Changing the Paradigm of Stock Ownership from Concentrated Towards Dispersed Ownership? Evidence from Brazil and Consequences for Emerging Countries

Forthcoming Northwestern Journal of International Law & Business

Érica Gorga[*]

Abstract: *This paper analyzes micro-level dynamics of changes in ownership structures. It investigates a unique event: changes in ownership patterns currently taking place in Brazil. It builds upon empirical evidence to advance the theoretical understanding of how and why concentrated ownership*

[*] Ph.D., University of São Paulo, Brazil; Professor of Business Law, Fundação Getulio Vargas Law School at São Paulo (Direito GV). Former Visiting Assistant Professor of Law, Cornell Law School; former Lecturer, University of Texas at Austin School of Law, and Post Doctoral Research Fellow, University of Texas School of Law Center for Law, Business and Economics; former Visiting Scholar at Stanford Law School. E-mail address: erica.gorga@fgv.br.

I am grateful to Bernard Black, Robert Clark, Larry Fauver, Ronald Gilson, Jeffrey Gordon, Joan Heminway, Vikramaditya Khanna, Curtis Milhaupt, Katharina Pistor, Jeffrey Rachlinski, Mark Ramseyer, D. Danile Sokol, and Tracie Woidtke. I am also grateful to participants at the 2009 Harvard Law School/Sloan Foundation Corporate Governance Research Conference held at Harvard Law School; at the Faculty Legal Studies Workshop at Cornell Law School; at the 2008 Conference for Empirical Legal Studies held at Cornell Law School; at the 2008 Conference of the International Society for New Institutional Economics held at the University of Toronto; at the 2008 Conference of the American Law and Economics Association held at Columbia Law School; at the Law, Governance and Capitalism Workshop at Columbia Law School; at the 2008 World Wide World Junior Corporate Scholar Conference held at Columbia Law School; at the Faculty Workshop of the University of Buffalo Law School; at the Faculty Workshop of University of Florida Levin College of Law; and at the University of Tennessee College of Law Faculty Forum for helpful comments and suggestions. I thank Handemba Mutana Poli dos Santos and Luiz Fernando Conde Bandini for their excellent research support. I am grateful to Christine W. Kim for carefully editing the manuscript. Copyright © 2009 Érica Gorga.

structures can change towards dispersed ownership.

Commentators argue that the Brazilian capital markets are finally taking off. The number of listed companies and Initial Public Offerings (IPOs) in the São Paulo Stock Exchange (Bovespa) has greatly increased. Firms are migrating to Bovespa's special listing segments, which require higher standards of corporate governance. Companies have sold control in the market, and the stock market has recently seen an attempted hostile takeover. This paper discusses these current developments and analyzes ownership structures of companies listed on Bovespa's listing segments based on data from 2006 and 2007. It provides the first evidence of the decline of ownership concentration in Brazilian corporations.

There is, however, an important caveat: dispersed ownership is mainly found in Novo Mercado, the listing segment that requires the one-share-one-vote rule. This paper, then, investigates firms' migration patterns, and finds that eighty-five percent of Novo Mercado's firms are "new entrant" firms. Traditional firms have mostly migrated to Level 1, the least stringent corporate governance segment. Thus, there are two corporate worlds in Brazilian capital markets: new corporations that adopt proactive corporate governance patterns, and established corporations that retain their main patterns of corporate governance or ownership structure.

This paper additionally explores the consequences of increased dispersion of ownership through private contracting, such as shareholders' agreements and bylaws. The evidence suggests an increasing reliance on shareholders' agreements to coordinate joint control and to bind directors' votes. Research also shows a growing adoption of anti-takeover devices in bylaws.

Finally, this paper sheds light on the incentives that may alter preferences of controlling shareholders. This discussion also explains why controlling shareholders opt to create greater diversity of ownership structures. This analysis advances our knowledge of corporate structures in other emerging countries.

TABLE OF CONTENTS

I. Introduction 441
II. Recent Market Developments: Special Listing Segments, Listing Evolution and IPOs 450
III. The Companies Listed on Bovespa's Novo Mercado, Level 2 and Level 1, and Their Migration Patterns 452
IV. Concentration of Ownership Patterns 455
V. Towards Dispersed Ownership? 458
A. The Recent Takeover Attempt 458
B. Data on Share Ownership 460
C. Divergence from Voting Capital and Total Capital 463
D. Data on Share Ownership Accounting for Shareholders' Agreements 464
E. Data on Indirect Ultimate Largest Shareholders 466
VI. Consequences of Greater Dispersion of Ownership on Corporate Behavior: Shareholders' Agreements, Independence of

Directors, and Poison Pills 470
A. Types of Shareholders' Agreements 470
B. Effects of Shareholders' Agreements on Directors' Votes 475
C. Changes in Bylaws: Anti-Takeover Clauses 477
VII. The Determinants of Changes in Ownership Structures 482
A. Merger Activity 483
B. Cross-Listing 484
C. Life Cycle 485
D. Size 486
E. Public or Private Initiative? 487
F. IPO Market 491
G. Decreasing Levels of Private Benefits of Control and Firm Value 493
H. One Share—One Vote 493
I. Controlling Shareholders' Preferences and Incentives 495
VIII. The Challenges that the Market Will Face 498
IX. Conclusion 499

I. INTRODUCTION

Corporate governance scholars have recently begun to analyze publicly held corporations that have controlling shareholders.[1] Controlling shareholders are the most common distribution of corporate ownership outside of the United States and the United Kingdom.[2] They are prevalent in continental Europe,[3] and are particularly common in emerging countries

[1] *See, e.g.*, Ronald J. Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, 119 HARV. L. REV. 1641, 1642 (2006) (surveying this literature); Ronald J. Gilson & Jeffrey N. Gordon, *Controlling Controlling Shareholders*, 152 U. PA. L. REV. 785, 786 (2003); Ronald J. Gilson, *Controlling Family Shareholders in Developing Countries: Anchoring Relational Exchange* 1 (ECGI Law Working Paper Group, Paper No. 79, 2007), *available at* http://ssrn.com/abstract=957895.

[2] *See* Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *Corporate Ownership Around the World*, 54 J. FIN. 471, 498 (1999) ("If we look at the largest firms in the world and use a very tough definition of control, dispersed ownership is about as common as family control. But if we move from there to medium-sized firms, to a more lenient definition of control, and to countries with poor investor protection, widely held firms become an exception. Berle and Means have created an accurate image of ownership of large American corporations, but it is far from a universal image.").

[3] *See* Alexander Aganin & Paolo Volpin, *The History of Corporate Ownership in Italy*, *in* A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD 325, 325 (Randall Morck, ed. 2005); Marco Becht & Ekkehart Boehmer, *Voting Control in German Corporations*, 23 INT'L REV. L. & ECON. 1 (2003); Peter Högfeldt, *The History and Politics of Corporate Ownership in Sweden*, *in* A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD 517, 518 (Randall Morck, ed. 2005); *see also* MARCO BECHT, ARIANE CHAPELLE & LUE

in Asia[4] and Latin America.[5]

Scholars have attempted to explain the prevalence of large shareholders in these countries.[6] An important body of literature has shown that the extraction of private benefits of control is a key reason why these shareholders maintain corporate control.[7] Related works have proposed several hypotheses to explain why private benefits of control are large in certain countries and small in others.[8]

Even though this literature has advanced our understanding of corporate governance structures, there remains a serious gap in our knowledge. We still do not understand the *dynamic*s of changes in patterns of ownership. While we know why most corporate ownership is concentrated in the hands of controlling shareholders, we must investigate how concentrated ownership can transform into dispersed ownership, and how ownership change operates in practice.

This gap exists partially because ownership patterns do not change very quickly or often. As Nobel Prize laureate Douglass North argued, institutional change is slow and path-dependent in nature.[9] However, there

RENNEBOOG, SHAREHOLDING CASCADES: THE SEPARATION OF OWNERSHIP AND CONTROL IN BELGIUM (1999); Mara Faccio & Larry H.P. Lang, *The Ultimate Ownership of Western European Corporations*, 65 J. FIN. ECON. 365, 366 (2002) (showing that family ownership is more common than widely held ownership in continental Europe).

[4] *See* Stijn Claessens, Simeon Djankov & Larry H.P. Lang, *The Separation of Ownership and Control in East Asian Corporations*, 58 J. FIN. ECON. 81, 92–93 (2000) (demonstrating that more than two-thirds of public corporations in East Asia have controlling shareholders, most of which represent family-owned companies).

[5] *See, e.g.*, Richard A. Price, Francisco J. Roman & Brian Robert Rountree, *Governance Reform, Share Concentration and Financial Reporting Transparency in Mexico* 1 (April 7, 2006) (unnumbered working paper), *available at* http://ssrn.com/abstract=897811; *see also* La Porta, Lopez-de-Silanes & Shleifer, *supra* note 2, at 492–96 (showing that virtually all Mexican and Argentinian corporations are controlled by few wealthy families).

[6] *See, e.g.*, Stijn Claessens, Simeon Djankov, Joseph P.H. Fan & Larry H.P. Lang, *Disentangling the Incentive and Entrenchment Effects of Large Shareholders*, 57 J. FIN. 2741 (2002) (finding that there are incentive and entrenchment effects of large share ownership, the former refers to increases in firm value in connection with the cash-flow ownership of the largest shareholders, and the latter refers to decreases in firm value that occur when control rights of the largest shareholder exceed its cash-flow ownership); Gilson, *Controlling Shareholders and Corporate Governance*, *supra* note 1, at 1644–45.

[7] *See* Lucian A Bebchuk, *A Rent-Protection Theory of Corporate Ownership and Control* 1–4 (Nat'l Bureau of Econ. Research Working Paper Group, Paper No. 7203, 1999), *available at* http://www.nber.org/papers/w7203 (surveying control structure scholarship).

[8] *See, e.g.*, John C. Coffee, Jr., *Do Norms Matter? A Cross-Country Evaluation*, 149 U. PA. L. REV. 2151 (2001) (looking to societal norms rather than differences in legal regimes); Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer & Robert Vishny, *Investor Protection and Corporate Governance*, 58 J. FIN. ECON. 3, 4 (2000) (looking to differences in shareholder and creditor protection regimes); Mark J. Roe, *Political Preconditions to Separating Ownership from Corporate Control*, 53 STAN. L. REV. 539, 543 (2000) (looking to differences in countries' style of government).

[9] DOUGLASS NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE 3 (1990). *See* Lucian A. Bebchuk & Mark Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, 52. STAN. L. REV. 127, 137 (1999) (exploring the role of path dependence in "creating and maintaining differences in corporate structures.").

are examples one can look to.

There are two countries where concentrated ownership has transformed into dispersed ownership: the United States and the United Kingdom. Scholars have already debated the causes that led to such change.[10] The debate has been both furthered and hampered by the fact that these countries completed their ownership change processes before they became subjects of scholarly inquiry.[11]

One advantage enjoyed by scholarly inquiry into the United States and the United Kingdom is that it is certain that these countries are species of the dispersed ownership genus. They present success stories of corporate ownership change.[12] Thus, the study of these cases bears a certainty that does not exist when one analyzes initial stages of ownership change, which may be instable. For example, researchers report that some countries, such as Canada, Germany, and Japan, experienced temporary ownership dispersion that soon reverted to traditional concentrated ownership.[13] In contrast, the United States and the United Kingdom have successfully surpassed the instability inherent to economic change and now present well-defined dispersed ownership patterns. Moreover, enough time has passed from when both countries experienced initial changes in ownership structures to allow a more comprehensive investigation about the variables that may have brought about ownership change.

On the other hand, there are disadvantages to using the United States and United Kingdom as ownership change benchmarks. Because ownership change has already been consolidated, scholars cannot accurately assess which variables were most important at the beginning of the process. As such, there are competing theories that attempt to explain what happened

[10] *See, e.g.*, Brian R. Cheffins, *Does Law Matter? The Separation of Ownership and Control in the United Kingdom*, 30 J. LEGAL STUD. 459, 469 (2001); John C. Coffee, Jr., *The Rise of Dispersed Ownership: The Roles of Law and the State in the Separation of Ownership and Control*, 111 YALE L. J. 76 (2001).

[11] Cheffins, *supra* note 10, at 461 (noting that Berle and Means argued that dispersed ownership was the predominant type of ownership in the United States in the early 1930s).

[12] *See* Marco Becht & J. Bradford Delong, *Why Has There Been So Little Block Holding in America?*, *in* A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD 613, 620 (Randall Morck, ed. 2005) (commenting that the U.S. response to the Great Depression was to destroy family capitalism).

[13] *See* Caroline Fohlin, *The History of Ownership and Control in Germany*, *in* A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD 223, 232 (Randall Morck, ed. 2005); Randall K. Morck & Masao Nakamura, *A Frog in a Well Knows Nothing of the Ocean: A History of Corporate Ownership in Japan*, *in* A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD 367, 369-70 (Randall Morck, ed. 2005); Randall K. Morck, Michael Percy, Gloria Y. Tian & Bernard Yeung, *The Rise and Fall of the Widely Held Firm: A History of Corporate Ownership in Canada*, *in* A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD 65, 65–66 (Randall Morck, ed. 2005) (discussing the rise and decline of freestanding widely held firms in Canada).

first: dispersion of ownership or investor protection. La Porta and his co-authors argue that formal laws protecting investors and proper enforcement are a precondition for pulverizing share ownership and developing capital markets.[14] In contrast, Coffee and Cheffins contend that the development of capital markets occurred without such formal laws.[15] Accordingly, we do not have a clear picture of the turning point that caused the change or development of each phase of the process. Experiencing the change at the present moment offers the opportunity to accurately map out these phases and major events.

This paper analyzes the micro-level dynamics of changes in ownership structures. It investigates a unique, contemporaneous event: a process of change in patterns of ownership in Brazil, where corporations have historically been characterized by severely concentrated ownership.[16] These concentrated ownership patterns have recently been diluted, indicating an early stage of diffused ownership.[17] Based on this evidence of ownership change, this paper contributes to the corporate governance literature by inquiring how and why ownership structures change.

This case study also adds to the literature on controlling shareholders. Recent articles have called attention to the taxonomy of controlling shareholders' types, proposing that the simple taxonomy distinguishing between countries with controlling shareholder systems and widely held shareholder systems is unrefined.[18] According to this view, controlling shareholders' structures are more nuanced: they can vary from efficient to inefficient structures with controlling shareholders who extract pecuniary or non-pecuniary private benefits of control.[19]

Brazil's system is usually classified as one with inefficient controlling shareholders receiving both pecuniary and non-pecuniary benefits.[20] Investigating recent conditions leading Brazilian concentrated ownership to become dispersed therefore illuminates the incentives that may alter the preferences of controlling shareholders. Additionally, this discussion allows us to understand why controlling shareholders may opt for a greater diversity of ownership structures. It then enables us to draw comparisons

[14] La Porta et al., *supra* note 8, at 7.

[15] Cheffins, *supra* note 10, at 469; Coffee, Jr., *supra* note 10, at 76. *See also* Julian Franks, Colin Mayer & Stefano Rossi, *Spending Less Time With the Family: The Decline of Family Ownership in the United Kingdom*, *in* A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD 581 (Randall Morck, ed. 2005).

[16] *See infra* notes 59–72.

[17] *See infra* Part V.

[18] Gilson, *Controlling Shareholders*, *supra* note 1, at 1643.

[19] *Id.* at 1652, 1661.

[20] *See* Alexander Dyck & Luigi Zingales, *Private Benefits of Control: An International Comparison*, 59 J. FIN. 537, 539 (2004) (finding that private benefits of control are worth 65% of the equity value of a firm in Brazil); Tatiana Nenova, *The Value of Corporate Voting Rights and Control: A Cross-Country Analysis*, 68 J. FIN. ECON. 325, 327 (2003) (noting that private benefits of control in Brazil are 16% to 23% of a company's market value). *See generally* Érica Gorga, *Culture and Corporate Law Reform: A Case Study of Brazil*, 27 U. PA. J. INT'L ECON. L. 803 (2006) (discussing controlling shareholders in Brazil).

and make deductions that can enrich the comparative corporate governance debate and advance our knowledge of corporate structures in other emerging countries.

Brazil traditionally had capital markets that could not sufficiently finance corporations because of high discounts applied to security prices.[21] Brazilian firms were characterized by strong ownership concentration[22] and weak corporate governance.[23] Family tycoons typically retained ownership of voting shares,[24] and extracted very high private benefits from control of the corporations.[25] Boards were composed entirely or "almost entirely of insiders or representatives of the controlling family or group."[26]

New developments in Brazilian capital markets seem to challenge the traditional model. Firms have been looking for equity financing in the market.[27] The number of listed companies in the São Paulo Stock Exchange (Bovespa) has risen.[28] Firms are adhering to higher standards of corporate governance[29] through migration to Bovespa's special listing

[21] *See* Maria Helena Santana, *The Novo Mercado*, *in* Focus 5: Novo Mercado and Its Followers: Case Studies in Corporate Governance Reform 2, 11 (Global Corporate Governance Forum (World Bank) 2008), *available at* http://www.gcgf.org/ifcext/cgf.nsf/Content/Focus_Notes (arguing that discount in shares prices was considered the most important factor for a company's lack of interest in the stock market); Tatiana Nenova, *Control Values and Changes in Corporate Law in Brazil* 23 (EFMA London Meetings, 2002), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=294064 (measuring price difference between controlling and non-controlling shares and finding that the market applies a discount to non-controlling shares); *see also* David M. Trubek, *Law, Planning, and the Development of the Brazilian Capital Market: A Study of Law in Economic Change* 48–49 (New York University Graduate School of Business Administration Institute of Finance Bulletin Nos. 72–73, April 1971) (discussing the failure of strategies that the government sought to adopt to deal with depressed stock prices in the early beginnings of private capital markets).

[22] *See infra* Part IV.

[23] *See* Gorga, *supra* note 20, at 857 (discussing corporate governance failures in Brazil).

[24] *Id*. at 822, n.55 (discussing family ownership in Brazil).

[25] *See* Dyck & Zingales, *supra* note 20, at 569; Nenova, *supra* note 20, at 327; *see also* Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *The Law and Economics of Self-Dealing* 25 (NBER Working Paper Group, Paper No. 11883, 2005) *available at* http://ssrn.com/abstract=875734 (stating that block premium is very high in Brazil, amounting to 49%).

[26] *See* Bernard S. Black, Antonio Gledson de Carvalho & Érica Gorga, *An Overview of Brazilian Corporate Governance* 1 (U. of Texas Law, Law and Econ Research Paper. Paper No. 109), *available at* http://ssrn.com/abstract=1003059 (examining board corporate governance practices in Brazil).

[27] *See, e.g.*, Giuliana Napolitano, *Dinheiro mais barato para as empresas. Com anos de atraso, as companhias brasileiras começam a ter opção de financiamento fora dos bancos* [*Cheaper Finance for Firms. After Years of Delay, Brazilian Companies Begin to Have Financing Options Outside Banks*], REVISTA EXAME (Braz.), Apr. 25, 2005.

[28] *See infra* Table 2.

[29] *See infra* Table 1, Table 2, Part II.

segments.[30] The number of Initial Public Offerings (IPOs) has increased tremendously.[31] The stock market has seen the first attempt of a hostile takeover in thirty years.[32] Companies have been selling control in the market,[33] and anti-takeover defenses are being incorporated into companies' bylaws.[34] In addition to these company-related developments, Bovespa recently merged with the Brazilian Exchange for Future Contracts and Commodities (BM&F) and became the world's third largest stock exchange.[35]

This phenomenon has received significant attention from the media. Several articles have pointed out that the Brazilian capital market is experiencing unprecedented momentum. They have specially focused on the so-called trend towards dispersed ownership.[36] According to these commentators, Brazil is finally experiencing a transition in ownership patterns. Some even hypothesize that ownership diffusion may result in Brazilian managerial control becoming more like its U.S. counterpart.[37]

Scholars have not yet analyzed this phenomenon. Nonetheless, these recent developments present a very interesting opportunity for research. If ownership patterns are indeed shifting, we need to understand how and why ownership structure is changing.

To investigate changes in Brazilian ownership structures, this paper analyzes the ownership structure of Brazilian listed corporations using IANs for the year 2006 and updated in 2007. To determine whether

[30] *See infra* Table 7.

[31] *See infra* Table 5.

[32] *See infra* Part V. A.

[33] *See* Vanessa Adachi, Carolina Mandl & Catherine Vieira Mandl, *Perdigão pulveriza capital e entra na onda das companhias públicas* [*Perdigão Diffuses Capital and Enters the Wave of Public Companies*]**,** VALOR ECONÔMICO, (Braz.) Jan. 17, 2006; Carolina Mandl & Vanessa Adachi, *Dasa vai pulverizar o controle acionário em bolsa* [*Dasa Will Diffuse Stock Control in the Stock Exchange*], (Braz.) VALOR ECONÔMICO, Jan. 25, 2006; Marcelo Onaga, *Empresas sem dono* [*Firms Without Owners*], REVISTA EXAME (Braz.), Jan. 26, 2006.

[34] *Vitamina ou veneno? Enquanto a Europa discute os prós e contras das poison pills, o Brasil desenvolve versões próprias da pílula e reforça a dose quando o controle é pulverizado* [*Vitamin or Venom? While Europe Discusses the Pros and Cons of Poison Pills, Brazil Develops Its Own Pill Versions and Reinforces the Dose When Control is Diffused*], REVISTA CAPITAL ABERTO (Braz.), Mar. 2006. *See* discussion *infra* Part VI.C.

