks that the securities purchase and sell operations via Internet could bring to the investors. Thus, the best way to prevent the occurrence of bankruptcy, as well as to diminish the systemic risk of a Country, to prevent the crash, is to increase the level of information and education of the investors, being responsible for this the Government agencies, the self-regulatory entities (example: BOVESPA) and the financial institutions (example: the Brokerage Firms).

Therefore, BOVESPA, CVM, and the Brokerage Firms play an essential role in the market, which is to educate the investor, as the more information an investor has and the more prepared he is to act in the financial and capital market, especially when dealing via Internet, the lower will be the risk of becoming bankrupt or insolvent. Education is a *sine qua non* condition for the online financial transactions to become a success in the world.<sup>37</sup>

That is exactly one of the principles adopted by Instruction CVM 380. According to article 3 of this Instruction, the Brokerage Firms should state at their pages in Internet in a clear, precise way and in a language accessible to the investor : a) detailed instructions as of the use of securities trade by Internet; b) the policies of brokerage charges and eventual additional costs of trade by Internet, including fees charged by self-regulatory entities or by clearing and depository corporations; c) detailed proceeding followed by the broker during the execution of the purchase and sell orders by Internet, including the possibility of the orders not being automatically executed by the system, and its priority compared with other orders received from other communication channels, operating volume and other parameters; d) the characteristics of the safety system maintained by the broker, including the use of passwords and electronic signatures; e) the electronic ways used to communicate to the investor the reception and the execution of its orders, as well as any other information the investor should receive; f) information about securities, including the price of the last trade and the 10 best prices in the list of offers to purchase and sell in the trade system, with the total volume to each price, identified by security, as well as the time of divulgation of those information at the broker's page at Internet; g) the Brokerage Firm responsible for the execution of the order received by the Internet, in the case of repassing the order; h) the maximum interval of time without operating that the investor can remain connected to the trade system by Internet, without being automatically disconnected; and: i) shortcut to CVM page at Internet.

Besides, the Brokerage Firms should create at their Internet page, a section or a shortcut aimed to the education of the investors, containing information about the functioning of the capital market and others that the administration of the Brokerage Firm should deem relevant. Article 4 of this Instruction is exemplifying and establishes a roll of information which should be shown at the home page of the *Home Broker*, pointing out the obligation of containing information about the risks of price oscillation and eventual losses of the securities' principal value inherent to the capital markets, mainly those resulting from the positions in the options market, one of the markets that the Brazilian investors could operate by means of the *Home Broker*.

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<sup>37</sup> *Stijn Claessens; Thomas Glaessner; Daniela Klingebiel. Electronic Finance. A New Approach to Financial Sector Development? World Bank Discussion Paper n. 431. Washington, D.C., p. 27.*

The Brokerage Firm should state, in a clear position, the following warning at its Internet Page: “ALL COMMUNICATIONS CARRIED OUT THROUGH THE WORLD WIDE WEB ARE SUBJECT TO INTERRUPTIONS, DELAYS, AND CAN INHIBIT OR DAMAGE THE DELIVERY OF ORDERS OR THE RECEPTION OF UPDATED INFORMATION”.

Finally, I point out the responsibility delegated to the Stock Exchange that administrates the electronic trade systems with the reception of orders through Internet to carry out biannual auditing sessions in all Brokerage Firms that have *Home Broker*, verifying if the information that should be shown at the Internet page, as stated by CVM in article 3, are being accomplished by the Brokerage Firms.

• **Instruction CVM 387/03**

It establishes the rules and proceedings to be observed during the operations with securities, in outcry and through electronic trade systems at the Stock Exchange and provides other instructions. This instruction establishes the minimum rules that should be observed by the Brokerage Firms in the relationship with the investor.

According to articles 3 and 6 of this Instruction, it is the Stock Exchange responsibility to establish rules of conduct which should be observed by the Brokerage Firms in the relationship with the investors, as well as rules and parameters of acting related to the kind of order, period to be received, way of issuing, validity term, proceedings of refusal, record, accomplishment, distribution and cancellation; and the way and criteria for the acceptance of the orders and the distribution of the businesses. The rules of conducting and the rules and parameters of acting are established in Chapter 23 of the Operations Regulation of BOVESPA.