[35] Heloiza Canassa & Edgar Ortega, *Bovespa-BM&F Merger to Create Third-Biggest Exchange*, BLOOMBERG, Mar. 26, 2008, http://www.bloomberg.com/apps/news?pid=20601086&sid=abTHmx9GUGwA&refer=news.

[36] *A vida depois da pulverização. Empresas que já optaram pela diluição de controle têm aumento de liquidez em seus papéis e passam a fazer parte dos principais índices* [*Life After Diffusion of Shares. Companies that Have Opted for Diffusion of Control Have Liquidity Increase for Their Securities and Become Part of the Main Indexes*], VALOR ECONÔMICO (Braz.), June 29, 2006; Catherine Viera, *Para Previ, pulverização de controle valoriza governança* [*For Previ, Control Pulverization Enhances Governance*], VALOR ECONÔMICO (Braz.), Jan. 18, 2006.

[37] *See* Vanessa Adchi & Catherine Viera, *Controle pulverizado cria grupo de executivos superpoderosos. Modelo exige mais participação dos acionistas e atenção aos conflitos de interesse* [*Diffused Control Creates a Group of Super Powerful Executives. The Model Requires More Shareholder Participation and Attention to Conflicts of Interest*], VALOR ECONÔMICO (Braz.), Mar. 13, 2006; Onaga, *supra* note 33.

concentrated ownership has been decreasing recently, this paper compares data obtained from this research with results of previous studies on ownership structures from 1996 to 2002.[38] The paper then analyzes the types of control structures that emerge as concentration of ownership diminishes, inquiring whether firms present minority control or eventually managerial control.

In addition to establishing whether ownership has become more dispersed, assessing whether shareholders have changed enables us to understand recent developments in corporate governance. Do profiles of the largest stockholders look the same as they used to? Has family ownership dissipated? Has institutional investor ownership increased? To answer these questions, this paper identifies changes in the profiles of majority shareholders. Comparing this data with results obtained by previous studies, this paper concludes that, contrary to what one might expect, no relevant change in the profile of shareholders has occurred. Family ownership is still a dominant feature of Brazilian corporations. However, there have been other significant developments in ownership structures. For example, government ownership has lessened considerably and ownership by institutional investors seems to be increasing.

This paper finds that managerial control is far from being a Brazilian reality. But this paper presents evidence that concentration of ownership has indeed diminished in Brazilian capital markets. There is, however, one important caveat: ownership has become more "dispersed" in Novo Mercado, the special listing segment of Bovespa that requires firms to adopt the one-share-one-vote rule. The largest shareholder of Novo Mercado companies holds 36.39% of the shares on average. This datum greatly contrasts with measures of the largest stake of shares from previous studies.[39] In Level 2 and Level 1,[40] segments with less stringent requirements of corporate governance, ownership is more concentrated. Firms' largest shareholders average 64.79% ownership in Level 2 and 63.14% in Level 1.

It may appear as though companies have been changing their governance and ownership patterns in the ways envisioned by Novo Mercado.[41] However, this paper argues that this conclusion is, at best, incomplete. For a complete understanding of these current changes, any

[38] *See infra* Part IV.

[39] *See infra* notes 59–72.

[40] *See infra* Part II.

[41] *See* Alfonso Celso Pastore, *Síndrome de Peter Pan: argumentos adicionais* [*Peter Pan Syndrome: Additional Arguments*], VALOR ONLINE, (Braz.), Sept. 10, 2007; Cristiano Romero, *A decolagem do mercado de capitais* [*The Take Off of the Capital Markets*], VALOR ECONÔMICO, (Braz.), Jan. 3, 2007; *see also* Tiago Lethbridge & Melina Costa, *Temporada de compras* [*Buying Season*], REVISTA EXAME (Braz.), Nov. 16, 2006.

account must analyze the players who have been changing corporate governance patterns.

This paper analyzes the historical background of all the firms that have listed on Novo Mercado, Level 2 and Level 1. It identifies the companies that have migrated from Bovespa's traditional listing market to a special segment (Novo Mercado, Level 2 or Level 1). One could suppose that firms have been scaling-up from the standard listing segment to Level 1, Level 2 and then to Novo Mercado to take advantage of the heightened value of their securities in the most stringent segments.[42] One could even assume that most firms that are now listed on Novo Mercado used to be listed on the traditional segment. However, the reality is that few companies from the traditional listing market have migrated to Novo Mercado. Only 15.2% of the firms listed on Novo Mercado come from the standard market. The majority of companies (thirty-five out of fifty-seven, or 61.4%) that originally migrated from the standard market to any special listing segment went to Level 1.[43]

In contrast, the majority of companies that have listed in Novo Mercado are "new entrants." Nearly eighty-five percent of Novo Mercado's firms are closely held corporations that have gone public and issued shares directly in this listing segment. This suggests that we can identify two corporate worlds in Brazilian capital markets. One world consists of new corporations that adopt better corporate governance patterns; the other consists of traditional corporations that have not changed their main patterns of corporate governance or ownership. So, while new entrants increase corporate governance quality and market competition, a significant group of corporations resist changes and act in a manner consistent with path dependence theory predictions.[44]

The new entrants are, on their own, changing the market as more dispersed ownership patterns produce important consequences in corporate control and governance. This paper, accordingly, discusses the

[42] *See* Ricardo P.C. Leal & Andre Carvalhal-da-Silva, Corporate Governance and Value in Brazil (and in Chile) (Oct. 2005) (unnumbered working paper), *available at* http://ssrn.com/abstract=726261 (finding strong evidence that good corporate governance leads to a higher market valuation and lower cost of capital). *Cf.* Antonio Gledson de Carvalho & George G. Pennacchi, Can Voluntary Market Reforms Promote Efficient Corporate Governance? Evidence from Firms' Migration to Premium Markets in Brazil 6–7 (Jan. 25 2005) (unnumbered working paper), *available at* http://ssrn.com/abstract=678282 (examining positive impact of firms' migration to premium exchanges on minority shareholdings' value). *See generally* Bernard S. Black, Inessa Love, & Andrei Rachinsky, *Corporate Governance Indices and Firms' Market Values: Time Series Evidence from Russia*, 7 EMERGING MKTS REV. 361 (2006), *available at* http://ssrn.com/abstract=866988 (finding that governance predicts market value in a firm fixed effects framework in Russia); Bernard S. Black & Vikramaditya S. Khanna, *Can Corporate Governance Reforms Increase Firms' Market Values? Evidence from India*, 4 J. EMPIRICAL LEGAL STUD. 749 (2007), *available at* http://ssrn.com/abstract=914440 (noting that investors consider Clause 49's corporate governance reforms in India valuable, as large firms' share prices react positively to reform announcements).

[43] *See infra* Part III; Table 7.

[44] Bebchuk & Roe, *supra* note 9, at 137–38.

consequences of this phenomenon on Brazilian corporate governance and legal regulations.

One by-product of dispersed ownership is minority control, which is posing new issues for the management of corporations. In response, Brazilian companies have begun relying heavily on shareholder agreements. Main shareholders use these agreements to coordinate corporate decision-making and exercise of control. The aim of this paper is to identify the effects that shareholders agreements produce on corporate control. To that end, this paper surveys shareholders' agreements of all firms with dispersed control disclosed in 2006-2007 IANs to Comissao de Valores Mobiliarios (CVM)—the Brazilian Securities Exchange Commission. This is the first work to assess how shareholders' agreements interfere with corporate governance. Corporate governance scholars usually restrict their analyses to companies' charters and bylaws. Analysis of shareholders' agreements in Brazil reveals that the contractual relations that affect corporate governance may be more complex than generally assumed. Thus, this paper contributes to corporate governance literature by showing that shareholders' agreements are a very important piece of the governance puzzle.

A second development refers to changes in companies' bylaws. Many corporations are adopting legal mechanisms to prevent hostile takeovers. Renner and Perdigao were the first companies to include anti-takeover provisions in their bylaws.[45] This paper investigates all the eighty-four companies without a clear controlling shareholder to assess how diluted ownership has led to the use of anti-takeover clauses in bylaws.

After analyzing how ownership patterns have been changing and the consequences of this process, this paper discusses why this change has taken place. This paper then considers the Brazilian experience to suggest how dispersed ownership has been promoted and how the law, the State, and private players supported this development. Empirical evidence from Brazil is then used to advance theoretical understanding of changes in corporate ownership structures in emerging countries. In addition, this paper highlights several problems regulators will face in strengthening Brazilian capital markets.

This paper proceeds as follows. Section II identifies recent changes in the Brazilian market following the creation of Bovespa's listing segments, showing a consistent increase in the number of IPOs and the numbers of the new listing phenomenon. Section III analyzes what companies have

[45] *See Adversários de primeira viagem. Oferta hostil da Sadia pelo controle da Perdigão deixa espaço para os administradores brasileiros agirem com muito mais governança da próxima vez* [*First Trip Adversaries*; *Sadia's Hostile Offer for Control of Perdigao Leaves Room for Brazilian Managers to Act with More Governance Next Time*], REVISTA CAPITAL ABERTO, (Braz.), Aug. 2006.

migrated to Novo Mercado, Level 2, and Level 1. Section IV reviews empirical evidence of ownership concentration in the Brazilian capital markets. Section V discusses the recent takeover attempt and presents new data on the decrease of ownership concentration, examines patterns of ownership in Bovespa's corporate governance segments, and finds that dispersed ownership is present in Novo Mercado and not in Level 2 and Level 1. Section VI then explores the main consequences of increased dispersion of ownership on private contracting. Section VII matches empirical evidence with theoretical hypotheses on changes of corporate ownership and highlights lessons we can learn from the Brazilian experience. It identifies the reasons for and consequences of ownership change on other emerging markets. Section VIII discusses challenges that Brazilian regulation will have to face to sustain market development.

II. RECENT MARKET DEVELOPMENTS: SPECIAL LISTING SEGMENTS, LISTING EVOLUTION AND IPOS

Bovespa, the main stock exchange in Brazil, launched three special listing segments in December of 2000: Level 1, Level 2 and Novo Mercado.[46] These segments were intended to enhance companies' securities prices and attract investors to the market by fostering transparency and confidence in the stock market.[47] To list in these segments, companies must comply with stricter disclosure requirements and corporate governance practices than those required by Brazilian legislation.[48] Because the standard trading market continues to exist, firms voluntarily choose to migrate to the special segments.[49]

Table 1 details the most important rules of the special listing segments. Level 1 basically requires: (1) a maintenance of free-float of at least twenty-five percent of the total capital; (2) improvements in quarterly information reports, including disclosure of consolidated financial statements, cash flow statement, and special audit revision; (3) disclosure of an annual calendar of corporate events; (4) disclosure of trading involving securities of the company by its management or controlling shareholder; and (5) disclosure of contracts between the company and related-parties.[50]

Level 2 mandates compliance with Level 1's rules and the following regulations: (1) disclosure of financial statements in accordance with U.S. GAAP or IFRS standards; (2) a unified term of two years at maximum for the entire board of the directors, which must have at least five members, of which at least twenty percent must be independent; (3) voting rights granted to non-voting (preferred) shares in certain corporate decisions such as

[46] Santana, *supra* note 21, at 12–13.

[47] *See* BOVESPA, NOVO MERCADO, APRESENTAÇÃO *available at* http://www.bovespa.com.br/pdf/Folder_NovoMercado.pdf.

[48] *Id.*

[49] *Id.*

[50] *See* BOVESPA, REGULAMENTO DE PRÁTICAS DIRERENCIADAS DE GOVERNANÇA CORPORATIVA NÍVEL 1, *translated in* http://www.bovespa.com.br/pdf/regulamento_niveisI_ingles.pdf [hereinafter Level 1 Listing Rules].

merger, spin-off, or incorporation, approval of contracts between the company and other firms of the same holding group when deliberation occurs at the general meeting; (4) tag along rights for non-voting shareholders who ought to receive at least eighty percent of the price paid for the voting shares of the controlling shareholder in a sale of control; (5) the obligation to hold a tender offer by the economic value of the shares in the case of a delisting or going-private transaction; and (6) adherence to the Market Arbitration Panel for the solution of corporate disputes.[51]

Novo Mercado requires compliance with Level 1's and Level 2's standards and the following rules: (1) all shares must be voting shares; and (2) tag along rights for all minority shareholders who must receive the same price paid for the shares of the controlling shareholder.[52]

All three segments require that public share offerings use mechanisms favoring capital dispersion and broader retail access.[53] However, Novo Mercado is the only segment that requires the one-share-one-vote rule,[54] which best enables ownership to become dispersed. Therefore, Novo Mercado is the most stringent listing segment, followed by Level 2 and Level 1, the least stringent segment.

Table 2 displays information on listing evolution in Bovespa's segments. In the first three years of existence, the market did not respond as expected. By the end of 2003, there were only two companies listed on Novo Mercado and three companies listed on Level 2. Level 1 already had thirty-one companies, but no clear pattern emerged because Level 1 was not considered to require a great change in corporate governance standards. Then, slowly in 2004, the situation began to change. The boom came in 2006. At the end of 2006, there were forty-four companies listed on Novo Mercado and fourteen on Level 2. Interestingly, Level 1 did not share the same growth rate. By the end of 2006, Level 1 listed thirty-seven companies, a slight increase from 2003. The Novo Mercado's boom continued through the end of 2007 and the adhesion rate more than doubled during this period, making a total of ninety-two listed companies. Level 2 did not benefit from the same evolution and grouped twenty companies for

[51] *See* BOVESPA, REGULAMENTO DE PRÁTICAS DIRERENCIADAS DE GOVERNANÇA CORPORATIVA NÍVEL 2, *translated in* http://www.bovespa.com.br/pdf/regulamento_niveis_ingles.pdf [hereinafter Level 2 Listing Rules].

[52] *See* BOVESPA, NOVO MERCADO, *translated in* http://www.bovespa.com.br/pdf/regulamento.pdf [hereinafter Novo Mercado Listing Rules].

[53] Each segment's listing rules specify that dispersed ownership can be encouraged through "(i) Ensuring access to all interested investors; or (ii) Allocating at least 10% of the offering to individuals or non-institutional investors." Level 1 Listing Rules, *supra* note 50, § 5.1; Level 2 Listing Rules, *supra* note 51, § 7.1; Novo Mercado Listing Rules, *supra* note 52, § 7.1.

[54] *See* Novo Mercado Listing Rules, *supra* note 52, § 3.1(vi) (requiring ordinary shares, which by definition have voting rights).

the same time frame. Level 1 also obtained just a few more companies, leading to a total of forty-four.

Novo Mercado's firms have been responsible for the large growth in the number of IPOs in Bovespa. Table 5 presents the numbers of the IPO phenomenon for primary offerings, secondary offerings, and mixed offerings, focusing on the numbers of primary and mixed offerings (these also include a primary initial public offering). In 2004, only three companies engaged in IPOs in Novo Mercado and two companies in Level 2. In 2005, five companies in Novo Mercado and two companies in Level 2 went public. The number of IPOs dramatically increased in 2006 and 2007. In 2006, seventeen IPOs were conducted in Novo Mercado and four in Level 2. In 2007, the numbers jumped to forty-one IPOs in Novo Mercado, seven in Level 2, and eight in Level 1.

Table 6 shows that Novo Mercado has been receiving the vast majority of the new IPOs. Novo Mercado already represents 18.59% of the market capitalization of Bovespa. Level 2 fares much worse. Level 1 has the largest market capitalization of the new listing segments, representing approximately 38% of Bovespa's market capitalization—a figure more than two times the market capitalization of Novo Mercado. Overall, the largest capitalization of Bovespa still comes from the standard market, which has a market capitalization slightly in excess of Level 1, at approximately 40% of the total market capitalization of the stock exchange.

Analyzing this data, we can foresee that Level 1 will surpass the standard market in terms of market capitalization. However, this is less likely to happen with Novo Mercado if most traditional Brazilian firms continue to adhere to Level 1.

III. THE COMPANIES LISTED ON BOVESPA'S NOVO MERCADO, LEVEL 2 AND LEVEL 1, AND THEIR MIGRATION PATTERNS

By the end of 2007, Bovespa had 156 companies listed on its special segments of corporate governance (ninety-two in Novo Mercado, twenty in Level 2 and forty-four in Level 1).[55] These numbers present a notable development considering the historical evolution of Brazilian capital markets. As a result, many commentators have been very optimistic about the recent growth of the market.

These developments can imply several hypotheses about stock market and corporate governance evolution. Recent studies show that Novo Mercado's firms receive higher prices for their securities.[56] These prices should encourage firms to upgrade their listing level, since firms can more easily obtain financing by enacting stricter corporate governance practices.

[55] Based on data gathered by the end of 2007. *See infra* Table 2.

[56] *See, e.g.*, Antonio Gledson de Carvalho & George G. Pennacchi, Can Voluntary Market Reforms Promote Efficient Corporate Governance? Evidence from Firms' Migration to Premium Markets in Brazil (Jan. 25, 2005) (unnumbered working paper), *available at* http://ssrn.com/abstract=678282; Alexandre Di Miceli da Silveira & Lucas Ayres B. de C. Barros, Corporate Governance Quality and Firm Value in Brazil (June 2007) (unnumbered working paper), *available at* http://ssrn.com/abstract=923310.

Therefore, one could suppose that firms that used to be listed on the standard market should gradually scale-up from this market to Level 1, Level 2, and then to Novo Mercado. One could hypothesize that the majority of firms that are now listed in Novo Mercado came from the traditional segment. However, a careful analysis of the companies that have been listing on Novo Mercado does not support these hypotheses.

This Section identifies the companies listed on Novo Mercado and the dates when their shares began to be traded in this segment. It then determines whether these companies had been previously listed on the Bovespa standard market, Level 2 or Level 1. Checking the dates of these companies' registrations with CVM enabled an assessment of when these companies opened their capital and whether they had done so in Bovespa's standard market. Telephone interviews were conducted to clarify doubts that arose when the data were insufficient to determine whether the company had previously been listed on the standard market.

At the end of 2007, Bovespa had ninety-two companies listed on Novo Mercado.[57] Table 7 shows that, of these companies, only fourteen companies, or approximately 15.2% of all Novo Mercado's companies, migrated from the traditional market. These companies include: Banco Brasil S.A., Cia Hering, Cia Saneamento Básico Est São Paulo, CPFL Energia S.A., Drogasil S.A., Eternit S.A., Indústrias Romi S.A., Light S.A., Lojas Renner S.A., Perdigão S.A., Rossi Residencial S.A., São Carlos Empreendimentos e Participacões S.A., Tractebel Energia S.A. and Weg S.A. Therefore, the vast majority of Novo Mercado companies are new entrants that listed their IPOs in Novo Mercado.

There are twenty companies listed on Level 2. From these companies, eight firms (forty percent) have already been listed on the traditional market. These include All América Latina Logística S.A., Centrais Elétricas de Santa Catarina S.A., Eletropaulo Metrop. Elet. São Paulo S.A., Marcopolo S.A., Net Seviços de Comunicação S.A., Saraiva S.A. Livreiros Editores, Suzano Petroquímica S.A. and Tam S.A. This information shows that although the majority of firms listed on Level 2 are new entrants in the stock exchange, a significant number of firms have migrated from the standard market.

Bovespa now has forty-four companies listed on Level 1. Thirty-five of these companies, or approximately eighty percent of all companies listed on Level 1, come from Bovespa's traditional listing market. These include: Aracruz Celulose S.A., Banco Bradesco S.A., Banco Estado do Rio Grande do Sul, Banco Itaú Holding Finaceira S.A., Parapanapanema S.A., Brasil Telecom Participações S.A., Brasil Telecom S.A., Braskem S.A., Centrais Elet. Bras. S.A. Eletrobrás, Cia Energética de São Paulo (CESP), Cia

[57] *See infra* Table 2.

Brasileira de Distribuição, Cia Energética de Minas Gerais (CEMIG), Cia Fiação Tecidos Cedro Cachoeira, Cia Transmissão Energia Elet. Paulista, Cia Vale do Rio Doce, Confab Industrial S.A., Duratex S.A., Fras-Le S.A., Gerdau S.A., Iochpe Maxion S.A., Itausa Investimentos Itaú S.A., Klabin S.A., Mangels Industrial S.A., Metalúrgica Gerdau S.A., Randon S.A., Implementos e Participações S.A., Fábrica de Produtos Alimentícios Vigor, Sadia S.A., São Paulo Alpargatas S.A., Suzano Papel e Celulose S.A., Ultrapar Participações S.A., Unibanco Holdings S.A., Unibanco União de Bancos Brasileiros S.A., Unipar União de Ind. Petroquímica S.A., Usinas Siderúrgicas de Minas Gerais S.A. (USIMINAS), and Votorantim Celulose e Papel S.A. Traditional firms are more likely to gravitate towards segments that require small changes in corporate governance.

Several factors explain the migration patterns of firms from the standard market to Level 1, and their reluctance to migrate to the highest levels of corporate governance. First, these firms tend to be large, established, and successful corporations. They can rely on internal or governmental financing or on financing from other institutions with which they have continuous businesses. Therefore, they can resolve capital shortage without depending on the capital market. Second, Novo Mercado and Level 2 lessen corporate control because of their additional disclosure requirements and, for Novo Mercado companies, the one-share-one-vote rule. Complying with these rules may conflict with the interests of important controlling shareholders. Third, the controlling shareholders of these corporations are the wealthiest families in Brazil and they carry political influence. Therefore, extracting non-pecuniary, and perhaps pecuniary, private benefits of control may be an important reason why they maintain control. Thus, consistent with the path dependence hypothesis, we find that traditional firms that migrate most likely list on Level 1, which requires the least stringent changes in their initial ownership and governance structure.

At this point, there is insufficient data to suggest that traditional market firms are gradually migrating to Level 1, to Level 2, and then to Novo Mercado. Only four companies improved their corporate governance using this kind of step-by-step approach. Eternit S.A. went from the traditional market to Level 2 and then to Novo Mercado. Cia Hering, Perdigão S.A. and Weg S.A. left the traditional market for Level 1 and then for Novo Mercado. Two other companies, Net Serviços de Comunicação and Rossi Residencial S.A., had their IPOs in Level 1 before migrating to Novo Mercado.

Together, the listing and migration patterns support three conclusions. First, new entrants comprise the vast majority of Novo Mercado firms. They likely utilize capital markets as an alternative for raising capital. Therefore, they are the largely responsible for the growth in Bovespa's IPOs market.

Second, Level 2 represents the compromise between the strongest corporate governance practices of Novo Mercado and the weakest of Level 1. It is likely because of this gray compliance with better corporate governance that Level 2 is the segment that has attracted the smallest

number of listings. Level 2 mostly contains new entrants, but it has a significantly greater percentage of firms from the standard market. All companies listed on Level 2 have non-voting preferred shares in their structures, which explains why they have not listed on Novo Mercado. Some of Level 2's companies suffer from regulatory restrictions because of the type of industry in which they operate. This happens, for instance, with companies in the business of air transportation and education. Such regulation constrains the possibility of converting non-voting shares into voting shares, therefore impeding companies from complying with Novo Mercado's one share-one vote rule.[58]

Third, Level 1 is the segment that contains the largest number of firms that migrated from the standard market. Level 1 contains very traditional Brazilian firms with very strong reputations. These firms account for the largest market capitalization of the special segments. Controlling shareholders have chosen to comply with weak corporate governance practices that permit them to continue to extract pecuniary and non-pecuniary private benefits of control. These firms have additional financing sources due to their strong political connections and reputations. Path dependence also explains why most migrating traditional firms enter the segment that requires the least demanding changes in corporate governance, enabling them to preserve most of their initial ownership and governance structures.

IV. CONCENTRATION OF OWNERSHIP PATTERNS

Several studies have shown that concentrated ownership characterizes Brazilian publicly-held companies. For example, Valadares and Leal found that, on average, one shareholder owned 74% of the voting capital in 203 companies, or 62.5% of their sample.[59] They relied on data disclosed in the 1996 IANs. Their sample comprised ownership information of 325 companies, including 26 financial institutions.[60] Among 122 companies

[58] This is true of air transportation firms, which must have four-fifths of the voting capital pertaining to Brazilian citizens. Lei No. 7.565 de19 de dezembro de 1986, Lex-38854616, art. 181 II, *available at* http://www.planalto.gov.br/ccivil_03/leis/L7565.htm. In addition, article 181 § 1º requires that firms' bylaws prohibit the conversion of preferred non-voting shares into voting shares. In the case of companies that provide educational services, a law still pending in Congress would constrain pre-IPO ownership structures: Article 7, § 4 of Project of Law No. 7.200 de 12 de junho de 2006 mandates that 70% of the voting capital of any institution that sponsors universities should belong to Brazilian citizens. Educational firms that recently went public arranged their ownership structure accordingly, issuing units comprising non-voting shares and voting shares.

[59] Sílvia Mourthé Valadares & Ricardo Pereira Câmara Leal, Ownership and Control Structure of Brazilian Companies 8 (2000) (unnumbered working paper), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=213409.

[60] *Id.* at 7.

whose control is not retained by one sole shareholder, the largest shareholder owns, on average, 32% of the voting capital. Therefore, a shareholder will retain a major voting block of shares even in companies without a controlling shareholder. Considering the entire sample, the largest shareholder owns, on average, 58% of the voting capital, the three largest shareholders own 78%, and the five largest own 82%. Only thirty-five companies, or 11% of the sample, have not issued non-voting shares. Valadares and Leal find that the total capital of companies is composed, on average, by 54% voting shares and 46% non-voting shares. So, non-voting shares have been used as a mechanism to separate ownership from control.[61]

Confirming these findings, Carvalhal-da-Silva and Leal's study of a sample of 225 companies based on the IANs of 2000 showed that 90% of the sample had a shareholder owning more than 50% of the voting shares. This shareholder retained, on average, 76% of the voting capital and 54% of the total capital of the firm. Twenty-two companies did not have a controlling shareholder, and the largest shareholder held, on average, 37% of the voting capital. On average, taking the entire sample into consideration, the largest shareholder owns 72% of the voting capital, the three and the five largest shareholders own 85% and 87% of the voting rights respectively.[62] Thus, the total capital of the companies is composed, on average, by 53% of voting shares and 47% of non-voting shares.[63]

Considering capital origin, Carvalhal-da-Silva and Leal observed that of the 203 companies which had a sole controlling shareholder, 108 companies (48% of the sample) were controlled by families, 60 companies (27%) were controlled by foreign investors, 19 (8%) by institutional investors, and 16 (7%) by the government.[64]

Aldrighi and Oliveira analyzed ownership and control concentration, relying on IANS dated between 1997 and 2002.[65] They show that 77.3% of

[61] *Id.* at 10 ("If there is some diffusion in ownership of the firm, this occurs through non-voting shares. Thus small shareholders normally do not have voting rights, and therefore lack the formal power to guarantee their rights from the company managers.").

[62] André Carvalhal-da-Silva & Ricardo Leal, *Corporate Governance, Market Valuation and Dividend Policy in Brazil* 7 (Coppead Working Paper Series, Working Paper No. 390, 2004), *available at* http://ssrn.com/abstract=477302. *See also* Eduardo Schiehll & Igor Oliveira dos Santos, *Ownership Structure and Composition of Boards of Directors: Evidence on Brazilian Publicly-Traded Companies*, 39 REVISTA DE ADMINISTRAÇÃO DA UNIVERSIDADE DE SÃO PAULO 373, 381 (2004) (analyzing data from 2002 and concluding that "[o]verall, these statistics document that the ownership structure of Brazilian public firms has not changed significantly since 1998 and remains highly concentrated.").

[63] Carvalhal-da-Silva & Leal, *supra* note 62, at 9.

[64] *Id*. at 8, 10–13. The authors support their hypothesis that a higher concentration of voting rights is associated with a lower firm valuation, that the higher the voting total capital ratio, the lower is the firm valuation, that firms with a high concentration of voting rights have a low payout, and that firms with a high separation between voting and cash flow rights have a low payout.

[65] Dante Mendes Aldrighi & Alessandro Vinícius Marques de Oliveira, *The Influence of Ownership and Control Structures on the Firm Performance: Evidence from Brazil* 6 (Mar. 15, 2007) (unnumbered working paper), *available at* http://ssrn.com/abstract=972615 (also

listed companies have a controlling shareholder. Of those companies, 31.8% have a controlling shareholder owning more than 90% of the firm's voting capital. The largest ultimate shareholder retains, on average, 70.7% of the voting rights of listed companies and 46.4% of the cash-flows rights. The discrepancy between voting rights and cash flows matches 24.3 percentage points. The largest ultimate shareholder owns more than 50% of the outstanding capital in 41.8% of the companies listed on Bovespa. In 29.2% of the companies the largest ultimate shareholder holds cash-flow rights below 25%.

In a recent study, Leal and Carvalhal-da-Silva discovered a very high concentration of voting rights leveraged by the use of indirect control structures and non-voting shares.[66] They studied ownership structures using IANs from approximately 250 firms in 1998, 2000 and 2002. They concluded that ownership of voting rights became more concentrated during this period.[67] They noted that controlling shareholders owned more than fifty percent of the voting shares in seventy-five percent of the companies.[68]

Thus, with respect to direct ownership, the largest shareholder had a median of seventy-one percent of the voting rights and fifty percent of the cash-flow rights. When indirect ownership is analyzed, the largest shareholder has sixty-eight percent of the voting rights and thirty-four percent of the cash flow rights.[69] These results demonstrate that the use of indirect control structures and non-voting shares contribute to separation of ownership and control.[70]

Leal and Carvalhal-da-Silva also studied the identities of ultimate shareholders. Their data for 2002 showed that 75.2% of the firms had indirect control structures, and 21.5% of the companies had shareholders' agreements among their largest shareholders. After considering indirect control structures and terms of shareholders' agreements, they determined that 58.2% of the firms were ultimately owned by families, 24.9% by foreign investors (individuals or entities), 8.9% institutional investors (insurance companies, pension funds, foundations or investment funds), and

finding evidence on minority expropriation by controlling shareholders, mainly in the case of pyramids and non-voting shares structures which are associated with negative impacts on the performance of the largest firms).

[66] Leal & Carvalhal-da-Silva, *supra* note 42, at 5.

[67] *Id*. at 7.

[68] *Id*. at 19.

[69] *Id.* at 20. It is important to note that the authors have already adjusted ownership concentration results to reflect the voting blocks organized by means of shareholders' agreements. *See id.* at 20 (making ownership structures look much more concentrated than they actually are). In order to compare the effects these agreements have on ownership concentration and control in the market, this article analyzes ownership structures both with and without taking shareholders' agreements into account.

[70] *Id.* at 20.

8% by the government.[71]

Voting shares typically represented around 46.3% of the total number of shares in the market. Forty-nine percent of all shares available for trading in the market, including voting and non-voting shares, were free-floating shares. Non-voting shares used to be the most liquid, representing about 90% of trading volume at the Bovespa Stock Exchange.[72]

Thus, the available studies on Brazilian ownership structures conclude that an overwhelming majority of companies are controlled by a sole shareholder with concentrated ownership of voting shares.

V. TOWARDS DISPERSED OWNERSHIP?

This Section analyzes whether and to what extent ownership structures are becoming more dispersed in Brazil. This Section begins with anecdotal evidence of Sadia S.A.'s attempted takeover of Perdigão S.A.'s control. This case drew enormous media attention as it was considered the first modern hostile takeover attempt in Brazilian capital markets.[73] It provided the first evidence of three interesting developments in corporate control and governance structures: (a) Perdigão's significant dispersion of ownership by Brazilian standards; (b) its main shareholders' adoption of a shareholders' agreement to coordinate control; and (c) the current discussion on the adoption of tactical anti-takeover defenses.

A. The Recent Takeover Attempt

Sadia S.A. and Perdigão S.A. are the largest players in the Brazilian food manufacturing business. They produce beef, chicken, pork, turkey and meat derivatives, and process chilled frozen food such as pastas, poultry and vegetables. They are both importers and exporters of meat-based products. Sadia is listed on Bovespa's Level 1. Perdigão is listed on Novo Mercado.

In June 2006, Sadia attempted to expand its international business by taking over Perdigão. Sadia offered to pay $27.88 per share.[74] Sadia's price was the average market price of Perdigão's shares at Bovespa in the thirty preceding days plus a premium of 35%.[75] Perdigão's executives found Sadia's price too far below Perdigão's value and shareholders' expectations. Perdigão's board additionally believed that the offer did not

[71] *Id.* at 20, 62.

[72] Leal & Carvalhal-da-Silva, *supra* note 42, at 23.

[73] *See* Cristiane Correa & Tiago Lethbridge, *Por que o negócio do ano não saiu* [*Why the Deal of the Year Did Not Go Through*], REVISTA EXAME (Braz.), July 28, 2006 (describing the offer of Companhia de Eletricidade de Juiz de Fora to acquire CEMIG in the 1970s and the takeover of Cimento Aratu by Votorantim in the 1980s).

[74] *Sadia nega que tenha sido inábil quanto à Perdigão* [*Sadia Denies That It Was Inept Regarding Perdigão*], REVISTA EXAME (Braz.), July 27, 2006.

[75] Alda do Amaral Rocha, *Perdigão reclama da forma e do valor da investida feita pela Sadia* [*Perdigão Complains About the Form and Value of Sadia's Investiture*] VALOR ECONÔMICO (Braz.), July 18, 2006.

comply with procedures provided by Perdigão's bylaws.[76]

The largest shareholders of Perdigão are eight pension funds: Previ, Petrus, Fapes, Sistel, Valia, Real Grandeza Fundos de Previdência, Previ Banerj, and PSPP. Most of these funds engaged in a shareholders' agreement regulating voting rights in the company.[77] They jointly own about 49% of Perdigão's voting shares.[78] The pension funds designed a strategy to prevent the transaction by convincing Weg SA, a shareholder owning approximately 5.88% of Perdigão's shares, not to tender its shares. Because the pension funds controlled a very high percentage of shares, they simply adopted the strategy of saying "no."[79]

Sadia then offered a new price of $29 per share.[80] This price was below the legal requirement that a second offer be priced at least 5% higher than the first offer.[81] Grouping 55.38% of Perdigão's capital, the funds refused to tender their shares and easily and quickly blocked the hostile takeover attempt.[82]

Many Brazilian companies currently have ownership structures similar to Perdigão's. In 2006, Perdigão's ownership structure was the following: Previ-BB (15.6%), Petrus (11.9%), Sistel (5.1%), Valia (4.1%), Fapes (3.7%), Real Grandeza Fundo de Previdencia (2.9%), Fundo Librium (2.2%), and Previ-Banerj (1.2%).[83] Considering share ownership alone, no shareholder held a majority of the voting shares to control corporate decisions in the general meeting or to elect the majority of the board. Though Previ and Petrus were the largest two shareholders, other shareholders could still challenge their power by acting as a homogeneous group.

Many minority shareholders have been coping with this situation through shareholders' agreements. This was indeed the case of Perdigão, whose shareholders were bound by a shareholders' agreement that regulated

[76] Márcio Juliboni, *Perdigão considera oferta da Sadia "abaixo do valor" de mercado* [*Perdigao Considers the Offer from Sadia Below the Market Value*], REVISTA EXAME (Braz.), July 17, 2006.

[77] Alda do Amaral Rocha & Vera Brandimarte, *Frustrada Sadia revê seus planos de expansão* [*Disappointed, Sadia Reviews Its Expansion Plans*], VALOR ECONÔMICO (Braz.), July 24, 2006.

[78] Alda do Amaral Rocha, *Em unanimidade, fundos dizem "não"* [*Unanimously, Funds Say No*], VALOR ECONÔMICO (Braz.), July 19, 2006, at B12.

[79] *Id*.

[80] Aguinaldo Novo, *Sadia aumenta oferta para comprar Perdigão* [*Sadia Raises the Offer to Acquire Perdigão*], REVISTA EXAME (Braz.), July 20, 2006.

[81] CVM, Instrução 361, art. 13, § 2º (Mar. 5, 2002), *available at* http://www.cvm.gov.br/ingl/indexing/asp.; Correa & Lethbridge, *supra* note 73.

[82] Mara Luquet, *Caso Sadia-Perdigão é sinal de evolução do mercado* [*Sadia-Perdigao Case Is a Sign of Market Evolution*], VALOR ECONÔMICO (Braz.), July 24, 2006.

[83] PERDIGÃO, 2006 ANNUAL REPORT 54 (Dec. 31, 2006), *available at* http://www.perdigao.com.br/ri/web/arquivos/Perdigao_RelatorioAnual_2006_eng.pdf.

the exercise of voting rights.

The control structure of Perdigão is highly concentrated because of the shareholders' agreement, which enables its management to form a quick defense. However, Perdigão's ownership structure is sufficiently dispersed to make it a target for a hostile acquirer. This situation is very unusual in Brazil and provides evidence of a shift in ownership patterns.

The Sadia-Perdigão case raises two hypotheses for this study: (1) corporate control has become more dispersed among some shareholders; and (2) shareholders' agreements will be prevalent in firms with dispersed ownership, so that main shareholders can coordinate control. Analyzing a larger sample of Brazilian companies may show whether a new trend in ownership patterns has arisen.

B. Data on Share Ownership

The initial sample consists of the 530 firms listed on Bovespa as of December 19, 2007. The following corporations were excluded: (1) corporations listed on the over the counter market (ninety-one firms); (2) corporations that have not issued equity (twenty-four firms); (3) corporations that did not pass a "liquidity test," and did not have any trading activity between January 1 and May 31, 2007 (thirty-eight firms); and (4) corporations with incomplete or unavailable data (thirty-eight firms).

The final sample consists of 339 corporations, including all the companies listed on Novo Mercado (ninety-two companies), Level 2 (twenty companies) and Level 1 (forty-four companies) and 183 companies from the standard market. This paper looks at information on shareholding structures from IANs delivered to CVM in 2007, referring to year-end 2006.

IANs must be delivered annually, within five months of the end of a company's fiscal year, disclosing information regarding the preceding year.[84] Any changes in material facts that occur after the IAN's delivery must be updated and resubmitted to CVM, including changes in shareholding ownership.[85] Ninety-six companies reported changes in ownership structures during 2007 and resubmitted ownership disclosure information to CVM. Accordingly, our data tracks these changes and includes up-to-date information delivered to CVM by the end of 2007. IANs are publicly available from CVM's and Bovespa's websites.

Additionally, CVM requires that shareholders disclose direct or indirect shareholding ownership corresponding to five percent or more of shares of a corporation.[86] These data enable one to identify direct and indirect shareholders. Research underlying this paper thereby identified the

[84] CVM, Instrução 202 art. 16, items IV(a) & (b) (Dec. 6, 1993), *available at* http://www.cvm.gov.br/ingl/indexing.

[85] CVM Instrução 202 art. 16, para. 7 (Dec. 6, 1993), *available at* http://www.cvm.gov.br/ingl/indexing.

[86] CVM Instrução 358 art. 12 (Jan. 3, 2002), *available at* http://www.cvm.gov.br /ingl/indexing.

average ownership of the first, third, and fifth largest shareholders for each segment of Bovespa.[87]

The sample is split into two groups: firms with a controlling shareholder and firms without a controlling shareholder. Control can be exercised through different mechanisms. The most obvious, of course, is ownership of a relevant amount of shares.[88] For the purposes of this paper, a company is considered to have a controlling shareholder when a single shareholder (or a block of shareholders bound by shareholders' agreements) owns more than fifty percent of the voting shares of the company. A company will be classified as without a controlling shareholder if the largest shareholder has less than fifty percent of the voting stock.[89] A controlling shareholder by this definition has uncontestable decision-making power in corporate affairs, and may elect the majority of the board of directors (and managers) and control the agenda of the general shareholders' meeting. When ownership decreases below the fifty percent threshold, the power of one shareholder will depend on the ownership structure of the other shareholders. This holds true even as ownership of voting shares declines.

On the other hand, if ownership is considerably more diffuse (e.g., few shareholders owning more than around five percent of the voting capital), shareholders may coordinate control by using a non-ownership mechanism, such as contractual devices. For example, shareholders' agreements can guarantee control. This would occur if shareholders owning less than fifty percent of the voting rights enter into a shareholders' agreement to regulate their voting rights and/or exercise of control.[90] Therefore, shareholders' agreements are powerful mechanisms to assure control without requiring

[87] Some companies have less than five shareholders who own more than 5% of the shares.

[88] Control can also be exercised by non-ownership mechanisms such as contracts and actual control of the proxy machinery.

[89] We acknowledge that this cutoff is very stringent, and the literature has applied more lax definitions of controlling shareholder. *See generally*, Claessens, Djankov & Lang, *supra* note 4 (defining a controlling shareholder as holding 10 to 20 % of either direct or indirect voting rights); La Porta, Lopez-de-Silanes & Shleifer, *supra* note 2. Accordingly, interpretations of the results depend on the threshold of control used to define a controlling shareholder. If, however, 20% of voting power is deemed sufficient to characterize control, then the vast majority of Brazilian firms would be classified as companies with concentration of ownership, leaving very few companies with dispersed control. While this article does not take issue with such interpretation, the objective herein is to show that ownership patterns are changing in Brazil. Comparing the results of this analysis with results obtained by previous studies of Brazilian corporate ownership, one finds a decrease in ownership concentration, even if one argues that the actual ownership structures may not be fully classified as dispersed structures.

[90] This is not to say, of course, that shareholders holding more than 50% of voting rights cannot engage in such agreements.

the burdensome financial commitment of having a lot of non-diversified capital invested in a corporation.

In order to evaluate the role of shareholders' agreements in bringing about control structures, this paper presents the data before considering the terms of shareholders' agreements. The data on direct ownership confirm that dispersion is found mostly in Novo Mercado, where the one-share-one-vote requirement promotes a broader diffusion of voting rights. As reported in Table 8, the majority of firms (sixty-five out of ninety-two) listed on Novo Mercado lack a controlling shareholder. In those sixty-five firms, the largest shareholder owns, on average, 26.23% of the shares, the three largest shareholders own 47.28% of the shares, and the five largest own 54.73% of the shares. These results show that the two or three largest shareholders can coordinate their voting rights and control a corporation, even when the largest shareholder alone cannot. If those two or three largest shareholders belong to the same family, a formal shareholders' agreement may not even be necessary. In the twenty-seven firms with a controlling shareholder, the largest shareholder on average owns 60.87% of the shares of the company.