▪ **Instruction CVM 461/07**

This Instruction modifies and consolidates the rules that discipline the constitution, organization and functioning of the Stock Exchange.

### 3.4. BOVESPA's Power of Self-Regulation

I understand that BOVESPA's power of self-regulation is the key for the success of the *Home Broker*. We have already seen in item 1 of this article that, according to Article 8 of Law 6.385/76, it is CVM's competence, observing the policies defined by CMN, to permanently regulate and monitor the activities and the services of the capital market, as well as the transmission of information relative to the market, to the people involved, and to the values being traded. But, this power to rule, monitor and supervise the capital market is legally delimited and shared with the Stock Exchange. According to Article 17 of Law 6.385/76, in its paragraph 1:

*“Art. 17 – The Stock Exchange will have administrative, financial and patrimonial autonomy, operating under the supervision of the CVM.*

*Paragraph 1 – As auxiliary sections of the Securities Commission it is the Stock Exchange's responsibilities to verify the respective members\* and the operations executed therein.” (g.n.).*

*\*Observation: Member means Brokerage Firm.*

The concepts of administrative, financial and patrimonial autonomy should be understood as the capacity of the Stock Exchange to establish proper rules for the functioning, as it occurs, for example, at the Brazilian Bar Association, an entity that supervises and rules the activities of its professionals. In this way, the Stock Exchange has the power to decide over any matters inherent to its administrative, financial and patrimonial autonomy.

Pontes de Miranda, commenting Article 6 of Law 4.728/65, gives us the understanding of what is the administrative, financial and patrimonial autonomy (where it is written Central Bank, should be Securities Commission):

*“Central Bank holds the responsibility of supervision – understood as: the verification, the surveillance and inspection (not the management or direction) of the Stock Exchange in any part of the country. The rules established by the Central Bank shall respect the principle of isonomy or equal distribution of rights (Constitution of 1946, art. 141, § 1).”*

*(...)*

*The verification, surveillance or inspection shall not be transformed in intervention at the administration, nor at the Stock Exchange patrimony, as it is stated at the Law the principle of administrative, financial and patrimonial autonomy<sup>38</sup> .”*

After a short analysis of the *caput* of article 17, we can conclude that BOVESPA is no longer subordinated to the Securities Commission, being its auxiliary section at the regulation of the capital market and at the verification of the Brokerage Firm.

Professor Arnaldo Wald clarifies:

*“At the Law, the positions of CVM and the Stock Exchange are defined in a way that the first could exercise over the others a supervision that shall not be confused with hierarchical subordination, but involves specific powers of regulation, of revision of certain acts and exceptionally, the intervenience under a legally determined way, in specific cases of abnormal situations <sup>39 40</sup> .” (g.n.).*

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<sup>38</sup> *Tratado de Direito Privado, RT, São Paulo, Tomo Book II, p. 227.*

<sup>39</sup> *These abnormal situations of the market are defined by the CMN (examples: wars, calamity, manipulation of the market, suspicion of non-equitable practices, and considerable loss of reserves, among others). To prevent or correct these abnormal situations, CVM could, among other sanctions and orientations, suspend the negotiations of a certain security or even call the recession of the Stock Exchange and expose the information or recommendations in order to clarify or orient the participants of the market.*

Paragraph 1 of Article 17, when combined with the above analyzed *caput*, shows clearly that the Stock Exchange has a normative and verification competence over the Brokerage Firms and its operations, granting it the characteristic of self-regulatory entity.

Professor Fábio Konder Comparato understands that:

*“Article 17 of Law 6.385 is decisive when characterizing the stock exchange as auxiliary institutions of the Securities Commission. The support could only be for the development of the public services attributed to CVM by the law, among which it shows up the police power, The stock exchange exercise this power not only at the place of the outcry but outside, verifying the activities of the Brokerage Firms and demanding public explanations to the public companies, when issuing securities, by applying the legal principle of full disclosure <sup>41 42</sup> .” (g.n.).*

The referred competence is exercised by the Stock Exchange as an auxiliary institution of CVM, an eminently public function, as it aims the interests of the capital markets <sup>43</sup> . It is with this objective, granted by the legislation, that the Stock Exchange could and should regulate the operations carried out through the Internet.