One could still argue that these numbers denote that concentrated ownership is still prevalent, especially if we accept a 20% threshold to assess control.[91] However, these numbers greatly contrast with the usual Brazilian pattern of ownership concentration reported in the previous section. Considering the entire sample of firms listed on Novo Mercado (ninety-two), the largest shareholder owns 36.39% of the shares. These data confirm that Novo Mercado achieves considerably more dispersed ownership in comparison to the ownership concentration found in earlier studies.[92]

Level 2 continues to be characterized by the traditional degree of ownership concentration. In the sample of twenty companies listed on Level 2, the largest shareholders holds, on average, 64.79% of the voting capital.[93] Nonetheless, six companies have significantly more dispersed ownership. The average voting shares of the largest shareholder for these firms is approximately 38.84%.

Level 1 also has strong ownership concentration of voting shares. On average, the forty-four firms of Level 1 have, on average, approximately 63.14% of voting shares owned by the largest shareholder (see Table 10). Almost 71% of the Level 1 firms have controlling shareholders who, on average, control 76.07% of the voting rights. Only thirteen firms, or 29.5% of Level 1 companies, achieve more dispersion of ownership, with the

[91] *See* La Porta, Lopez-de-Silanes & Shleifer, *supra* note 2, at 491 (using a smaller percentage of share ownership to characterize control).

[92] Previous studies found much larger means. *See, e.g.*, Carvalhal-da-Silva and Leal, *supra* note 62 (calculating the average as 72% and finding a median of 71%); Aldrighi and Oliveira, *supra* note 65 (noting an average of 70.7%.); Valadares and Leal, *supra* note 59 (finding that the largest shareholder controlled on average 58% of the voting rights). Therefore, the reported drop in ownership structure concentration shows a significant change in Brazilian ownership patterns.

[93] *See infra* Table 9.

largest shareholder owning approximately 32.31% of voting rights, on average.

As expected, the same pattern of ownership concentration also applies to the standard market of Bovespa. Table 11 shows that approximately 72.67% of the companies listed on this market have controlling shareholders. Of the entire sample of 183 companies, the largest shareholder holds, on average, 65.50% of the voting shares, the three largest and the five largest shareholders approximately retain, respectively, 81.64% and 85.19% of the voting shares. These results confirm that concentration of ownership increases when moving from Novo Mercado to all the other segments which do not have the one-share-one-vote rule, and thus have less stringent corporate governance requirements.

It is important to keep in mind that, until this point, the ownership data have not been adjusted to reflect the terms of existing shareholders' agreements on voting rights and exercise of control. Incorporating these agreements into the analysis, the ownership structure will likely become more concentrated because minority shareholders will likely be part of a controlling block.

C. Divergence from Voting Capital and Total Capital

Brazilian law permits corporations to issue non-voting shares. Companies publicly held before Law 10.303/2001 may issue up to two-thirds non-voting shares of the total number of shares. Companies publicly held thereafter may issue up to fifty percent non-voting shares of the total shares.[94] Therefore, this paper also analyzes the composition of voting and non-voting shares to evaluate the divergence between cash flow and voting rights. Voting shares can assure cash flow rights and control rights, but non-voting shares can only assure cash flow rights.

Total capital for a specific company is available from CVM's website. It considers all the cash flow rights that voting shares plus non-voting shares provide. Therefore, depending on how many non-voting shares there are, the cash flow rights provided by voting shares can be smaller or larger.

The divergence between voting capital and total capital can potentially determine the level of private benefits of control that can be extracted from the corporation. The more concentrated cash-flow rights rest in the hands of the largest shareholder, the stronger the incentives that she will have to run the firm properly, as doing so will also raise her wealth. A controlling shareholder with fewer cash flow rights is better able to extract value to the detriment of minority shareholders, decreasing firm valuation. The larger the divergence between control and cash flow rights, the less restrained the

[94] Lei No. 10.303, de 31 de outubro de 2001, D.O.U de 1.11.2001, art. 2°; Lei No. 6.404, de 15 dezembro de 1976, D.O.U de 17.12.1976, art. 15 § 2. (Braz.).

controlling shareholder will be in extracting value, as she will not bear the costs of her actions.

Table 8 shows no voting or total capital divergence due to Novo Mercado's one-share-one-vote requirement. Table 9 displays total capital data for companies listed on Level 2. On average, the largest shareholder of a Level 2 firm holds only 42.11% of the firm's total capital, even if he or she controls 64.79% of the firm's voting rights. This results from the issuance of non-voting shares, which expand the firm's total capital, but do not add corresponding voting power. The largest shareholder holds, on average, approximately 18.72% of the non-voting shares of the corporation.

This divergence is more pronounced in Level 1 firms. According to Table 10, the largest shareholder of a Level 1 firm, on average, has invested 33.4% of the firm's total capital and controls 63.14% of the voting rights. This largest shareholder retains, on average, only 7.12% of the corporation's non-voting shares.

Table 11 presents data for companies listed on the standard market. The largest shareholder, on average, owns 49.23% of the corporation's total capital and 65.5% of the voting rights. He or she has invested a larger part of the total capital of the company, retaining approximately 22.65% of its non-voting shares.

Analysis of this information reveals a significant separation of ownership and control in Brazilian firms. However, controlling shareholders have not yet achieved the maximum amount of separation possible. Brazilian Corporate Law 6404/76 allowed the issuance of one-third voting shares and two-thirds non-voting shares.[95] Under this law, the controlling shareholder would only need to hold 16.6% of the total capital of the company. The controlling shareholder would merely need to retain 50% plus one share of the voting shares to fully exercise control, and these shares encompass one-sixth of the total capital of the company.

The segment that achieves the largest separation of ownership and control is Level 1. Level 1 majority shareholders have on average 33.4% of the total capital, but they still hold two times the number of shares necessary to exercise control (16.6%).[96] The ability of firms to separate ownership from control is considered to be a mechanism that explains why ownership is not dispersed in certain environments.[97] In section VII, I develop this theoretical argument to explain why Level 1 firms still concentrate control through the ownership of voting rights.

D. Data on Share Ownership Accounting for Shareholders' Agreements

Section VI provides a detailed account of the most frequently used types of shareholders' agreements and their effects. This section considers

[95] *See* Lei No. 6.404, de dezembro de 1976, D.O.U. de 17.12.1976 (suplemento) art. 15 § 2°, *available at* http://www.planalto.gov.br/ccivil_03/Leis/L6404compilada.htm.

[96] The old rule still applies for the companies that already adopted the one-third structure during the reform process.

[97] Högfeldt, *supra* note 3, at 553–54.

the impact of shareholders' agreements on voting rights and control. Tables 12, 13, and 14 reveal that shareholders' agreements have a profound effect on the concentration of voting rights and control in Brazil. Table 12 shows that the sixty-five Novo Mercado companies without a controlling shareholder drop to forty-five firms when considering the effects of shareholders' agreements over control. Twenty companies (30.76%) with diffuse ownership become companies with a clear controlling group (owning more than fifty percent of the voting rights) when shareholders' agreements are taken into account. Before accounting for the agreements, the largest shareholder from these twenty companies held an average of 28.06% of the voting rights. When shareholders' agreements are considered, the average share ownership of the group of shareholders exercising control through such agreements increases to 65.27% for these twenty companies. Overall, the shareholders' agreements make the average largest stake of ownership in the total sample increase from 36.39% to 45.25%. Nevertheless, the main conclusion regarding the larger dispersion of ownership structures in Novo Mercado persists. In contrast to previous studies, the 45.25% average ownership of the agreement-bound group of shareholders indicates a meaningful decrease of ownership concentration in Brazilian firms.

Table 13 exhibits ownership patterns in Level 2 companies. Four of the six Level 2 companies characterized as lacking controlling shareholders have been reincorporated into the analysis as companies with a controlling shareholder due to their shareholders' agreements. Shareholders' agreements cause the overall average of largest ownership blocks to rise from 64.79% to 69.6%. Thus, the impact of shareholders' agreements on ownership of the controlling block is not as pronounced as in Novo Mercado.

Table 14 considers the impact of shareholders' agreements on the structure of firms in Level 1. Nine of the thirteen firms (69.23%) previously considered to lack a controlling shareholder become companies with a controlling shareholder group. Among these firms, agreements cause the average of the voting rights retained by the largest shareholder group to increase from 27% to approximately 70%. Overall, the average ownership of voting rights for the largest shareholder changes from approximately 63.14% to 72.75%, revealing an even higher concentration of control in this segment.

This analysis shows that shareholders' agreements are important mechanisms to coordinate control in Brazilian corporations. These agreements tend to be adopted in companies where ownership is more dispersed. Approximately forty percent of these companies (thirty-three of the eighty-four companies) have a determined group of shareholders that jointly exercise control by means of shareholders' agreements. Considering shareholders' agreements, the number of companies without controlling

shareholders drops considerably in all three special segments: from sixty-five to forty-five in Novo Mercado, from six to two in Level 2, and from thirteen to three in Level 1. Novo Mercado is the only listing segment that maintains a degree of ownership dispersion, with an adjusted average ownership under fifty percent, even though the number of companies with controlling shareholders (forty-seven) surpasses the number of companies without controlling shareholders (forty-five) when these agreements are considered.

This analysis shows that shareholders' agreements have a profound impact on Brazilian corporate ownership and control. They work as substitute mechanisms to share ownership when shareholders have less ownership and control is more dispersed. They provide control concentration and coordination by regulating shared control among few shareholders.

This analysis also demonstrates that current corporate governance literature does not consider the impact of these agreements on international patterns of corporate ownership. Nonetheless, as the Brazilian experience shows, shareholders' agreements may be key instruments to organize the interests of important block holders, making control much more concentrated in practice than is revealed by looking solely at share ownership.

E. Data on Indirect Ultimate Largest Shareholders

Different types of ultimate shareholders shape different market characteristics and, therefore, different types of capitalism. Well-developed equity markets, such as those in the United States and Britain, present distinctive features. Most listed companies in these systems have diffused ownership. Large shareholdings, and especially majority ownership, are rare. In addition, very few large companies are family-controlled. In both the United States and Britain, institutional investors, like pension and mutual funds and insurance companies, retain significant ownership of listed companies, even if they own minority stakes in large public companies.[98] These particular types of ownership afford different types of governance practices.[99]

This section analyses the use and effect of pyramiding on corporate control structures. Pyramiding implies a discrepancy between the ultimate owner's total capital and control rights. The total capital is given by the

[98] *See* Brian Cheffins, *Current Trends in Corporate Governance: Going from London to Milan via Toronto*, 10 DUKE J. COMP. & INT'L. L. 5, 12 (1999–2000) (quoting studies finding that institutional investors retain ownership of approximately 50% of the equity market in the United States and between 16% and 70% of the equity market in England).

[99] Scholars propose more or less active participation for institutional investors in corporate governance. *See* John C. Coffee & Bernad S. Black, *Hail Britannia?: Institutional Investor Behavior Under Limited Regulation*, 92 MICH. L. REV. 1997 (1994); Roberta Romano, *Less is More: Making Institutional Investor Activism a Valuable Mechanism of Corporate Governance*, 18 YALE J. ON REG. 174 (2001); *see also* Cheffins, *supra* note 98, at 25 (discussing proposals from the Cadbury Committee and the Hampel Committee to improve institutional investor participation in corporate governance).

product of ownership stakes along the chain. If a shareholder owns forty percent of Firm A and Firm A owns twenty percent of Firm B, then this shareholder owns eight percent of Firm B's cash flow rights. Control rights are measured by the weakest link in the control chain. In the former example, the shareholder would control Firm B with twenty percent of the voting rights.

This section examines shareholder composition backwards to identify the ultimate main shareholders of Brazilian corporations.[100] The ultimate largest shareholders fall into one of the following categories: (1) individuals or families; (2) foreign investors (individuals or institutions); (3) government; and (4) institutional investors (banks, insurance firms, pension funds, foundations or investment funds). When a company does not have a controlling shareholder, this paper identifies the largest ultimate shareholder—the shareholder who owns the largest number of voting shares of the corporation.

In practice, one has to make several assumptions in order to calculate indirect ownership structures. Some of these assumptions include: (a) how one defines each defining category (for example, how one defines "institutional investors"); and (b) how one groups different families that are the main shareholders of one company. Regarding the first assumption, banks are typically considered to be institutional investors.[101] However, in many countries, banks can be controlled by families. Therefore, classifying banks as institutional investors may distort the measures of corporate ownership if one does not assess the bank's main shareholders. The same applies to investment funds. However, when participation in an investment fund is not disclosed in CVM dataset, I treat those funds as institutional investors. Therefore, the data for individual or family ownership may be underestimated.

Regarding the second assumption, Diagram 1 shows the ownership structure of Klabin S.A. We can distinguish three families as the main shareholders of Klabin S.A.: the Lafers, the Pivas and the Klabins. The results of an indirect ownership structure will vary according to whether these families are grouped as one big family, two joint families or three separate families. There is some evidence that these families might constitute one single family. For example, the name of one holding company is Jacob Klabin Lafer Adm. e Part. S.A., which might lead us to conclude that Klabin and Lafer have a familial relationship. The main shareholders of this company nonetheless are Miguel Lafer and Vera Lafer. Another example would be Sylvia Lafer Piva, Horacio Lafer Piva and

[100] This analysis does not consider the existence of shareholders' agreements in order to identify the largest ultimate shareholder from the exclusive perspective of ownership patterns.

[101] *See, e.g.*, Valdares & Leal, *supra* note 59.

Eduardo Lafer Piva, who carry two names of the main families. Therefore, results will change depending on how we aggregate these families. One can consider the Klabins to be one family separate from the Lafers and the Pivas. In this situation, the Klabins control 57.22%, while the Lafers own 45.36% of the voting capital structure, and the Pivas own 20.32% of the voting rights. If one considers Lafers and Pivas as one family group separate from the Klabins, then the Lafers and Pivas are the controlling shareholders, with 57.88% of the voting rights. For purposes of Table 19, the three families are regarded as one. The Klabins, the Lafers, and Pivas jointly control 59.5% of the voting capital of Klabin S.A. and 20.55% of the total capital.

Other cases, such as Medial Saúde S.A., are simpler. Medial Saúde S.A. has three main families (Kalil, Rocha Mello, and Schapira) controlling seventy-five percent of the company´s voting capital. There is no apparent evidence that those families are related. Therefore, this study regards these families as three separate main shareholders. However, if they actually happen to be part of the same family, this study underestimates the concentration of family control. Therefore, the analysis herein assumes that different last names designate different shareholders. In contrast, shareholders with the same last names are considered to belong to the same family group. As Faccio and Lang pointed out, this convention may understate family affiliation and, therefore, concentration of control.[102]

The data show that individual and family ownership are clearly dominant in Brazilian corporations. Of the twenty-seven firms listed on Novo Mercado with controlling shareholders, twenty of them (74.07%) are controlled by individuals or families.[103] The large majority (seventeen out of twenty) of companies controlled by either individuals or families are controlled by means of a pyramidal structure. In Novo Mercado's firms without a controlling shareholder, individual or family ownership also accounts for the largest stake of shares in corporations. Of sixty-five companies without a controlling shareholder, thirty-seven companies have individuals or families as the ultimate largest shareholders. Overall, as Table 15 shows, individual or family ownership is found in fifty-seven firms, which amounts to 39.75% of Novo Mercado's total market capitalization.[104] Foreign companies are the second largest shareholders. They are the largest ultimate shareholder in twenty-four companies, 21.86% of the entire sample of Novo Mercado's firms. Institutional shareholders are the largest ultimate shareholders of six companies and account for 15.08% of Novo Mercado's market capitalization.[105] Only five companies are government-owned, but government ownership amounts to 23.31 % of the market capitalization of the segment.[106]

Table 17 displays ownership data for companies listed on Level 2.

[102] Faccio & Lang, *supra* note 3, at 388.
[103] *See infra* Table 15.
[104] *See infra* Table 16.
[105] *See id.*
[106] *See id.*

Considering companies with a controlling shareholder, individual or family ownership (8) still predominates in relation to foreign ownership (4). Considering companies without a controlling shareholder, individuals or family ownership is found in five out of six companies. Individual or family ownership is responsible for 63.62% of the market capitalization, followed by foreign companies and the government with 21.12% and 15.26%, respectively.[107]

Information on the ultimate shareholder in Level 1 is found in Table 19. Individual and family ownership is also pervasive. Twenty-one out of thirty-one companies that have controlling shareholders are individual or family-held. Individuals and families are also the largest ultimate shareholder of nine out of thirteen companies without a controlling shareholder. Table 19 also shows that individuals and families overwhelmingly rely on pyramidal structures to exercise control. Control is kept through indirect control structures in twenty-seven of twenty-nine companies that have individuals and families as either the controlling or the largest ultimate shareholders. Table 20 shows that individual or family ownership is responsible for the second largest market capitalization (40.57%). Institutional shareholders are responsible for the largest market capitalization (48.16%), even though they either control or are the largest ultimate shareholders of only six companies.

Table 21 reports ownership data for companies listed on the standard market. Individual/family ownership is also dominant, followed by foreign ownership. Of the 133 companies with controlling shareholders, seventy-eight are controlled by individuals or families; seventy-one are controlled by means of indirect mechanisms (pyramids). Individuals or families are also the largest ultimate shareholders of thirty-seven corporations (out of fifty companies without a controlling shareholder). In terms of market capitalization, however, individual/family ownership accounts for only 9.87%.[108] This shows that most companies tend to be small, and hardly match the concept of a true publicly-held company. The government is the largest ultimate shareholder in terms of the standard level's market capitalization, with 48.63% (eighteen companies). Foreign ownership represents the second largest market capitalization. Foreign shareholders are the largest ultimate shareholders in thirty-seven companies and achieve 39.18% of the standard market capitalization.

Table 23 provides an overview of the general use of non-voting shares and pyramidal structures by the different types of last ultimate owners. Out of the whole sample of companies with available information (339), 163 companies make use of both pyramidal structures and non-voting shares. Sixty-seven companies adopt pyramidal structures and sixty-two companies

[107] *See infra* Table 18.
[108] *See infra* Table 22.

adopt non-voting shares. Therefore, approximately 86% of the firms in the sample separate ownership and control through these mechanisms. Approximately 69% of the sampled companies have non-voting shares, and 66% have pyramidal structures. Individuals and families are, by far, the groups most likely to adopt these mechanisms for separation of ownership and control. Of the sampled firms, 51.03% have individuals and families as ultimate shareholders that make use of pyramidal structures and 43.66% have individuals and families as ultimate shareholders that also adopt non-voting shares.

Several studies have found that large shareholdings are usually associated with families.[109] Family ownership increases in the segments that are characterized by more concentrated ownership. Family firms' heavy reliance on pyramidal structures shows that they are used to organizing interests of the several family members.

VI. CONSEQUENCES OF GREATER DISPERSION OF OWNERSHIP ON CORPORATE BEHAVIOR: SHAREHOLDERS' AGREEMENTS, INDEPENDENCE OF DIRECTORS, AND POISON PILLS

This section explores the main consequences generated by the increase of ownership dispersion in Brazilian capital markets. There are two main developments: widespread use of shareholders' agreements as mechanisms to coordinate joint control, and adoption of anti-takeover devices to avoid hostile takeovers.

A. Types of Shareholders' Agreements

As ownership has become more dispersed in the market, shareholders' agreements have increasingly been used to coordinate control. The Brazilian Corporate Law provides that shareholders' agreements can regulate the purchase and sale of shares, preference to acquire shares, the exercise of voting rights, or the exercise of control.[110] Shareholders' agreements may be mixed to address more than one of these subjects. The Corporate Law also contains specific rules regarding disclosure of these agreements. While shareholders' agreements are kept private in many jurisdictions,[111] in Brazil these agreements must be duly entered in the corporation's registration books to be enforceable against third parties.[112]

[109] Claessens, et al., *supra* note 6, at 2764 (finding that 70% of the block holders of their sample are families); La Porta, Lopez-de-Silanes & Shleifer, *supra* note 2, at 498.

[110] Lei No. 6.404, de dezembro de 1976, D.O. de 17.12.1976 (suplemento), art. 118, *available at* http://www.planalto.gov.br/ccivil_03/Leis/L6404compilada.htm ("Article 118. Shareholder agreements regulating the purchase and sale of shares, preference to acquire shares, the exercise of voting rights, or the exercise of control must be observed by the corporation when filed in its head office.").

[111] REINIER KRAAKMAN ET AL., THE ANATOMY OF CORPORATE LAW 75 (2004).

[112] Lei No. 6.404, de dezembro de 1976, D.O. de 17.12.1976 (suplemento), art. 118 ¶ 1, *available at* http://www.planalto.gov.br/ccivil_03/Leis/L6404compilada.htm ("Paragraph 1. The commitments or encumbrances resulting from such an agreement may only be enforced against a third party after the agreement has been duly entered in the register books and on the share certificates, if any.").

They bind the corporation provided that they are filed with the corporation's head office.[113] Therefore, shareholders have strong incentives to disclose these agreements.[114] If shareholders do not register the agreements with the company, agreements will be enforceable only between the signing parties.[115]

The 2001 Corporate Law reform expanded shareholders' agreements' ability to control corporate actions. Directors elected by shareholders who have signed such an agreement are required to vote in accordance with the terms of the agreement.[116] Votes cast in breach of the agreement will not be considered by the president of the meeting.[117] Therefore, shareholders' agreements now play an even more critical role in corporate governance. They not only can regulate the control exercise and voting rights of shareholders, but also bind directors' votes to the terms of the agreement and therefore diminish directors' independence.

The disclosure of shareholders' agreements to the public presents an interesting research opportunity. Black, de Carvalho, and Gorga surveyed corporate governance practices in Brazil in an extensive 2005 survey. They found that thirty-six (42%) of the Brazilian private companies in their sample have a shareholders' agreement among the members of the controlling family or group.[118] In twenty-four (67%) of these firms, the shareholder agreement ensures joint control.[119] The authors also report that in twenty-two firms, one or more non-independent directors were elected in accordance with a shareholders' agreement. In twelve firms, four or more directors are elected under a shareholders' agreement, forming a majority of the board.[120] Thus, shareholders' agreements perform an important role in Brazilian corporate governance.

---

[113] *See id.* at art. 118.

[114] *See* Black, de Carvalho & Gorga *supra* note 26 (finding that 92% of all shareholders' agreements are registered with the company in Brazil and showing that the parties want to enjoy stronger enforcement against third parties and the corporation itself).

[115] *See* Lei No. 6.404, de dezembro de 1976, D.O. de 17.12.1976 (suplemento) art. 118, ¶ 1.

[116] *See id.* at art. 118, ¶ 9 ("Failure to attend a general meeting or meetings of the corporation's management bodies, as well as failure to vote on matters specified in the shareholders' agreement by any party or by members of the board of directors elected under the terms of the shareholders' agreement assures the damaged party the right to vote with the shares belonging to the shareholder who is absent or remiss and, in case of a member of the board of directors, by the board member elected by the votes of the damaged party.").

[117] *Id.* at art. 118, ¶ 8 ("The president of the meeting or of the decision making body of the corporation shall not compute a vote that infringes a duly filed shareholders' agreement.").

[118] Black, de Carvalho & Gorga, *supra* note 26, at 39 (reporting that thirty-six of eighty-six companies surveyed have shareholders' agreements).

[119] *Id.*

[120] *Id.*

The present paper uses data gleaned from collecting and analyzing all shareholders' agreements provided to Comissão de Valores Mobiliários by companies without a controlling shareholder. These agreements are available along with other material information on publicly-held companies disclosed on CVM's website. Shareholders' agreements are deemed to be material information.[121] Therefore, engaging, amending or breaching these agreements immediately triggers disclosure obligations to the market. Using shareholders' agreements dating from September to December 2007, research for this paper focused on agreements of companies without a controlling shareholder because their shareholders' agreements are likely to produce more relevant effects on corporate control. The objective of this research is to understand whether shareholders' agreements are being used as substitute mechanisms in order to assure control when ownership has become more dispersed. Companies with controlling shareholders might have shareholders' agreements not investigated in this paper. Intuitively, these agreements are less likely to regulate control, and may instead regulate the purchase or sale of shares, or the relationship between controlling shareholders and strategic minority shareholders.

The sample consists of eighty-four Novo Mercado, Level 2 and Level 1 companies without a controlling shareholder. Fifty-four of these companies have shareholders' agreements available for download on the CVM website. Looking at the percentage of shares bound by each agreement serves to establish whether the agreements affect the control of the companies. A company without a controlling shareholder may have a de facto controlling shareholder group due to the shareholders' agreement. Nonetheless, there are many inconsistencies when attempting to establish the percentage of shares that are bound by the shareholders' agreements. These inconsistencies mostly emerge when comparing parties to the agreements with the company's reported shareholding ownership structure available on CVM. For example, consider the case of COSAN SA Indústria e Comércio. At the time of this research, there were two shareholders' agreements available for download for this company on CVM's website. Apparently both were valid shareholders' agreements. However, the company's latest IAN (also available from CVM) refers only to the existence of one agreement. Furthermore, the shareholders that signed one agreement do not correspond to the shareholders who are reported in the company's shareholding structure available in the IAN. In order to resolve this contradiction, the company was contacted for clarification. The investor relations officer stated that the shareholders' agreement under analysis is no longer effective. Similarly, phone calls were made to all companies with inconsistent data in order to clarify questions on validity, contracting parties and the percentage of shares

[121] *See* CVM, Instrução 358, art. 2, para. 1, items I–III (Jan. 3, 2002), *available at* http://www.cvm.gov.br/ingl/indexing/asp (considering shareholders' agreements material information (*fato relevante*) when they cause changes in the control of the company, when they are entered in the register books of the corporation, or when the corporation is an intervening party in the agreement).

included in shareholders' agreements.

This process revealed that forty-two (50%), of the companies have valid shareholders' agreements. The distribution of companies that have these agreements among the listing segments are as follows: twenty-eight (66.67%) Novo Mercado companies, four (9.52%) Level 2 companies, and ten (23.81%) Level 1 companies. The majority of companies without controlling shareholders that have shareholders' agreements come from Novo Mercado, which has the largest number of companies with more dispersed control. Shareholders' agreements, especially voting and control agreements, are most likely to be adopted by companies that have more dispersion of ownership.

This paper examines the scope of these shareholders' agreements. Table 24 shows the types of agreements that shareholders engage in. Sixteen of the forty-two shareholders' agreements (38.1%) are mixed to regulate preferences to acquire shares and voting rights. Twelve shareholders' agreements (28.57%) regulate the sale and purchase of shares, the preference to acquire shares, voting rights and exercise of control. Three shareholders' agreements (7.14%) include clauses on preferences to acquire shares and voting rights.

For purposes of this research, shareholders' agreements are classified as control agreements when they regulate control exercised by shareholders that jointly own more than fifty percent of the corporation's voting rights. The definition of controlling shareholder adopted earlier in this paper is retained for this analysis. The most predominant clause found in thirty-nine out of forty-two shareholders' agreements (92.86%) refers to the exercise of shareholders' voting power. Of these, seven shareholders' agreements bind shareholders that have less than fifty percent of the voting rights.[122] One could argue that voting rights agreements could also regulate control when a group of minority shareholders coordinate their votes, even if they do not jointly own fifty percent of the voting shares. One example is the Inpar S.A. agreement, which binds 41.42% of the voting shares of the corporation. While this agreement could be considered as a control agreement, I prefer to classify it as a voting agreement to maintain a consistent definition of control in this paper. Any agreement that relies on an ownership based on less than fifty percent of the voting rights requires a case-by-case analysis to verify whether shareholders exercised control. This could lead to arbitrary decisions. The analysis herein, therefore, may underestimate the number of minority control agreements that can exist in practice.

Another caveat regarding the classification of agreements is important. Classification followed formal (literal) and qualitative analysis of the

[122] These shareholders' agreements also regulate issues other than voting rights. *See infra* Table 24.

contents of these agreements. Only agreements expressly regulating control issues are deemed control agreements. Analysis showed that only nine (28.13%) agreements are literal control agreements. The other twenty-three agreements (71.87%) are classified as control agreements because they bind more than fifty percent of the voting shares of a corporation. These numbers show that most control agreements are not literal agreements. Therefore, the classification might not match the literal classification contained in the agreements themselves, but content analysis provides a clearer idea of the effects of shareholders' agreements.

One example is Abyara S.A.'s shareholders' agreement, which binds 52.9% of the voting shares. The text of the agreement regulates the behavior of stockholders, the exercise of voting rights, and the transfer of the shares bound in the agreement. Nonetheless, the agreement does not make explicit that one of its objectives is to regulate control. Instead, one of its expressed objectives is "to provide general orientation for the business management of the company."[123] The agreement states that shareholders must hold a preliminary meeting to decide voting orientation prior to any general meeting of the company. Thus, upon analysis of its content, it is clear that the agreement regulates not only voting rights, but also the joint exercise of control. Therefore, even though shareholders might not consider this a control agreement, it is classified herein as a control agreement.

The same rationale applies to the case of Brasil Ecodiesel Ind. Com. Bio. e Óleos Vegetais S.A., which has a shareholders' agreement binding 65.3% of the voting shares. While the agreement does not mention explicitly that it regulates corporate control, it states that parties to the agreement aim "to regulate their reciprocal relations, notably with respect to stock transfers, exercise of voting rights and management of the company."[124] Thus, the agreement is clearly a control agreement. Agreements categorized as control agreements are also classified as voting rights agreements because control cannot be exercised without the coordination of voting rights—every control agreement will inevitably encompass a voting rights agreement.

Table 24 reflects this more comprehensive qualitative classification of control. Thirty-two out of forty-two shareholders' agreements include regulation, among other issues, of control. Therefore, control agreements are adopted by 76.19% of the companies that have shareholders' agreements. On Novo Mercado, which is the segment with the largest number of shareholders' agreements, twenty-six out of twenty-eight shareholders' agreements are either control agreements (nineteen) or voting agreements (seven). This result confirms this paper's hypothesis that the majority of companies without a controlling shareholder adopt shareholders' agreements to coordinate control or voting rights as a

[123] Abyara Planejamento Imobiliário S.A. Shareholders' Agreement Consolidation from Apr. 16, 2007, at 3, item 6.

[124] Brasil Ecodiesel Indústria e Comércio de Biocombustíveis e Óleos Vegetais S.A. Shareholders' Agreement from Aug. 14, 2006, at 1.

substitute for share ownership.

B. Effects of Shareholders' Agreements on Directors' Votes

This section analyzes the extent to which shareholders' agreements bind director's votes. Of the forty-two companies that have shareholders' agreements, twenty-six (61.90%) have shareholders' agreements that bind directors' votes. Of these twenty-six companies, sixteen (61.53%) specify instances in which directors' votes are bound and ten do not.

Table 25 displays the detailed content of the clauses of sixteen agreements that bind directors' votes. It shows that shareholders' agreements of fourteen companies (87.50%) regulate votes on transactions resulting in sale and/or actions affecting company assets. Eleven companies' (68.75%) agreements bind directors' votes on distributions of earnings and dividends. Ten companies (62.50%) have agreements that control directors' votes on contracts within the value range stipulated in the agreement, and budget approval. Nine companies (56.25%) have agreements that control votes on the issuance of securities. Eight companies' agreements (50%) regulate the election or dismissal of managers. Six companies (37.5%) have agreements that have power over directors' votes on merger, acquisition, incorporation, liquidation and corporate transformation, approval or dismissal of independent auditors and others. Four companies (25%) use shareholders' agreements to restrict compensation policies and benefits for managers and board members, reduction or increase in the social capital, and creation of joint ventures, among other things.

This analysis presents a paradox. While some companies have been complying with better standards of corporate governance, they have shareholders' agreements that constrain directors' votes in practice, diminishing directors' independence. As discussed previously, this situation is, oddly, endorsed by current Brazilian legislation. This total lack of director independence is at odds with Level 2's and Novo Mercado's rules for good corporate governance. It is also contrary to current international corporate governance recommendations.[125]

Level 2's and Novo Mercado's rules require that the board of directors have at least five members, of which at least twenty percent shall be independent members.[126] Bovespa defines independence in Section II of Novo Mercado's Regulation. According to this section, an "Independent Member":

[125] *See* CAL. PUB. EMPLOYEES' RETIREMENT SYS., GLOBAL PRINCIPLES OF ACCOUNTABLE CORPORATE GOVERNANCE (2008), *available at* http://www.calpers-governance.org/principles/docs/2008-8-18-global-principles-accountable-corp-gov-final.pdf.

[126] *See infra* Table 1.

> (i) has no ties to the Company except for owning an equity share of its capital stock; (ii) is not a Controlling Shareholder, the Controlling Shareholder's spouse or a relative to the second degree, is not or has not been linked in the last 3 (three) years to a company or entity with ties to the Controlling Shareholder (this restriction does not apply to people linked to governmental institutions of education and research); (iii) has not been a Senior Manager of the Company or employed by or worked for the Company, the Controlling Shareholder or any other company controlled by the Company; (iv) is not a direct or indirect supplier or purchaser of the Company's services or products or both, to a degree that results in loss of independency; (v) is not an employee or manager of a company or entity that supplies services or products or both to, or buys these from, the Company; (vi) is not a spouse or a relative to the second degree of any Senior Manager of the Company; (vii) does not receive any compensation from the Company except for that related to its activities as member of the Board of Directors (this restriction does not apply to cash from equity interests in the capital stock).[127]

This definition does not clarify whether or not directors bound by shareholders' agreements would be considered independent. It remains unclear how Bovespa assesses the number of independent directors of companies listed on the special segments that require compliance with the twenty percent of independent directors threshold. If Bovespa considers those directors bound by shareholders' agreements as independent, it is making a mistake. Directors bound by shareholders' agreements cannot be deemed independent. These agreements directly interfere in decisions that directors make because they determine ex ante how directors ought to vote before they have analyzed a situation and reached an independent conclusion. One may even dispute whether having independent directors is good for corporate governance, as there is evidence that independent directors do not contribute to improving company performance.[128] However, if Bovespa has decided that having independent directors is an important rule for good corporate governance, it should enforce its own rules.

Independent directors are considered important in emerging countries which typically have boards dominated by representatives of the controlling shareholders.[129] In those countries, independent directors may contribute to decreasing levels of expropriation and, as a consequence, augment the company's wealth. Evidence supports that having more independent directors is associated with better corporate performance in emerging markets. A study by Black, Jang, and Kim found that requiring large firms to have a majority of outside directors has caused a forty percent increase in

[127] Novo Mercado Listing Rules, *supra* note 52, § 2.1.

[128] Sanjai Bhagat & Bernard S. Black, *The Non-Correlation Between Board Independence and Long-Term Firm Performance*, 27 J. CORP. LAW 231, 233 (2002) ("Firms with more independent boards . . . do not achieve improved profitability, and there are hints in our data that they perform worse than other firms.").

[129] *See* Black, de Carvalho & Gorga, *supra* note 26, at 14.

stock price in Korea. Apparently, the market valued the companies' existing cash flow higher because of a perception that outside directors help eliminate insider self-dealing.[130]

To conclude, this study shows that control comes in different forms. Despite the current focus of the literature, control does not only come through equity ownership in a direct or indirect way (pyramids). It can also take contractual forms. This section presents evidence concerning the effects of shareholders' agreements on corporate governance. Shareholders' agreements work as substitute control mechanisms when ownership is more dispersed. As the Brazilian experience shows, when shareholders do not have enough ownership to assure control, they can rely on shareholders' agreements to coordinate joint control. This is the case mainly in Novo Mercado, which concentrates the vast majority of the companies that adopt control or voting agreements. Furthermore, Brazilian shareholders' agreements also bind votes of directors in certain matters, lessening director independence. Thus, under certain circumstances, board decisions may not be based on the best interests of the corporation or minority shareholders.

C. Changes in Bylaws: Anti-Takeover Clauses

Takeovers have been extremely rare in Brazilian capital markets due to the ownership structure of Brazilian corporations discussed in Part III.[131] Control transactions have usually been conducted by private agreements, in which a large control premium is paid to the seller of control. In 2001, a reform to Corporations Law 6404/76 reintroduced a mandatory rule for tag-along rights in sales of control. This rule, Article 254-A, provides that minority voting shareholders must receive eighty percent of the price paid for a controlling shareholder's voting shares in a sale of control.

Additionally, Bovespa burdened private sales of corporate control. It introduced a "super" tag-along right in the listing requirements of Novo Mercado and Level 2. Under this rule, the acquirer of control in a private sale must indemnify all other shareholders from whom the acquirer purchased shares six months before the control transaction. The acquirer will be required to pay the same price paid to the shares of the controlling shareholder. Indemnification should take place on top of the usual tender

[130] Bernard S. Black, Hasung Jang & Woochan Kim, *Does Corporate Governance Predict Firms' Market Values? Evidence from Korea*, 22 J. L. ECON. & ORG. 366, 400 (Fall 2006) ("Korean firms with 50% outside directors have significantly higher share prices than firms with fewer outside directors. This effect appears to be causal. This is the first strong evidence that greater board independence predicts higher share prices in emerging markets.").

[131] Commentators report that so far there have been two successful hostile takeovers in Brazil. *See* Correa & Lethbridge, *supra* note 73.

offer to acquire all minority shares as required by Corporate Law 6404/76. Table 26 shows that companies from Novo Mercado and Level 2 and a few companies from Level 1 have also voluntarily adopted the "super tag-along" clause.

As ownership structures have been changing, one may think that potential acquirers may be able to acquire control more easily in the market. However, anti-takeover defenses have begun to appear in companies' bylaws as ownership has become increasingly dispersed. While the media has already pointed out this phenomenon,[132] there has been no attempt to analyze the effects of their use in a systematic way.

To fill this gap and examine the evolution of Brazilian capital markets and corporate governance, this paper empirically analyzes how many companies have adopted defenses and which defenses are most common. The sample includes the bylaws of eighty-four companies (each listed on either Novo Mercado, Level 2, or Level 1) that do not have a controlling shareholder.[133] These companies make up the sample because they are the most likely to have anti-takeover defenses because of their larger degree of ownership dispersion.[134] The bylaws were collected between September and December of 2007 from IANs delivered to CVM at the end of April of 2007, referring to year-end 2006. Changes in bylaws during the year of 2007 must be disclosed and updated on CVM´s website: therefore the research relied on the most recent updates.

Brazil has developed defenses other than the poison pill, which is the most common anti-takeover defense in the United States. A poison pill is a shareholders' rights plan whereby a target issues rights to its existing shareholders to acquire a large number of new stocks. Holders can buy more stocks under market value when anyone acquires a pre-determined amount of the target's stock (typically ten to twenty percent) in a possible control acquisition. This strategy dilutes the percentage of the target's common shares that the bidder owns, making it more expensive to acquire control of the company. In Brazil, the predominant takeover defense is a provision in the company's charter that allows current shareholders to sell their shares to an acquirer who attains a critical limit of target's shares. In this sense it resembles the mandatory tender offer required by law but is triggered by a lower threshold of shares' acquisition. While the media calls this defense a poison pill, this type of takeover defense might not completely stop a determined acquirer. Instead, it ensures minority shareholders the right to tender their shares at a fair price if they think this is a good time to sell. This strategy also makes the target acquisition much more expensive to the bidder.

The use of anti-takeover clauses is widespread. Forty-seven out of

[132] *See supra* note 36 and accompanying text.

[133] This Part retains the same control definition: a controlling shareholder is considered to have more than 50% of the voting stock.

[134] The underlying idea is that the controlling shareholder of a company does not need to be concerned with including anti-takeover clauses in the bylaws because control cannot be sold without his or her consent.

eighty-four companies, or approximately fifty-six percent of the sample companies, have included anti-takeover protections in their bylaws. There appear to be two prevalent types of defenses. A "Type A" anti-takeover defense provides that once a determined threshold of ownership is met, the acquiring shareholder must make a tender offer to acquire all outstanding shares. This threshold of acquisition generally ranges from ten to thirty-five percent of the shares. Brazilian Corporate Law does not require an acquirer to offer minority shareholders to tender their stock for sale if the acquirer has purchased the control in the market. The mandatory tag-along right requires a tender offer only for a sale of a controlling block by the controlling shareholder.[135] This clause, on the other hand, requires a tender offer of shares even if control was acquired in the market, making hostile takeovers as burdensome as private sales of control.

A "Type B" anti-takeover defense, in contrast, is triggered when a shareholder who has acquired a pre-determined threshold of ownership wishes to purchase more shares. In that situation, the shareholder has to communicate his or her intention to the Investor Relations Manager of the company and the Manager of Trading Activity of the stock exchange. This threshold of acquisition generally ranges from five to thirty percent of the shares. The Manager of Trading Activity can then arrange a tender offer conducted by an open auction in the exchange market. This provision aims to promote competition between bidders interested in acquiring the company's control.

Table 26 categorizes the types of anti takeover clauses adopted by each company listed in Bovespa's special segments. It shows that 36.9% of the companies adopt exclusively Type A clauses. Approximately 14.28% of the companies adopt Type A and Type B clauses. Only four firms (4.76%) exclusively use Type B clauses. Table 26 also provides the thresholds of Type A and B clauses that will trigger the acquirer's obligation. Approximately 53.5% of Type A companies adopt a 20% threshold. For Type B companies, 43.75% adopt a 10% threshold.

The widespread adoption of anti-takeover defenses implies that lawyers acted faster than Brazilian regulators. Brazilian law does not regulate the use of these clauses. The preceding analysis has covered only bylaws of firms without a controlling shareholder. However, available information shows that companies controlled by a controlling shareholder who holds more than fifty-one percent of the voting capital have also adopted defenses.[136] This demonstrates that lawyers have been eager to

[135] *See* Lei No. 6.404, de dezembro de 1976, D.O. de 17.12.1976 (suplemento), art. 254-A, *available at* http://www.planalto.gov.br/ccivil_03/Leis/L6404compilada.htm.

[136] This is indeed the case with three such companies: Banco Daycoval, which adopted a defense Type A, Spring Participações, which adopted poison pill Types A and B, and SulAmerica S.A., which adopted defense Type B.

avoid future changes in control, even if a hostile takeover were factually impossible at that time. It is worth noting that it is unclear why a company with a controlling shareholder would include anti-takeover defenses clauses in its bylaws. In that situation, the clause would constrain the sale of the controlling shareholder's control block, which would be contrary to the wealth-maximizing behavior of a rational economic agent. This situation appears to show that controlling shareholders do not understand the effect of the clauses and that lawyers fail to explain to their clients the full implications of anti-takeover clauses. Arguably, the controlling shareholder could call a meeting and amend the bylaws to exclude the clauses. In that case, the anti-takeover defense would generate additional transaction costs in connection with a sale of control.

Nonetheless, Brazilian players seem to be celebrating the adoption of anti-takeover defenses. Dispersed ownership is usually associated with more mature capital markets. Players may want companies' bylaws to provide anti-takeover mechanisms because takeovers would again concentrate control. According to this rationale, anti-takeover defenses are considered to be useful devices to promote and stabilize diffused ownership. They are devices companies use to signal that their ownership structure will continue to be dispersed.