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<sup>40</sup> *Self-Regulation and the Market of Options. Revista de Direito Mercantil, Industrial, Econômico e Financeiro, São Paulo, n 79, p. 17 and next.*

<sup>41</sup> *Opinion about the competence of BOVESPA. Revista de Direito Mercantil, Industrial, Econômico e Financeiro, São Paulo, n. 60, p. 50.*

<sup>42</sup> *We should elucidate, in complementing the understanding of professor Fábio Konder Comparato, that the power of regulation and verification of the Stock Exchange over its Brokerage Firms is total. Nevertheless, the same cannot be said in relation to the public companies. The competence of the Stock Exchange, in this case, is practically inexistent. The verification of the public companies is exclusively of the CVM. The stock exchange has a power considered as relative, related to the admission of securities at its system, and to their suspension and cancellation.*

<sup>43</sup> *Professor Arnoldo Wald, states at his Opinion about the Self-Regulation and Market of Options. Revista de Direito Mercantil, Industrial, Econômico e Financeiro, São Paulo, n. 79, p. 17 and next, that at the time of the elaboration of the so called Maloney Act, the American Congress opted for a lower presence of the SEC, the North American CVM, for a larger delegation of powers to the Stock Exchange. According to preliminary considerations of the Congress Especial Commission that ruled the matter “the Commission believes that there are two alternative programs able to face the problem of an adequate regulation of the market. The first involves a significant expansion of the Organization of Securities Commission; the multiplication of representations; a great increase in the expenses of public funds; an increase in the problem of escaping from the bureaucracy; and a detailed and strict regulation of the legal conduction of the businesses. This could mean an expansion of the current process of registering the brokers and the dealers at SEC to include the penalties not only for the dishonest, but also for the ones unable to adjust to the strict standards of financial responsibility, of professional behavior and technical efficiency. The second alternative program, that the commission believes to be much better than the first, is based on the cooperative regulation, where the tasks were largely accomplished by organizations representatives of investment banks, dealers and brokers (...).” The Commission complements, explaining that these tasks are of public interest and that: “(...) in the light of the concept of a well organized and well conducted Stock Exchange in the terms of the supervision instituted by the Securities Exchange Act of 1934, the possibilities of a program of this ambit can be attested.”*

In this way, I understand that the Stock Exchange, specially BOVESPA, without detriment of the regulatory and verifying competences of CVM, have the responsibility of not only creating products and means to enable the execution of stocks and securities purchase and sell operations in general (example: *Home Broker*), but also “...to create regulatory and operational mechanisms to enable the attendance, by the Brokerage Firms, of any purchase and sell orders of the investors...”. And it is exactly when BOVESPA, obviously within its competences, can regulate and fulfill the existing legal gaps and regulate the operations carried through the *Home Broker*.

In practice, this self-regulation could be exercised by BOVESPA, through regulations emanated from the Administrative Council. These regulations establish rules aiming to conduct not only the operations occurred at the cash and option markets administrated by BOVESPA, but also the behavior the Brokerage Firms which, as we will see below, have obligations that must be preliminarily accomplished before: a) obtaining its own *Home Broker* system and b) admitting new clients.

#### **3.4.1. Rules issued by BOVESPA**

Dr. Luiz Eduardo Martins Ferreira, BOVESPA’s Self Regulation Legal Counselor, resumed the specific rules that submit the Brokerage Firm and the investors that operate through the *Home Broker*:

*“For accessing the Home Broker, Bovespa, investor and broker ought to comply with specific rules, notably these:*

*1) Brokerage Firm must be authorized by Bovespa and must have protection mechanisms that avoid improper access (firewall). For granting this authorization, the stock exchange takes into consideration several technical and operational aspects, in special these: it must have specific server for the function of the respective Home Broker that enable its connection with Bovespa, besides signing a Responsibility Term declaring that it is able to operate its Home Broker.*

*2) By his side, investor must be previously registered at the broker, as well as sign a specific contract for operations executed via Internet. Beside this, investor must accomplish operational limits fixed by the broker. The order that exceeds those limits would only be executed if additionally validated by a professional broker. Bovespa has also established many rules for Brokerage Firms site with access to the Home Broker, being the “Bovespa Official Seal” one of the most important requirements.*

*(...)*

*The most important benefit of its typical self-regulation exercise is that Bovespa may alter the established rules immediately, as soon as it is shown as necessary or convenient for the market<sup>44</sup>”(g.n.).*

Here are the main rules that conduct trading stocks via *Home Broker*:

• **Investors authorized to operate via *Home Broker***

They are able to insert stock sale and purchase orders via Internet, using *Home Broker*, both of them individuals or legal entities<sup>45</sup>. In this sense any individual that wants to apply any value, without any kind of limitation, can operate in the stock market, as far as they observe rules and operation parameters of each Broker Firm that must be inserted in the Broker website, according to BOVESPA Operations Procedures. Legal entities are also authorized.