In other environments, anti-takeover defenses are generally considered wealth-decreasing mechanisms that safeguard control from outside monitoring. They are typically designed by managers. Because managers typically seek to entrench themselves, defenses are usually thought to increase agency costs between the management and shareholders.

Takeovers are widely believed to be wealth maximizing because they replace inefficient management with a more efficient one, promoting allocation of resources to a higher use value. The threat of a hostile takeover is considered to be a way to discipline incumbent management.[137] If managers do not run the company properly, the company will lose its value and become a potential target for a hostile takeover.

In Brazil, if the current situation persists, poor managers may not face this type of market discipline. Many bylaws go even further than providing mandatory tender offer clauses, establishing penalty clauses that are triggered if the tender offers clauses are breached. The adoption of penalty clauses is pervasive. Of the forty-seven companies that adopt anti-takeover defenses, 100% adopt at least one penalty clause. There are two types of penalty clauses.

Penalty clause "Type 1" provides that if the acquirer does not comply with the tender offer clause, the board of directors will call an extraordinary shareholder meeting during which the board may decide to suspend the rights appurtenant to shares that were acquired in disregard of the tender offer clause. The shareholder that has acquired the control will not be able

[137] Robert Daines & Michael Klausner, *Do IPO Charters Maximize Firm Value? Antitakeover Protection in IPOs*, 17 J. L. ECON. & ORG. 83, 88–91 (2001) (surveying the literature that supports the "management entrenchment hypothesis," which suggests that anti-takeover protections entrench management at shareholders' expense).

to cast votes in this meeting. He or she may also be liable for damages suffered by the other shareholders in connection with the breach of the tender offer. This penalty clause is therefore applied against the acquirer of blockholdings.

Penalty clause "Type 2" provides that any future change in the bylaws that restricts shareholders' rights to tender their shares according to the tender offer clause will obligate shareholders who approved the change to make a tender offer to acquire the shares of the other shareholders. Basically, this prevents anti-takeover clauses from being excluded from bylaws, even if the majority of shareholders want to deliberate their exclusion in a shareholder meeting. This happens because of the huge costs imposed on shareholders that approve this exclusion. Brazilian anti-takeover clauses of this type seem to rise to the level of fundamental rights that cannot be contracted around. These penalty clauses are applied against shareholders who want to ban the tender offer clause, regardless of whether they want to take this action to protect the welfare of the corporation.

The data displayed in Table 26 show that of the forty-seven companies that adopt penalty clauses, twenty-five (53.19%) companies exclusively use penalty clause Type 1. Twenty-two (46.81%) companies adopt both Types 1 and 2. None adopt Type 2 only. Only eight companies (10.81%) have bylaws that explicitly state that the tender offer clause can be removed. Of these eight, only three companies establish a qualified quorum for the approval of changes concerning the clause.[138] Six of the eight companies confer authority power to the shareholders to remove the tender offer clause. The remaining two companies confer this authority to the board of directors.

This analysis shows that changes in ownership patterns towards more dispersed ownership have produced important effects in companies' bylaws, prompting shareholders to adopt takeover defenses. However, these defenses may not correspond to an actual threat, as there still is a significant degree of concentrated ownership in most companies that could preclude takeover threats. As illustrated by Sadia's attempted takeover of Pedigão[139] and confirmed by our data, most Brazilian companies are still controlled by a small group of block holders who could easily coordinate defenses against outside attacks.[140] Nonetheless, Brazilian anti-takeover

[138] These companies are Bematech Ind. Com. Equip. Eletrônicos S.A., Bylaws of the Company, Art. 10 § 10 (on file with author) (establishing a quorum of 50% plus one of the common shares); Companhia Hering, Bylaws of the Company § 11 (on file with author) (establishing a quorum of shareholders that represent two-thirds of the shares of the company); Even Construtura e Incorporadora S.A., Bylaws of the Company, Art. 43 § 9 (on file with author) (establishing approval with a quorum of 70% of the total shares of the company).

[139] Correa & Lethbridge, *supra* note 73.

[140] *See infra* Table 8 (showing that even companies without a controlling shareholder on

clauses demonstrate the interesting effect of ownership structure changes on corporate governance practices.

VII. THE DETERMINANTS OF CHANGES IN OWNERSHIP STRUCTURES

This Section builds on empirical evidence from Brazil to advance theoretical hypotheses explaining changes in corporate ownership. Ownership structures are key distinguishing features underlying different forms of capitalism.[141] Yet we still know remarkably little about the motives that drive changes in ownership structures.

Scholars argue that initial patterns of stock ownership tend to create structures and set rules that contribute to the maintenance of these ownership structures.[142] According to this thesis, path dependence would prevent changes from occurring. There could be a critical moment when the costs of adhering to the same structure would surpass the benefits of adopting a new structure. At this point, the path could be broken, and dispersed ownership would then develop.[143] Ownership structure is then dependent on prevailing institutions existing in an environment. As we have seen, the persistence of traditional Brazilian firms in segments of poor corporate governance supports the path-dependence hypothesis. On the other hand, the significant change towards more significant levels of ownership dispersion begs the question what the reasons are that prompted this evolution.

Scholars have recently discussed the preconditions necessary for developing strong capital markets.[144] They have analyzed how institutions affect corporate ownership and focused their research on legal, social and political institutions. La Porta et al. have analyzed the factors that may bring about critical change towards dispersed ownership.[145] They argued that protective legal rules would be a key factor in diffusing ownership, pointing out that common law countries tend to protect more investors and stockholders, and therefore have achieved more significant levels of ownership dispersion.[146] Other scholars contend that private regulation by stock exchanges is more important,[147] along with a country's social norms

Novo Mercado are controlled by their five largest shareholders).

[141] Randall K. Morck & Lloyd Steier, *The Global History of Corporate Governance: An Introduction*, *in* A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD 4 (Randall K. Morck, ed., 2005).

[142] Bebchuk & Roe, *supra* note 9, at 131.

[143] *Id.* at 166.

[144] *See* Bernard S. Black, *The Legal and Institutional Preconditions for Strong Securities Markets*, 48 UCLA L. REV. 781 (2001).

[145] *See generally* La Porta, Lopez-de-Silanes, Shleifer & Vishny, *supra* note 8.

[146] *See generally id.* (claiming that corporate governance is better understood through its legal determinants). *But see* Fohlin, *supra* note 13 (arguing that no temporal correlations exist between changes in shareholder protection and ownership diffusion in Germany because the German stock market has ebbed and risen at various points while German's legal system has changed very little).

[147] *See, e.g.*, Coffee, Jr., *supra* note 10.

regarding business behavior.[148] Still others have argued that a nation's politics must foster dispersed ownership.[149]

Understanding the determinants of changes in corporate ownership in Brazil requires detailed investigation of several variables. Some of these may include macro variables such as the level of financial development, tax and competition policy, labor rights, shareholder and debt holder rights, industrial and trade policy, merger activity, cultural beliefs, political relationships between dominant families and the power structure, private initiative development, and listing in outside markets. Some variables may be attributed to micro-related firm-specific characteristics such as company size, age, capital structure, finance needs, level of private benefits of control extraction, industry segment, and others. While this paper does not attempt to test empirically the broad range of theories explaining ownership structure changes, it does explore some potential explanations that are supported by the data raised by this paper.

A. Merger Activity

Intense merger activity may be related to profound changes in corporate structure. For instance, scholars attribute the increase of widely held companies to the corporate reorganization that was necessary after merger waves in the United States. For example, the paradigmatic merger of eight steel companies brought about the creation of a large steel conglomerate with a high level of dispersed shares, meaning that no single investor could own large stakes of ownership in such a large company.[150] In the late 1930s, few corporations had families with controlling stakes, though many still had families dominating the board of directors.[151] Frank, Mayers, and Rossi point out that, in the United Kingdom, mergers played a more important role in ownership dilution.[152] In Britain, family ownership shrunk when their holdings were diluted in the process of issuing shares to acquire other companies.[153] Therefore dispersed ownership in Britain was mainly a product of takeover activity during the twentieth century. Families retained control through disproportional representation on boards of directors in relation to their equity in the first half of the century. In the second half of the century, institutional ownership replaced families and

[148] *See, e.g.*, Coffee, Jr., *supra* note 8.

[149] MARK J. ROE, POLITICAL DETERMINANTS OF CORPORATE GOVERNANCE 13–15 (Oxford University Press 2003).

[150] Coffee, Jr., *supra* note 10, at 33.

[151] Becht & DeLong, *supra* note 12, at 617.

[152] Julian Franks, Colin Mayer & Stefano Rossi, Ownership: Evolution and Regulation (March 25, 2005) (unnumbered working paper), *available at* http://cepr.org.uk/meets/wkcn/5/5528/papers/Mayer_3Ownership_Evolution_and_Regulation.pdf.

[153] Franks, Mayer & Rossi, *supra* note 15, at 583.

rapidly extinguished their control.[154]

Although merger waves can quickly change ownership structures, no clear connection between present changes in Brazilian ownership structures and an extraordinary upheaval in merger activity exists. Interestingly, a new merger wave is currently occurring. Over the past two years, companies turned to the capital markets to raise financing. In 2008, fewer companies have gone public on Bovespa due to the international financial crisis and the following decrease of stock prices in the New York Stock Exchange and Bovespa[155] On the other hand, many firms have recently announced merger plans.[156]

B. Cross-Listing

Another potential explanation for the upsurge of firms listing on Novo Mercado could be cross-listing in other jurisdictions. According to this hypothesis, firms listing in foreign exchanges and offering equity in other markets would have to comply with better corporate governance because of legal and listing requirements of other markets, so the costs of listing on Novo Mercado would be much smaller to these firms. Therefore, companies listing on Novo Mercado would also comply with good corporate governance in the national market because they have decided to comply with stricter models of regulation abroad. According to this argument, the upsurge of firms listing on Novo Mercado would be a response to international pressure towards better corporate governance.

However, the data do not support this hypothesis. Table 27 provides information on cross-listing of firms listed on Bovespa's special segments (Level 1, Level 2, and Novo Mercado). Of eighty-nine IPOs made on any of the special listing segments,[157] twenty-seven from Novo Mercado, nine from Level 2 and nineteen from Level 1 were accompanied by cross-listings in other jurisdictions. Of those twenty-seven from Novo Mercado, twenty-three were not registered with the Securities and Exchange Commission (SEC). These offerings were designed for accredited foreign investors under Rule 144-A and Regulation S. Therefore, these offerings did not

[154] *Id.* at 593.

[155] *See Empresas cancelam IPO diz consultoria* [*Companies Cancel IPOs, Says Consultants*] GAZETA MERCANTIL (Braz.), Apr. 16 2008; Luciano Feltrin, *Volume levantado em IPOs no País recua 67% no ano* [*The IPOs' Volume in Brazil Drives Back 67% in the Current Year*], GAZETA MERCANTIL (Braz.), Jul. 04 2008; *IPOs no mundo têm queda de 58,37%* [*IPOs Have Worldwidely Fallen 58.37%*], GAZETA MERCANTIL (Braz.), Dec. 30 2008; Vinícius Pinheiro, *Mercado ainda está aberto a novas ofertas* [*The Market Is Still Open for New Offerings*], GAZETA MERCANTIL (Braz.), Sept. 8 2008; Vinícius Pinheiro, *Empresas novatas são as que mais sentem a queda da bolsa* [*The New Listed Companies Are More Affected by Stock Exchange Fall*] GAZETA MERCANTIL (Braz.), Sept. 8 2008.

[156] *See* Maria Luíza Filgueiras, *Aperto financeiro estimula fusões e aquisições no País* [*Financial Constraints Stimulates Mergers and Acquisitions in Brazil*] GAZETA MERCANTIL (Braz.), Feb. 04 2009; Maria Luíza Filgueiras, *Com volume recorde, Brasil dobra participação global* [*Brazil Doubles Its Global Share with a Record Volume*] GAZETA MERCANTIL (Braz.), Jan. 06 2009.

[157] Data gathered from Table 5, excluding offerings from BDRs (Brazilian Depositary Receipts).

require any special effort to comply with international standards, and cross-listing cannot be deemed a motive to justify the adherence of the large majority of companies from Novo Mercado to its strictest standards of corporate governance. Cross-listing appears to play a more important role for companies listed at Level 2. Of the fifteen IPOs conducted by companies from Level 2, eight were accompanied by cross-listings abroad. However, six of these were not registered with the SEC, which further damages the cross-listing hypothesis.

Level 1 is the only segment in which the number of firms cross-listed is higher than the number of IPOs in the segment. Of the nineteen cross-listings conducted by companies listed at Level 1, eleven companies did register their offerings with the SEC. Interestingly, these data show that the very companies that are cross-listed in the U.S. market and registered with the SEC (those supposedly adhering to stricter rules of the New York Stock Exchange's Level 2 or Level 3 listings) are the ones that are not listed on Bovespa's stricter special segments. These companies are listed on Bovespa's Level 1, which shows that there are still reasons for them not to comply with stricter rules. The main reason may be to avoid the one-share-one-vote rule. Indeed, all of these companies, with the exception of Brasil Telecom S.A., have offered preferred shares (non-voting) to foreign investors, which explains why they continue adhering to Level 1 and not to Novo Mercado.

C. Life Cycle

The life-cycle theory holds that young corporations are more likely to present concentrated ownership, while older companies are more likely to be widely held.[158] It assumes that large corporations started as family businesses and evolved into widely held businesses in a few countries with a reasonably long industrial history.[159] Implicit in this assumption is the fact that during the life cycle of the firm, it will grow and need increasing levels of capital to perform its activities. Thus, more shareholders will be needed and the ownership of the firm will increasingly disperse. Asjeet Lamba and Geof Stapledon posit that the longer a company has been listed on the stock exchange, the more likely the company is to have a widely held ownership structure.[160]

[158] *See* Claessens, Djankov & Lang, *supra* note 4, at 104–05 (discussing the life-cycle theory, but finding that the older corporations in a sample of East Asian companies were less likely to be widely held).

[159] *See* Morck & Steier, *supra* note 141, at 8. According to this view, Brazilian industrial history, which developed mainly after the second half of the twentieth century, may still be considered a short one, providing insufficient time for the development of forces that could drastically change corporate ownership.

[160] Asjeet Lamba & Geof Stapledon, *The Determinants of Corporate Ownership*

Nonetheless, the analysis of Brazilian ownership data does not seem to be consistent with the life-cycle theory. As we have seen, most companies with dispersed ownership are new entrants on Novo Mercado. The oldest and the most traditional Brazilian firms are concentrated on Bovespa's Level 1 and the standard market. These firms present very concentrated patterns of corporate control. Brazilian data also corroborate the findings of Claessens, Djankov, and Lang, who pointed out that in East Asia, especially in Indonesia, Malaysia and Taiwan, older firms tend to have more concentrated corporate control.[161] This result begs the question of why old firms have only migrated to Level 1 and not to the most stringent segments. In a sense, this shows institutional adaptation and stability towards concentration of control. One explanation could be that these firms have other sources of finance like government credit through the Brazilian Bank for Social and Economics Development (BNDES). They may also have a history of retained earnings so that they can finance themselves, and therefore do not need to comply with stricter Novo Mercado rules to get cheaper capital in secondary offerings, as new firms have been doing. The underlying story also shows the preceding role of the government in providing capital to captains of industry.

D. Size

The size theory provides that smaller corporations tend to remain family businesses while larger corporations are more likely to be widely held.[162] Several studies have identified a negative effect of the firm's size on the level of concentration of shareholding control: the larger the firm, the greater dispersion of shareholding control it will have.[163] Demsetz and Lehn, examining a sample of American firms, found greater diffusion of ownership in larger firms and noted that the size of the firm, as measured by the market value of equity, is negatively correlated to ownership concentration.[164] Claessens, Djankov, and Lang found that the incidence of family ownership inversely correlates to firm size in East Asian countries, especially Japan.[165] Faccio and Land demonstrated this inverse correlation in Western European countries, particularly in the United Kingdom and Sweden; the large firms in their sample were more likely to be widely held than the smaller firms.[166] Asjeet Lamba and Geof Stapledon show that larger firms are less likely to have a controlling shareholder in Australia, as

Structure: Australian Evidence 15–16 (The University of Melbourne Faculty of Law Public Law Research Paper No. 20, 2001), *available at* http://mba.tuck.dartmouth.edu/ccg/PDFs/2002Conference/OwnerStr-Submit-DartmouthConference.pdf.

[161] Claessens, Djankov & Lang, *supra* note 4, at 105.

[162] *Id.* at 105. *Cf.* Morck & Steier, *supra* note 141, at 8.

[163] *Cf.* Harold Demsetz & Kenneth Lehn, *The Structure of Corporate Ownership: Causes and Consequences*, 93 J. POL. ECON. 1155, 1158 (1985); Harold Demsetz & B. Villalonga, *Ownership Structure and Corporate Performance*, 7 J. CORP. FIN. 209 (2001).

[164] *See* Demsetz & Lehn, *supra* note 163, at 1158.

[165] Claessens, Djankov & Lang, *supra* note 4, at 105.

[166] *See generally* Faccio & Lang, *supra* note 3, at 381 (pointing out Austria, Norway, and Portugal as exceptions).

they are expected to have issued more shares than smaller companies.[167]

This study, on the contrary, finds a positive correlation between company size and control concentration. Brazilian data show that the largest Brazilian industrial conglomerates are still controlled by families. This includes companies such as Klabin SA, Votorantim SA and Gerdau SA, which are listed on Level 1. Smaller firms tend to need more capital and therefore have greater incentives to comply with Novo Mercado's more stringent corporate governance rules in order to raise capital.

E. Public or Private Initiative?

At least three conditions are necessary to separate ownership from control. First, the controlling shareholders must decide to exit. This can be done either by a one-time liquidation of their stake in a merger transaction, a public offering, or by selling their stakes in stages onto market.[168] Second, there must be demand for the shares. Investors must expect to receive sufficient financial return in exchange for the risk they are assuming.[169] Third, the buyers of the shares must not be inclined to gain control, or otherwise, concentrated ownership would persist.[170] This can happen in two ways: either the purchaser of the control block is a widely held company itself, or the shares are acquired by dispersed shareholders in the market.

This process can suffer from State intervention or be privately driven. A brief historical overview on the development of Brazilian markets helps reveal which incentives mattered more in promoting ownership dispersion. Brazil has experienced two very different phases, each characterized by market players' advocacy in promoting the country's development. The first phase was characterized by government initiative beginning in the 1960s, when the Brazilian government engaged in many efforts to encourage the growth of the stock markets.[171] The main strategy was based on tax incentives. Scholars have already pointed out that tax policy can impact corporate ownership and governance.[172] In the Brazilian situation,

[167] Lamba & Stapledon, *supra* note 160.

[168] *See* Brian R. Cheffins & Steven A. Bank, *Corporate Ownership and Control in the UK: The Tax Dimension*, 70 MOD. L. REV. 778, 783 (2007).

[169] *Id.*

[170] *Id.* at 784 ("The three questions one needs to address to explain why the widely held company might move to the forefront in a particularly country are: Firstly, why would those owning large blocks want to exit? Second, were investors willing to buy the shares potentially available for sale? Third, why did the new investors fail to exercise control themselves?").

[171] Trubek, *supra* note 21, at 7.

[172] Cheffins & Bank, *supra* note 168, at 783 (arguing that taxes imposed on corporate profits, taxation of managerial and investment income, and inheritance taxes help to explain why ownership separated from control in the UK). *See also* Randall Morck, *How to*

tax breaks help explain why companies went public and why there was demand for shares among investors. The Brazilian government provided a variety of tax incentives to market players in order to stimulate the offering and demand of publicly traded securities. Two major sets of tax incentives were enacted. One was the "open capital companies program," which provided corporations and their shareholders substantial tax benefits if the corporation distributed shares to the public. The second was the Decree Law 157 Fiscal Investment Funds program, "under which taxpayers [could] purchase shares in special government approved mutual funds in lieu of paying taxes due; the special mutual funds, in turn, use[d] the tax receipts to purchase new and outstanding issues."[173]

Through these programs, taxpayers could deduct a percentage of resources spent for the acquisition of securities from their gross incomes. Trubek explained that Decree Law 157 provided "forced saving incentives."[174] The taxpayer would make a deposit in special mutual investment funds that relieved the taxpayer of her tax liabilities.[175] The tax deposit would then be employed to acquire securities, and the deposit holder would be entitled to a tax credit.[176] After holding shares of the mutual investment funds for a specified time, the taxpayer could redeem the fund shares for cash.[177] The government "had expected that the primary equities market would develop as an alternative source of funds for hard-pressed firms."[178] However, even with the tax incentives, the market did not experience sustainable development, apart from occasional activity brought by Decree Law 157 funds.[179]

The government then engaged in efforts to pass legal reforms that would provide the regulatory framework for market development.[180] These reforms included the Capital Markets Law (Law 6385/76)[181] and the

Eliminate Pyramidal Business Groups–the Double Taxation of Inter-corporate Dividends and Other Incisive Uses of Tax Policy (Nat'l Bureau of Econ. Research Working Paper No. 10944, 2004) a*vailable at* www.nber.org/papers/w10944.

[173] Trubek, *supra* note 21, at 8.

[174] *Id.* at 35.

[175] *Id.* at 56.

[176] *Id.*

[177] *Id.* at 57.

[178] *Id.* at 47.

[179] Trubek, *supra* note 21, at 47. One issue was that the government wanted to assist companies having financial difficulty and develop equity markets at the same time, without realizing that these objectives conflicted. *Id.* at 49 ("Firms in need of emergency assistance would hardly seem to be the best available investments. If tax incentives were used to channel investors' funds to such firms, there was a great risk that the investors, who would eventually receive securities of such companies, would become disillusioned about the attractiveness of share ownership. The working group failed to see this because it believed that the shaky firms were in fact very sound ventures which were experiencing short run problems due 'artificial' situations created by inflation and the stabilization program.").

[180] *Id.* at 7.

[181] Lei No. 6.385, de 07 de dezembro de 1976, D.O.U. de 9.12.1976 (suplemento), *available at* http://www.planalto.gov.br/ccivil_03/LEIS/L6385.htm.

Corporations Law (Law 6404/76).[182] Musacchio analyzed the resulting outcome of these regulatory systems and concluded that shareholder protections did not correlate with stock market development.[183]

At the end of the 1990s, Brazilian capital markets experienced a severe crisis.[184] The trading activity of Bovespa dropped by 47%,[185] and there was a strong trend toward privatization. At the same time, the few placements of shares that occurred were conducted mostly by companies that were listing in the U.S. market. The trading volume of ADRs increased from 0.3% in 1996 to 33% of the trading volume of Bovespa in 2000.[186] Therefore, by the end of the 1990s, one-third of Bovespa's trading activity had moved to the U.S. markets. With the failure of the market to provide financing for firms, the BNDES has become the main source for long-term business finance in Brazil.[187]

This situation threatened Bovespa's existence and caused it to look for alternatives that could promote the market. Private efforts had to overcome the failures of the market. First, the listing requirements of Bovespa were changed. The rationale behind this change was that investors' risk perception had to be reduced. Enhancing the confidence of investors in the market would cause share values and liquidity to increase and encourage

[182] Lei No. 6.404, de 15 dezembro de 1976, D.O.U de 17.12.1976. (suplemento), *available at* http://www.planalto.gov.br/ccivil_03/Leis/L6404compilada.

[183] Aldo Musacchio, Laws vs. Contracts: Legal Origins, Shareholder Protections, and Ownership Concentration in Brazil, 1890–1950 11–12 (Jan. 22, 2008) (unnumbered working paper), *available at* http://ssrn.com/abstract=1086450 ("Even with few shareholder protections on paper, Brazil enjoyed its first peak in stock market activity between the late 1880s and 1915. In fact, there seems to be a tenuous relation between shareholder protections in national laws and stock market development in that, by the time additional protections for minority shareholders were written into law in 1940, stock markets were already in decline. Moreover, if the literature that relates equity market size to shareholder rights on paper holds, Brazil's equity markets should have prospered between 1940 and the 1990s, when investor protections were strong . . . and jumped significantly in size after 2001 (after laws provided even more protections). But this is clearly not the evolution observed . . . . Some correlation between the level of stock market development and investor protections on paper is observed, but between 1940 and 1976 there is no correlation at all. Moreover, the period of relatively strong shareholder rights after 1976 . . . is precisely the period during which Brazil has been portrayed as one of the worst countries in which to be a small investor.").

[184] *See generally* Gorga, *supra* note 20 (describing the context of the Brazilian capital markets crisis that led legislators to propose a new reform in the Corporations and Capital Markets Laws in 2001).

[185] Santana, *supra* note 21, at 2.

[186] *Id.* at 6.

[187] *See* Ernani Teixeira Torres Filho, *O papel anticíclico do BNDES sobre o crédito* [*The BNDES Anticyclical Role on Credit*], 7 VISÃO DO DESENVOLVIMENTO 1 (Braz.), Aug. 03 2006, *available at* http://www.bndes.gov.br/conhecimento/visao/visao_07.pdf.

companies to issue new shares and go public.[188]

Bovespa's special listing segments were originally inspired by the German Neuer Markt.[189] Bovespa's listing levels provide rights to shareholders in addition to those given by law. These incentives are largely based on voluntary adhesion to stronger corporate governance that would produce changes in the internal structure of corporations. In turn, the value of these companies was expected to rise. This rationale therefore contrasts with the previous approach, because now companies were expected to improve corporate governance voluntarily.

In its first years, Bovespa's new listing levels did not show significant new additions. Some macroeconomic factors, such as the crisis in Argentina, the domestic energy crisis that required months of electricity rationing, the terrorist attacks of September 11, 2001, and the uncertainty brought about by the 2002 domestic Presidential election, are considered the main factors that generated instability.[190] These events produced an increase in the risk measured by investors, inhibiting companies' decisions to go public.[191]

Nonetheless, Bovespa's strategy was not limited to the new listing segments, as one may think. Bovespa also engaged in a series of efforts and alliances with both private and public agents in order to promote market development.[192] This networking was critical to the success of the new listing segments, which depended on the support of other important market players.[193]

In 2002 Bovespa passed Resolution 282/02-CA, which established that any new listings of public offerings must be conducted at least on Level 1.[194] Bovespa then heavily publicized Novo Mercado's advantages to businessmen, underwriters, domestic and foreign institutional investors, and investors in private equity and venture capital.[195]

Bovespa sought support from important private players, public institutions and international organizations to promote its new listing segments. For example, Bovespa gained support from the Brazilian Institute of Corporate Governance (*Instituto Brasileiro de Governança Corporativa* or IBGC), which offered many courses and lectures on

[188] Santana, *supra* note 21, at 8.

[189] This market later failed after experiencing a technological bubble. *See* René Daniel Decol, *O revolucionário da Bolsa* [*The Stock Exchange Revolutionary*], ÉPOCA, (Braz.), July 26, 2007.

[190] Santana, *supra* note 21, at 17.

[191] *Id.*

[192] *Id.* at 18.

[193] *Id.* at 21 ("The Novo Mercado is based on a market mechanism and so . . . its viability depended on the existence of a market. Since adherence by companies to its rules is voluntary, the Novo Mercado could only become a reality if that adherence was demanded by investors and other suppliers of capital and if companies considered corporate governance obligations to be advantageous.").

[194] Regulamento de Registro de Emissores e de Valores Mobiliários, art. 2º, § 1º, *available at* http://www.bovespa.com.br/pdf/InfoEmpresasResolucao282.pdf.

[195] Santana, *supra* note 21, at 18.

Bovespa's Novo Mercado.[196] Bovespa also sought the support of public institutions like the Brazilian Securities Commission (CVM) and the agency responsible for overseeing Brazilian pension funds (*Secretaria de Previdência Complementar*).[197] These two institutions changed regulations on investment of pension funds.[198] The changes authorized a higher ceiling on stock investments provided that the issuing company was listed in Novo Mercado or Level 2.[199] The National Association of Investment Banks (*Associação Nacional dos Bancos de Investimento* or ANBID), the Brazilian equivalent to the NASD, also provided a key rule establishing that its members could only lead offers whose issuers were registered at least on Bovespa's Level 1.[200] The practical effect of this rule was that underwriters would be virtually non-existent for offers in the traditional market.[201]

In addition, Bovespa gained support from BNDES, which "started granting specific incentives for companies to join the Novo Mercado and, in some cases, made such membership one of the conditions for financing."[202] Bovespa also relied on the support of the World Bank and the Organisation for Economic Cooperation and Development (OECD).[203] Public support from the World Bank's Private Sector Advisory Group on Corporate Governance (SAG) lent "enormous prestige and clout" to Novo Mercado.[204]

This brief description of the Brazilian experience shows that self-regulation by stock exchanges, allied with strong support of key market players, was a driving force of corporate governance and capital markets enhancement. The creation of special listing segments has provided the first impulse towards an important change in the market.

F. IPO Market

Scholars have argued that the absence of an active IPO market may be a reason why ownership does not widely diffuse in certain countries.[205] Strong capital markets are associated with the entry of new firms.

[196] *Id.*

[197] *Id.* at 20.

[198] *Id.*

[199] *Id.* ("Those pension investment provisions had no practical effect, though, since those investors had then—and still do—an exposure to equities that was well below the established limits. Even so, those rules were extremely important because they helped institutionalize and give official recognition to the existence of the Novo Mercado and both Level 1 and Level 2.").

[200] *Id. at* 21.

[201] This rule has been liberalized in practice, as underwriters ended up coordinating the issuance of BDRs (Brazilian Depository Receipts) in the standard market.

[202] Santana, *supra* note 21, at 20.

[203] *Id.*

[204] *Id.*

[205] Högfeldt, *supra* note 3, at 558.

According to this view, having developed secondary markets is not enough to promote overall market development. Secondary market development may be associated with the trading of dual-class shares, which generate liquidity but do not allow ownership to separate from control. Therefore, countries with less-developed primary markets will be characterized by concentrated ownership.

Helwege, Pirinsky, and Stulz investigated how firms evolved in the United States from 1970 to 2001 to understand why they became widely held.[206] Firms generally do not become widely held shortly after their IPO.[207] They found that about ten years after the IPO, insiders owning less than twenty percent of the cash flow rights controlled half of the firms. They also found that firms with greater financing needs are more likely to become widely held.[208] For primary markets to be strong there should be corporations that need to access financing through public security offerings. Established companies may have other financing sources. If financing is supplied by retained earnings, by bank borrowing or by infusion of private capital, firms will not have the need to go through equity offers.[209]

Helwege, Pirinsky, and Stulz attribute the changing dynamics of insider ownership to stock market variables.[210] Firms become more widely held when the market of their shares is liquid and they can be sold without significant discount.[211] Demsetz and Lehn also argued that a greater price for a fraction of the firm reduces the degree to which ownership is concentrated in their sample of American firms.[212]

Indeed Novo Mercado's developments seem to support these arguments. Studies show that the rise in the number of Novo Mercado listings is associated with the increase in the prices of securities obtained in this segment of the Brazilian securities market.[213] New corporations requiring capital infusions can find advantageous conditions for accessing financing in the Novo Mercado segment, as Novo Mercado is now a legitimate and attractive alternative to the traditional form of raising capital by borrowing funds at high interest rates.

The data presented in this paper show that most companies from Novo Mercado used to be closely held companies. Novo Mercado is, for the most part, comprised of newly public companies that aim to raise significant capital through their IPOs, widely offering securities to the public and thereby shirking the tradition of concentrated ownership structures. As we have seen, few companies from the traditional market have chosen to

[206] Jean Helwege, Christo Pirinsky & Rene M. Stulz, *Why do Firms Become Widely Held? An Analysis of the Dynamics of Corporate Ownership*, 52 J. FIN. 995 (2007).

[207] *Id. at* 1007.

[208] *Id. at* 1000.

[209] Högfeldt, *supra* note 3, at 553.

[210] Helwege et al., *supra* note 206, at 999.

[211] *Id.*

[212] Demsetz & Lehn, *supra* note 163, at 1158.

[213] *See, e.g.*, de Carvalho & Pennacchi, *supra* note 56, at 18; Miceli da Silveira & Ayres B. de C. Barros, *supra* note 56, at 22–23.

migrate to Novo Mercado, and many older companies maintain high levels of ownership concentration. Therefore, one can deduce that a more highly-dispersed ownership structure is associated with an increase in IPO activity in the Novo Mercado segment.

G. Decreasing Levels of Private Benefits of Control and Firm Value

Private benefits of control are considered an important determinant of ownership structures.[214] Studies have shown that larger levels of private benefits of control are associated with the presence of controlling shareholders.[215] The Brazilian experience with different listing segments allows testing of the relationship between private benefits of control and ownership structures. If controlling ownership structures are decreasing in the Novo Mercado, one might expect that private benefits of control are diminishing as well. Although such analysis is not conducted here, an interesting undertaking would be to compare the amount of private benefits extraction in all the different listing levels to assess whether they correlate with the concentration of ownership of companies listed on these segments. The evidence so far appears to suggest that private benefits extraction has diminished as shareholders derive more protection in the most stringent listing segments.

H. One Share—One Vote

The possibility that the one-share-one-vote rule may become a mandatory European Law rule has reopened a very intense debate. This debate brings to the European context a series of questions and arguments that were made in the United States a few decades ago about the desirability and effects of the one-share-one-vote rule. Several scholars have presented critiques.[216] For instance, it was argued that a mandatory rule could produce such undesired effects as pyramidal structures or derivative instruments that could circumvent the rule.[217]

On the other hand, many scholars have pointed out that deviations from one-share-one-vote may be efficient. Grossman and Hart have shown

[214] *See* Bebchuk, *supra* note 7, at 1.

[215] Lamba & Stapledon, *supra* note 160, at 23.

[216] *See, e.g.*, Renée Adams & Daniel Ferreira, *One Share, One Vote: The Empirical Evidence* (Euro. Corp. Governance Inst., Finance Working Paper No. 177/2007, 2007), *available at* http://ssrn.com/abstract=987488; Guido Ferrarini, *One Share-One Vote: A European Rule?* (Euro. Corp. Governance Inst., Law Working Paper No. 58/2006, 2006), *available at* http://ssrn.com/abstract=875620 (discussing the prospect of the adoption of the one share-one vote rule in Europe); Arman Khachaturyan, *The One-Share-One-Vote Controversy in the EU* (Euro. Cap. Markets Inst., ECMI Paper No. 1/2006, 2006), *available at* http://ssrn.com/abstract=908215.

[217] Khachaturyan, *supra* note 216, at 13.

that because the one-share-one-vote protects shareholders' property rights, value reducing bids are impossible under this rule. [218] They have also argued that changes that restrict voting power may harm security-holders.[219] Nonetheless, this literature still admits that in specific situations, such deviations can be wealth-enhancing.[220] One example is the initial public offering of dual-class shares, in which the newly-issued shares would reduce the value of the outstanding shares so that the company's existing shareholders would bear the cost of the issuance.

Defendants of the one-share-one-vote rule argue that the development of capital markets requires this arrangement so as to avoid the discounted share values found in regulatory regimes that allow for a divergence in voting rights. The difference between control rights and cash-flow rights of the controlling shareholder is usually associated with a discount on the value of the shares. Claessens et al. have shown that this discount increases when "the wedge between control rights and cash-flow rights" is larger.[221] They show that "[p]yramid schemes, cross-holdings among firms, and the issuance of dual-class shares are all associated with lower corporate valu[e], . . ." although none of these associations is statistically significant.[222] Nenova focuses her analysis on the effect of dual-class shares on private benefits of control, and finds that the existence of non-voting shares is associated with value extraction.[223]

An increasing number of firms in continental Europe have unified dual-class shares into a single class. Anete Pajuste presents evidence, based on data from seven European countries that rely heavily on dual-class share structures, that firm value increases more for companies that "unify" dual-class shares than for companies that retain their dual-class shares.[224] Pedersen and Thomsen have found that the use of dual-class shares positively correlates with family ownership[225] and with ownership concentration.[226]

Others have shown that the impact of the one share-one vote depends on the underlying ownership structure. In widely-held companies, the adoption of the one-share-one-vote rule may ensure efficient outcomes in bidding contests, but "[i]n the absence of bidding competition, non-voting shares mitigate the free-rider problem, thereby promoting takeover

[218] Sanford J. Grossman & Oliver D. Hart, *One Share-One Vote and the Market for Corporate Control*, 20 J. FIN. ECON. 175, 179-180 (1988).

[219] *Id*. at 200–01.

[220] *Id.* at 180.

[221] Claessens, et al., *supra* note 6, at 2743.

[222] *Id.* at 2743–44.

[223] Nenova, *supra* note 21, at 10–11.

[224] Anete Pajuste, *Determinants and Consequences of the Unification of Dual-Classes Shares* 6 (Euro. Cent. Bank, Working Paper Series No. 465, 2005) (concluding, however, that dual-class shares should not be forbidden, and stating that "firms that depend on equity capital will sooner or later be forced by the markets to unify their shares.").

[225] Pedersen & Thomsen, *supra* note 163, at 772.

[226] *Id.* at 764.

activity."[227] In companies with concentrated ownership, adoption "promote[s] value-increasing control transfers" but may exacerbate conflicts of interests between the controlling shareholders and the minority shareholders.[228]

These arguments show that the one-share-one-vote rule could "both discourage and promote ownership concentration."[229] Because it ties votes to cash flow rights, the rule increases the financial burden of the shareholder seeking to keep control. This can bring about two opposite effects: the shareholder may relinquish control because it is too expensive; or he or she may be wary of losing control, an attitude that may impede the floating of shares and perhaps induce a going-private transaction.[230]

Bovespa's special segment listing requirements seem to support the argument that the one-share-one-vote rule helps to promote the dispersion of ownership. The rule requires that controlling shareholders reduce their voting power if they want to raise a significant amount of capital on the Novo Mercado. In the other listing segments, which do not require compliance with the one-share-one-vote rule, block holders tend to retain their controlling position and are reluctant to float shares.[231]

I. Controlling Shareholders' Preferences and Incentives

Controlling shareholders bear significant costs maintaining concentration of ownership and voting rights. They incur the opportunity cost of holding a non-diversified portfolio, costs associated with the lack of liquidity of their investment, and costs of monitoring the operation of the company so as to assure that they will derive profits from their

[227] Mike Burkart & Samuel Lee, *The One Share-One Vote Debate: A Theoretical Perspective* 43 (Euro. Corp. Governance Inst., Finance Working Paper No. 176/2007, 2007), *available at* http://ssrn.com/abstract=987486.

[228] *Id.*

[229] *Id.* at 31.

[230] *Id.*

[231] This is also consistent with Musacchio's analysis that the concentration of control in Brazilian companies increased after the introduction of non-voting shares in 1932. *See* Musacchio, *supra* note 183, at 5 and 20. Musacchio concludes:

> Brazil's traded corporations had lower concentration of control rights, on average, in the past than today. Before 1910, the three largest shareholders controlled, on average, between 50% of shares and around 50% of total votes. By 2004, the three largest shareholders of the largest 20 companies in Brazil held 51.2% of the shares and 76.6% of the votes. Most of this increase in the concentration of control rights should be attributed to the introduction of nonvoting preferred shares in 1932, which reduced the cost of controlling a corporation and enabled controlling investors to obtain equity finance without sacrificing their control rights.

Id. at 30.

investment.[232] Controlling shareholders benefit by extracting private benefits from the corporation in exchange for incurring these costs.[233]

Some level of benefits extraction by controlling shareholders may be efficient for the corporation and the non-controlling shareholders as well. The controlling shareholders may do a better job in policing the management of public corporations than what market-oriented techniques would achieve in firms with dispersed ownership.[234] The controlling shareholders have lower information costs and have incentives to watch closely what is happening in the corporation, and therefore may be best-situated to recognize problems that could impair corporate results.[235] In light of this, controlling shareholders could serve as an efficient solution to the agency problems that arise in widely-held companies.[236] The controlling shareholders would increase productivity, generating gains to non-controlling shareholders as well.[237] Therefore, non-controlling shareholders should prefer having controlling shareholders manage the corporation, provided that the gains from the "reduction in managerial agency costs" justify the private benefits that controlling shareholders extract.[238] This balancing is what Professors Gilson and Gordon have called "the controlling shareholder trade off."[239]

Using this framework, it appears that a corporate governance system *should* achieve a positive trade off from controlling shareholder structures. To put it differently, the problem is transforming a structure featuring *inefficient* controlling shareholders accustomed to extracting many private benefits of control, into a structure featuring *efficient* controlling shareholders whose monitoring generates benefits exceed the costs of private benefits extraction.[240] This would cause minority shareholders to be better off under the controlling shareholders' management, raising the overall level of confidence in the capital markets.[241]

Gilson hypothesizes that "an efficient controlling shareholder system supports a diversity of shareholder distribution[]" structures among companies.[242] He gives examples from Sweden and Italy, showing that Sweden (a "good law" nation)[243] has considerably more widely-held ownership than Italy (a "bad law" nation), despite the fact that both systems

[232] *See* Gilson, *supra* note 1, at 1652.

[233] *See generally* Gilson & Gordon, *supra* note 1 (stating that the "costs associated with holding a concentrated position" may result in the need for "private benefits of control" in order "to induce a party to play that role."); Gilson, *supra* note 1, at 1651–52.

[234] Gilson, *supra* note 1, at 1651–1652.

[235] *Id.*

[236] *Id.*

[237] *Id.*

[238] *Id.* at 1650.

[239] *Id.* at 1651; Gilson & Gordon, *supra* note 1, at 785–86.

[240] Gilson, *supra* note 1, at 1652.

[241] *Id.*

[242] *Id.* at 1657.

[243] *Id.* at 1653 (defining "good law" as that which "limits private benefits of control to amounts that are smaller than the increased productivity from more focused monitoring.").

are considered dominated by controlling shareholders.[244] According to Gilson's hypothesis, inefficient controlling shareholders systems show less diversity of shareholding distribution.[245]

Likewise, the fact that there is more diversity in the ownership structures of Brazilian corporations today than in the recent past appears to support the hypothesis that controlling shareholders structures have moved to more efficient patterns because of relevant changes in the level of shareholder protection and the consequent reduction of private benefits of control. Investors pay more for shares listed on Novo Mercado because of the reduced level of expected pecuniary expropriation.

Gilson also distinguishes between pecuniary and non-pecuniary private benefits of control to explain differences between controlling shareholders in certain countries with "good law."[246] Non-pecuniary benefits such as social status play an important role in Brazil. High levels of non-pecuniary private benefits of control should decrease the rate at which controlling shareholders and their heirs dissipate control.[247] This may help explain why Level 1 companies still persist with very concentrated structures of ownership. In general, the companies listing on Level 1's are very traditional Brazilian companies, whose controlling shareholders enjoy social status and exert political influence.