However, it is necessary to clarify that access to the *Home Broker* is forbidden to institutional investor, such as allowance funds, Complementary Welfare Funds, pension societies, foundations of social welfare, investment funds, insurance, investment and capitalization companies. This prohibition aims to manage sale and purchase of stock market via Internet for legal entities and individuals with smaller investment potential that through Internet would be able to increase the investor's mass in the Brazilian stock market.

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<sup>44</sup> *Applications via Internet, an article published in August 2000 at "O Estado de São Paulo" Newspaper.*

<sup>45</sup> *Rules from the BOVESPA Operations Regulation.*

#### • Markets available for the *Home Broker*

Now, the investors that intend to acquire and to sell stocks through Internet can enjoy two types of markets, already presented in item 1 of this article, option and cash markets. It is worth to stand out that the operational regulations responsible for guiding the investors and the Brokerage Firms in the operations carried through *Home Broker* are the same ones that now regulate the operations in the cash<sup>46</sup> and options markets accomplished by BOVESPA's open outcry (Chapters VIII and X of the Regulation of Operations of BOVESPA).

#### • Broker's Duties before BOVESPA

The Brokerage Firms that intend to make available the automated systems of purchase and sale of stocks through Internet for their investors, *Home Broker*, should obtain previous authorization of BOVESPA. This previous authorization, however, can only be obtained when certain requirements established for the technical areas of BOVESPA are accomplished, for instance Brokerage Firms should describe in a clear and ostensible way the Rules and Parameters of Performance they adopt in the operations accomplished through *Home Broker*.

BOVESPA guarantees the safety of its corporate net, but the Brokerage Firm should install mechanisms (software + hardware) of protection in its headquarters against improper accesses. Besides this, the creation of the website that will present *Home Broker* services for the investors, the Brokerage Firm should observe the following rules<sup>47</sup>: a) the Brokerage Firm's name should always appear with prominence in all pages of the website, advertising campaigns, pamphlets, and other communication vehicles; b) the Brokerage Firm's name should precede the fantasy mark with the same weight graph; c) BOVESPA mark is obligatory in all website pages related with *Home Broker*; d) the Brokerage Firm should inform in the website if the quotations are supplied in real time or with delay of 15 (fifteen) minutes; e) other institutions that have access to *Home Broker* (for instance: Distributors of Titles and securities) should inform in their respective websites that they don't execute their investor's orders directly, identifying the Broker that will accomplish them.

#### 3.4.2. Legal relationship between Brokerage Firm and Investor

The relationship between the Brokerage Firm and the Investor, that buys and sells stocks through *Home Broker* is regulated by the norms now existent for the stock market and by other complementary rules of BOVESPA, such as the demand of celebration of specific contract for the accomplishment of purchase and sale of shares operations through Internet (item 7.3.1 of BOVESPA Operational Procedures Manual).

### 3.4.3. Register of Investors, Opening of Account and Applicable Legislation

It is through the opening of registration and the consequent opening of specific account for the accomplishment of operations in the stock market that the relationship between the investors and his virtual broker begins. This action is regulated and the administrators of the Brokerage Firms should observe the several existent norms, whose objective is to avoid the practice of frauds or falsification of documents<sup>48</sup> that in turn can provoke damages in the whole financial system.

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<sup>46</sup> *At the cash market, shares are traded in standard quotas (and multiples) and fractional quotas ( in quantities inferior to those quotas). The report issued at Folha de São Paulo, in March 1999, illustrated the importance of the fractional quotas for the investors that purchase and sell shares by Internet” As the operations at the outcry involve millions of reais, Bovespa demands for a minimum to be traded for each share. It is as if the smaller investor purchases in the retail and the larger investors in the wholesale for the shares with great marketability, i.e., with a larger volume of business per day, the standard quota could reach a 100 thousand shares, such as the RCTB PN (a receipt containing shares of 12 companies of the former Telebrás). This is the calculation: the share of the receipt was quoted, at the closing of last Friday to R\$ 0,145. Thus, the minimum value for trading at the “normal” market is R\$ 14.500 (0,145 times 100 thousand). Below this value, the trade is carried out at the fractional market.*

<sup>47</sup> *Source: Chapter VII of the Operational Proceeding Manual of BOVESPA.*

<sup>48</sup> *As a result of the irregular regulation, the Director of the Brokerage Firm could respond as co-author of a falsehood crime, according to Article 64 of Law 8.383/9 related to the opening and transaction of resources under (i) false name; (ii) inexistent name of individual or company; or (iii) name of a company already closed or without regular representation.*

### **3.4.4. Rules and Parameters of Performance - Brokerage Firms**

After the registration, the investor receives their Rules and Parameters of Performance from the Brokerage Firm. This document reflects requirements contained in the Article 6th of the Instruction CVM 387/03. According to this article, the Brokerage Firms and the other participants that act directly at the places or trade systems of the Stock Exchange should establish rules and relative parameters to the reception, registration, period of validity, priority, execution, distribution and cancellation of orders, in observation of the norms issued by the Stock Exchange. Besides, investors should be informed of those rules in writing.

Among the specific rules for the purchase and sale of stocks through Internet, they stand out those related to the form and transmission of the orders; to the registration of these orders in the system; to the priority in the distribution of the businesses; to the cancellation of orders; to the types of accepted orders and how the businesses are confirmed. We just emphasize that the Brokerage Firms can adapt, in agreement with their business the treatment that should be given to the orders input by the investors through *Home Broker*, provided the dispositions contained eventually in the Instruction CVM 387/03 and specific norms published by BOVESPA are observed. Below are the main rules established by BOVESPA for the Brokerage Firms and that should make part of the Rules and Parameters of the Brokerage Firms .

#### **• Form of Order Transmission**

When the orders are directly sent for the Brokerage Firm's *Home Broker*, they will be considered always as being written. This means that the orders given by the Internet will be recognized as written. In the impossibility of the order to be transmitted to the Brokerage Firm via Internet, the investor will always have the option of transmitting it through another way, that can be verbal or in writing, according to the investor's manifestation at the time of the completion of the enrollment.

#### **• Kind of accepted order**

The orders sent to *Home Broker* will be always of the limited type. This kind of order should only be executed at the same price or the price specified by the investor.

#### **• Transaction confirmation**

The indication of certain order execution doesn't represent irrevocable business, because in case any irregularity is verified in the transaction, BOVESPA has the power to cancel the accomplished businesses. In that way, the orders transmitted by the investor to the Brokerage Firm, directly to *Home Broker*, will only be considered indeed executed when any infraction to the norms of the capital market is verified and after the

periods for accomplishment of the special procedures foreseen in the Instruction CVM no. 168/91 were ended.

### **3.4.5. Contract for the Accomplishment of Internet Stock Trading**

After the completion of the registration, after the readings of the Rules and Parameters of Performance of the Broker and of its acceptance, it comes the moment when the investor, be individual or company, should execute the Contract for the accomplishment of trading stocks through Internet with the Brokerage Firm. The contract is mandatory as determined by BOVESPA (item 7.3.1, "b" of the Manual of Operational Procedures of BOVESPA).

When executing the Contract with the Brokerage Firm, the investor will be aware and agreed that: a) the procedures contained in the Rules and Parameters of Performance of the Brokerage Firm, among them those that declare that the orders directed through Internet are considered written; b) the legal and regulated dispositions of CVM that regulate the stock market; c) the regulations of in use and existent operations and other normative instruments sent by BOVESPA, and the uses and habits adopted and accepted at the capital market are applied to the operations object of the Contract, that is, those related to the trading stocks through Internet.

Taking into consideration that legislation that treats of the digital signature in Brazil doesn't exist, only a project exists, the contracts are signed by handwriting. In case the Contract is accessed by the investors through the Internet, they will have to print it and to sign it when individual or provide the legal representative's signature when company, to recognize the validity of the signature at the public notary, to have the signature of a witness and only then deliver 2 (two) copies of the same to the Brokerage Firm or vice-versa. After the registration, the Brokerage Firm sends two signed copies and the investors, if they accept the contractual terms, will sign this contract and will direct it to the Brokerage Firm with the documentation demanded by the Instruction CVM 387/03. In case the investors don't agree with the contractual terms, they can discuss them with a representative of the Brokerage Firm.

However, I stand out that few will be the terms that can be altered, once they are stipulated by norms of CVM or of BOVESPA in the exercise of their power of self-regulating the products that they launch. Many times the contract is nothing else but the reflex of those norms.

## CONCLUSION

I understand that BOVESPA, because of its self-regulation power could institute *Home Broker*, regulating and supervising it, as demonstrated in this article. CVM for its turn, with legal competence that it has to determine the suspension of the product *Home Broker*, approved it, especially because BOVESPA with its power of self-regulating the operations that occur in their facilities and systems, had legal competence to institute *Home Broker* and to establish the applicable rules to the operations executed through the system, especially obligations to Brokerage Firms concerning the disclosure of information and education for the investors interested in applying at the stock market through the Internet. These rules are contained in the Chapter 7 of the Manual of Operational Procedures of BOVESPA.

In that way, for what was presented, I conclude that the Internet Stock Trading in Brazil is fully valid of the legal point of view. Besides, I understand these operations are also endowed with probative capacity, because the orders given by the Investors via Internet are traceable and therefore registered in the systems of *Home Broker* of the Brokerage Firms and in *Mega Bolsa* of BOVESPA, which can be proven through technical expertise, if necessary.

According to the legislations presented along this article, it is observed that the implementation of several rules is delegated to BOVESPA, and it is its role to detail and to regulate norms originating from CMN and CVM. Several instructions mentioned above give us exact proof that BOVESPA is essential and an indispensable part of the Brazilian stock market.

In what refers to the legislation existent today and that governs the Brazilian stock market, especially the operations accomplished at the cash and option markets, the current rules are fully applicable. The Internet is just one way more that the financial institutions can use to democratize the stock market.

I clarify that the Stock Exchange and Brokerage Firms began in function of individual that sought to intermediate the purchase and sale of goods in general, among them currencies, stocks or public titles. Those people were the Brokerage Firms. So, I conclude that the stock trading, accomplished today through the Internet, is the result of the historical evolution of the stock market. By this comparison it is glimpsed clearly that the Internet in fact extinguished distances and it approximated those that wanted to sell some type of good, in the case stocks, for others that wanted to buy these stocks in the same price conditions and period offered by the salesperson.

The Broker became the Brokerage Firm Company and is represented by a page in the Internet, still having today the same functions that they had in the previous centuries, in other words, to approximate people to accomplish the businesses they look for. The advantage being that the purchase and the sale of stocks through the Internet are more convenient, effective, fast and less onerous for the investor. Moreover, BOVESPA and CVM already stipulated a series of rules that allow the largest possible degree of reliability in these operations.

Finally, as any other operation accomplished in the outcry and electronic trade of BOVESPA, the investor has the guarantee of the Guarantee Fund of BOVESPA against eventual current irregularities of operations accomplished through the Internet, in the terms of the Instruction CVM number 461/07. The investor is protected against: a) nonperformance or unfaithful execution of orders; b) inadequate use of cash, of titles or illegitimate values or of forbidden circulation; c) endorsement in authenticity in title or in value or illegitimacy in letter of attorney or in document necessary for its transference; d) announcement of extra judicial liquidation of a Brokerage Firm by BACEN; and e) closing of the Brokerage Firm's activities. The investor can claim the compensation for damages to Guarantee Fund of BOVESPA.

In a nutshell, the existent Brazilian legal framework for capital markets is fully applicable to the stock trading through Internet. It is sufficient to give backup and guarantee to the accomplishment of these operations. Even without the Instruction CVM number 380/02, a norm of administrative character, the operations through Internet or via *Home Broker* would continue fully valid from the legal point of view. This Instruction granted larger rigidity and responsibility to Brokerage Firms and to BOVESPA when is referring to the education, information and auditing. Although, I understand that those obligations contained therein were already fully followed due to the regulating and inspection skills of BOVESPA over the Brokerage Firms.

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