Even if there is evidence that listing on Novo Mercado diminishes the cost of capital to companies, pecuniary incentives may not be enough to alter the behavior of traditional controlling shareholders who still enjoy the non-pecuniary advantages of their positions. It is important to note, however, that even if social status and political relations are considered non-pecuniary private benefits, such advantages may result in gains that can be easily translated into pecuniary benefits. The concentration of corporate control and assets in the hands of few families creates the opportunity for these families to lobby government agencies for special treatment, demanding preferential public contracts and non-market-based financing from state banks as a substitute for equity financing.[248] Ultimately, families may have significant influence in determining governmental economic policy. This motivation for "crony capitalism" can also explain why many companies, particularly those listing on Level 1, still continue to have families as their major controlling shareholders.[249] Controlling shareholders' preferences may therefore be difficult to change if these

[244] *Id.* at 1659–60.

[245] *Id*. at 1659.

[246] Gilson, *supra* note 1, at 1665.

[247] *Id.* at 1666.

[248] Claessens, Djankov & Lang, *supra* note 4, at 109.

[249] *See id.* at 108–09 (discussing data on concentration of corporate assets that are indicative of crony capitalism in East Asia).

shareholders are not constrained by the need to raise more capital at lower costs. In this framework, changes in ownership structure may be more difficult to achieve and require more time to succeed.

VIII. THE CHALLENGES THAT THE MARKET WILL FACE

Over the last eight years, Novo Mercado has grown, and companies listed there now make up twenty percent of the total market capitalization of Bovespa. This represents a very significant change over a short period of time. In order for Novo Mercado to grow further, regulators and market participants will have to surmount many challenges. It is still unclear whether or not Bovespa's legal rules will be properly enforced.[250] Bovespa has established an arbitration panel to hear disputes in order to avoid the delay and uncertainty of Brazilian courts. However, at this time, the arbitration panel has yet to be installed and its efficacy is untested.

The Brazilian Corporate Law was designed with the traditional controlling shareholder in mind.[251] Brazilian law imposes more responsibilities on controlling shareholders than on managers.[252] However, this legal model is being challenged as ownership structures change. Many problems that may emerge in companies without clear controlling shareholders will present significant difficulties for the current law. For instance, the Brazilian Law affords tag along rights to minority shareholders in the case of control transactions, which usually involve the sale of more than fifty percent of the voting shares of a corporation. With the increasing level of ownership dispersion, it will be more difficult to determine when a control transaction is taking place. Is a sale of thirty percent of the voting shares still a control sale? What about a sale of ten percent of the voting shares? What about a sale of ten percent of voting shares by a shareholder who has entered into a control shareholder agreement?[253] There are still no clear guidelines for answering these questions. There is a lot of room for opposing arguments. The definition of independent directors, the adoption of shareholders' agreements that bind directors, and the use and enforcement of anti-takeover clauses[254] raise important questions for

[250] *See supra* Part VI.A.

[251] *See* Exposição de Motivos No. 196, de 24 de junho de 1976, do Ministério da Fazenda, *available at* www.cvm.gov.br/port/atos/leis/6404_Exposicao.asp.

[252] Lei No. 6.404, de 15 dezembro de 1976, D.O.U de 17.12.1976, (suplemento), art. 116, *available at* http://www.planalto.gov.br/ccivil_03/Leis/L6404compilada.

[253] The recent Votarantim Celulose e Papel (VCP) case involved VCP, a shareholder from Cia Aracruz, offering to buy all of Erling Lorentzen's shares in Cia Aracruz. VCP and Lorentzen were parties to the shareholders agreement to exercise control of Aracruz. The question arose as to whether the transaction would encompass a change of control that would require a mandatory offer to the other minority shareholders according to article 254-A of Law 6404. The conclusion will depend on whether the control of Aracruz would change if Lorentzen acquired control of Aracruz, considering that it was a previous participant in the agreement for exercize of control. *See* Daniele Camba, *Mercado aprova oferta pela Aracruz* [*The Market Approves the Bid Offer to Aracruz*], VALOR ECONÔMICO (Braz.), Aug. 7 2008; André Vieira, *Oferta da Votorantim deve criar gigante da celulose* [*Votorantim's Bid Shall Create a Cellulose Giant*], VALOR ECONÔMICO (Braz.), Aug. 7, 2008.

[254] Two recent cases involving the companies Even and Cremer call into question the

regulators and market players.

Finally, one must keep in mind that many activities are poorly regulated. One recent example that gained media attention involved the practices of underwriters in issuing securities.[255] The most notable concerns were the lending of capital by underwriters to issuers and the receipt of issuers' warrants by underwriters as compensation.

IX. CONCLUSION

Using a unique vantage point, this paper has tried to draw general conclusions about changing patterns of corporate ownership from the Brazilian experience. Designing special listing segments with higher standards of corporate governance appears to be an important part of fostering markets stuck in low-level equilibrium due to poor protection of minority shareholders and poor corporate governance. The Bovespa experiment has shown that many new companies have chosen to list on special segments that require more stringent corporate governance practices than the standard market. These companies are looking for financing in the capital markets instead of using their usual alternatives (e.g., debt). Thus, private financing by stock exchanges may succeed where public regulation has failed to foster market development.

Nonetheless, this paper cautions that the majority of traditional companies have not yet migrated to Bovespa's new listing segments in large numbers. This shows that path dependence still applies: firms tend to persist in their patterns of initial ownership, so any changes in corporate governance practices that depend on changes in ownership structures may remain elusive.

Brazilian capital markets are going through an important change. The "new entrants" have caused the level of ownership concentration to significantly diminish in Novo Mercado. However, this change is marred by the persistence of traditional concentration of ownership in Level 2, Level 1, and the standard market. In short, new practices of corporate governance coexist with old practices. While institutions strive for improved governance patterns, family ownership is still dominant and

enforcement of an anti-takeover clause when the board of directors or a strategic minority shareholder demands the exclusion of anti-takeover devices to make an investment by a prospective shareholder possible. *See Fundo quer retirar pílula de veneno do estatuto da Cremer* [*Investment Fund Wants to Exclude Poison Pill from Cremer Bylaws*], VALOR ECONÔMICO ONLINE (Braz.), Sept. 4, 2008; Vinícius Pinheiro & Regiane de Oliveira, *Even eleva capital e elimina "poison pill"* [*Even Raises its Capital and Eliminates its "Poison Pill"*], GAZETA MERCANTIL (Braz.), Sept. 22, 2008.

[255] *See* Érica Gorga, *O que o underwriter pode ou não fazer* [*What the Underwriter May and May Not Do*], GAZETA MERCANTIL (Braz.), July 5, 2007; Graziella Valenti & Ana Paula Ragazzi, *Escândalo da Agrenco testará mercado* [*Agrenco's Scandal Will Test the Market*], VALOR ECONÔMICO (Braz.), June 23, 2008.

entrenched.

This paper also identifies an important challenge for the corporate governance literature in general. Corporate governance scholars have restricted their research to companies' charters and bylaws. The analysis of shareholders' agreements in Brazil points out that the contractual relations that affect corporate governance may be more complex than expected. An analysis of Brazilian corporate governance that does not take shareholders' agreements into consideration is certainly incomplete. Shareholders' agreements are central in assessing the concentration of corporate control in Brazil. Whether this also applies to assessing corporate governance in other countries is still an open question that deserves more attention from researchers.

Shareholders' agreements are used by companies with a larger degree of ownership dispersion to coordinate joint control and voting rights. In this sense, shareholders' agreements serve as substitutes for share ownership. Furthermore, this analysis makes it clear that control comes in forms other than direct or indirect equity ownership (e.g., pyramids). Alternative forms of control may arise from contract and, in the case of shareholders' agreements, can determine how directors can vote, binding them to shareholders' interests and undermining their independence.

Anti-takeover defenses have been cropping up in companies' bylaws, which is a remarkable development accompanying increased ownership dispersion in the Brazilian capital markets. It remains to be seen how these defenses will withstand takeover attempts or control transactions, and whether public regulation will evolve to tackle this phenomenon. Private actors seem to have not yet realized that by increasing management entrenchment, anti-takeover defenses may hinder capital markets' development.

Changing the Paradigm of Stock Ownership
29:439 (2009)

TABLE 1: Main Aspects of Bovespa's Listing Rules

Main Aspects of the Listing Rules	Standard	Level 1	Level 2	Novo Mercado
Disclosure				
Disclosure of conditions of related party transactions.	not required	required	required	required
Monthly disclosure of transactions with shares of the company by employees, administrators and Fiscal Counselors.	not required	required	required	required
Disclosure of quantity and characteristics of securities issued by the company held by controlling shareholders members of the Board, officers and members of the Fiscal Counsel.	not required	required	required	required
Improvements in quarterly financial statements, including consolidated financial statements and report of the Independent Auditor.	not required	required	required	required
The Company's quarterly and year-end financial statements will include a Cash Flow Statement.	not required	required	required	required
Quarterly Statements should be presented in English or prepared in accordance with the US GAAP or IFRS.	not required	not required	required	required
Disclosure of annual balance sheet according to standards of US GAAP or IFRS.	not required	not required	required	required
Free-float				
Maintenance of a free-float of at least 25% of the capital.	not required	required	required	required
Capital Dispersion				
Public offerings have to use mechanisms that favor capital dispersion.	not required	required	required	required
Board of Directors				
Establishment of a two-year unified mandate for the entire Board of Directors, which must have five members at least, at least 20% of which shall be Independent Members.	not required	not required	required	required

TABLE 1: (Continued)

Main Aspects of the Listing Rules	Standard	Level 1	Level 2	Novo Mercado
Corporate Rules				
Voting rights granted to preferred shares in circumstances such as incorporation, spin-off and merger and approval of contracts between the company and other firms of the same holding group.	not required	not required	required	not applicable
Obligation to hold a tender offer for acquisition of the shares held by the other shareholders at the economic value of the shares.	not required	not required	required	required
In a sale of control, same conditions provided to majority shareholders will have to be extended to all shareholders (Tag Along).	not required	not required	not required	required
In case majority shareholders sell their stake, same conditions of price granted must be extended to common shareholders, while preferred shareholders must get, at least, 80% of the price (Tag Along).	not required	not required	required	not applicable
Corporate Rules				
The company should have a public shareholder meeting with analysts and investors, at least once a year.	not required	required	required	required
Arbitration				
Admission to the Market Arbitration Panel for resolution of corporate disputes.	not required	not required	required	required
Annual Calendar				
Disclosure of an annual calendar of corporate events.	not required	required	required	required
One Share—One Vote				
The capital stock must be solely represented by common (voting) shares.	not required	not required	not required	required

Sources: Standard segment listing rules are contained in Lei No. 6.404, de 15 dezembro de 1976 D.O.U. de 17.12.1976 (Braz.). Level 1 Listing Rules, *supra* note 50; Level 2 Listing Rules, *supra* note 51; Novo Mercado Listing Rules, *supra* note 52.

Changing the Paradigm of Stock Ownership
29:439 (2009)

TABLE 2: Number of Public Companies Listed on Bovespa

Number of Brazilian public companies listed on the indicated Bovespa levels. Data is provided by Bovespa, and is at year-end except for 2007.

Bovespa Listing Segments					
Year	**Standard**	**Level 1**	**Level 2**	**Novo Mercado**	**Total**
1995	577	these levels were created in 2000			577
1996	589				589
1997	595				595
1998	599				599
1999	534				534
2000	495	0	0	0	495
2001	450	18	0	0	468
2002	407	24	3	2	436
2003	374	31	3	2	410
2004	343	33	7	7	390
2005	316	37	10	18	381
2006	300	36	14	44	394
2007	293	44	20	92	449

Source: Bovespa, http://www.bovespa.com.br/indexi.asp.

TABLE 3: Primary Stock Offerings

STOCKS			
YEAR	**Number of Issuances**	***Volume***	
		R$ millions	**US$ millions**
1995	31	1,935.25	2,111.10
1996	22	9,142.96	9,168.27
1997	23	3,599.21	3,655.44
1998	20	4,112.10	3,494.52
1999	10	2,749.45	1,467.83
2000	6	1,410.17	628.24
2001	6	1,353.30	625.24
2002	4	1,050.44	370.12
2003	2	230.00	73.76
2004	9	4,469.90	1,552.03
2005	13	4,364.63	1,860.86
2006	29	13,745.58	6,565.67
2007	59	33,135.84	17,253.01

Source: Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 4: Secondary Stock Offerings

YEAR	Secondary Distributions(Stocks)		
	No. of registered distributions	***Volume***	
		R$ millions	**US$ millions**
1995	0	0	0
1996	2	37.9	37.2
1997	0	0	0
1998	14	1,856.30	1,618.00
1999	14	1,866.60	1,065.50
2000	14	12,127.30	6,726.00
2001	7	4,308.70	1,768.20
2002	2	5,096.80	2,158.60
2003	6	1,856.30	614.40
2004	12	4,682.30	1,611.60
2005	15	6,634.60	2,792.20
2006	30	12,760.80	5,878.70
2007	44	34,121.3	18,211.40

Source: Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 5: Recent IPOs

Statistics of Going Public Transactions in BOVESPA						
Year	Company's Name	Listing Segment	Offer Type	Volume R$ millions	No. of brokers	No. of investors
2007	Tempo Part	Novo Mercado	Primary	394	57	N/D
	MPX Energia	Novo Mercado	Primary	1,916	58	N/D
	BMF	Novo Mercado	Secondary	5,984	70	255,001
	Pan-americano	Level 1	Primary	680	61	N/D
	Laep	BDR	Primary	508	52	563
	Helbor	Novo Mercado	Primary	252	60	723
	Amil	Novo Mercado	Mixed	1,401	69	4,398
	BR Brokers	Novo Mercado	Mixed	699	55	13
	Bovespa Hld	Novo Mercado	Secondary	6,626	69	64,775
	Agrenco	BDR	Primary	666	55	805
	Marisa	Novo Mercado	Primary	506	67	13.177
	SEB	Level 2	Mixed	413	61	3,709
	Tenda	Novo Mercado	Primary	603	60	10,172

TABLE 5 (Continued)

Statistics of Going Public Transactions in BOVESPA						
Year	Company's	Listing Segment	Offer Type	Volume R$	No. of	No. of investors

	Name			millions	brokers	
	Trisul	Novo Mercado	Primary	330	62	2,444
	BicBanco	Level 1	Mixed	822	62	5,197
	Sul America	Level 2	Primary	775	67	19,261
	Satipel	Novo Mercado	Mixed	398	59	-
	Cosan Ltd	BDR	Primary	275	59	1,572
	Estacio Part	Level 2	Mixed	447	64	10,890
	Generalshopp	Novo Mercado	Primary	287	59	4,999
	Multiplan	Level 2	Mixed	925	66	24,419
	Providencia	Novo Mercado	Primary	469	64	11,135
	Springs	Novo Mercado	Mixed	656	69	7,383
	ABC Brasil	Level 2	Mixed	609	49	6,050
	Triunfo Part	Novo Mercado	Mixed	513	59	7,139
	Guarani	Novo Mercado	Primary	666	63	12,388
	Kroton	Level 2	Mixed	479	60	11,297
2007	MRV	Novo Mercado	Mixed	1,193	60	15,657
	Patagonia	BDR	Mixed	539	56	2,846
	Minerva	Novo Mercado	Mixed	444	62	11,660
	Invest Tur	Novo Mercado	Primary	945	53	17
	Redecard	Novo Mercado	Mixed	4,643	67	29,766
	Indusval	Level 1	Mixed	253	59	290
	Tegma	Novo Mercado	Mixed	604	64	6,776
	Marfrig	Novo Mercado	Primary	1,021	62	4,933
	Daycoval	Level 1	Mixed	1,092	62	7,585
	Cruzeiro Sul	Level 1	Mixed	574	61	4,221
	EZTec	Novo Mercado	Primary	542	62	5,553
	Log-In	Novo Mercado	Mixed	848	67	26,898
	SLC Agricola	Novo Mercado	Mixed	490	64	9,750
	Parana	Level 1	Primary	529	50	8,586
	Inpar S/A	Novo Mercado	Primary	756	60	9,614

TABLE 5 (Continued)

Statistics of Going Public Transactions in BOVESPA

Year	Company's Name	Listing Segment	Offer Type	Volume R$ millions	No. of brokers	No. of investors
2007	Tarpon	BDR	Primary	444	56	10,714
	Sofisa	Level 1	Mixed	439	61	7,269
	Wilson Sons	BDR	Secondary	706	57	11,915
	Cremer	Novo Mercado	Mixed	508	58	9,419
	Agra Incorp	Novo Mercado	Mixed	786	62	5,375
	CR2	Novo Mercado	Primary	308	58	2,810
	Bematech	Novo Mercado	Mixed	407	60	8,718
	Metalfrio	Novo Mercado	Mixed	453	65	9,672
	JHSF Part	Novo Mercado	Primary	432	66	4,561
	Fer Heringer	Novo Mercado	Mixed	304	64	9,275
	BR Malls Par	Novo Mercado	Mixed	657	66	13,909
	Even	Novo Mercado	Primary	460	65	11,366
	Pine	Level 1	Mixed	517	55	20,251
	JBS	Novo Mercado	Mixed	1,617	61	22,984
	Anhanguera	Level 2	Mixed	512	60	13,742
	GVT Holding	Novo Mercado	Primary	1,076	59	14,597
	Sao Martinho	Novo Mercado	Mixed	424	64	24,686
	Iguatemi	Novo Mercado	Primary	549	64	16,889
	Tecnisa	Novo Mercado	Mixed	791	66	17,436
	CC Des Imob	Novo Mercado	Mixed	522	63	22,294
	Rodoben-simob	Novo Mercado	Primary	449	62	14,181
	PDG Realt	Novo Mercado	Mixed	648	62	12,018
2006	Dufrybras	BDR	Secondary	880	60	10,177
	Lopes Brasil	Novo Mercado	Secondary	475	59	9,930
	Positivo Inf	Novo Mercado	Mixed	604	61	18,814
	Odontoprev	Novo Mercado	Mixed	522	55	8,860
	Ecodiesel	Novo Mercado	Primary	379	58	9,446
	Terna Part	Level 2	Mixed	627	52	6,509

TABLE 5 (Continued)

Statistics of Going Public Transactions in BOVESPA						
Year	Company's Name	Listing Segment	Offer Type	Volume R$ millions	No. of brokers	No. of investors
2006	Profarma	Novo Mercado	Mixed	401	53	4,609
	Brascan Res	Novo Mercado	Mixed	1,188	54	4,319
	M.Dias-branco	Novo Mercado	Secondary	411	56	3,460
	Santos Bras	Level 2	Mixed	933	54	4,209
	Klabinsegall	Novo Mercado	Mixed	527	53	4,720
	Medial Saude	Novo Mercado	Mixed	742	53	3,131
	Abyara	Novo Mercado	Primary	164	41	6
	MMX Miner	Novo Mercado	Primary	1,119	35	18
	Datasul	Novo Mercado	Mixed	317	52	5,514
	GP Invest	BDR	Primary	706	49	2,373
	Lupatech	Novo Mercado	Mixed	453	55	11,453
	BrasilAgro	Novo Mercado	Primary	583	35	3
	CSU CardSyst	Novo Mercado	Mixed	341	57	14,637
	ABnote	Novo Mercado	Secondary	480	55	15,453
	Equatorial	Level 2	Mixed	540	56	7,521
	Totvs	Novo Mercado	Mixed	460	57	16,322
	Company	Novo Mercado	Mixed	282	55	13,166
	Gafisa	Novo Mercado	Mixed	927	57	14,028
	Copasa	Novo Mercado	Primary	813	60	15,802
	Vivax	Level 2	Mixed	529	50	7,916
2005	UOL	Level 2	Mixed	625	56	13,234
	Cosan	Novo Mercado	Primary	886	52	9,079
	Nossa Caixa	Novo Mercado	Secondary	954	54	7,666
	OHL Brasil	Novo Mercado	Mixed	496	42	1,084
	Energias BR	Novo Mercado	Mixed	1,185	44	468
	TAM S/A	Level 2	Mixed	548	48	1,212
	Localiza	Novo Mercado	Secondary	265	48	809
	Submarino	Novo Mercado	Mixed	473	52	4,022
	Renar	Novo Mercado	Primary	16	42	1,698

TABLE 5 (Continued)

Statistics of Going Public Transactions in BOVESPA						
Year	Company's Name	Listing Segment	Offer Type	Volume R$ millions	No. of brokers	No. of investors
2004	Porto Seguro	Novo Mercado	Mixed	377	51	5,919
	DASA	Novo Mercado	Mixed	437	44	2,892
	Grendene	Novo Mercado	Secondary	617	56	7,905
	CPFL Energia	Novo Mercado	Mixed	821	47	2,750
	ALL Amer Lat	Level 2	Mixed	588	33	3,425
	Gol	Level 2	Mixed	878	40	11,397
	Natura	Novo Mercado	Secondary	768	32	4,445

Source: BM&FBovespa – For Investors – Recent Listings, http://www.bovespa.com.br/Empresas/InstInfoEmpresas/AberturaIPOsRecentes.asp?tit=5 (last visited March 5, 2009).

TABLE 6: Bovespa's Segments Market Capitalization

Market Capitalization ($ in millions) of Bovespa's standard market, Level 1, Level 2 and Novo Mercado. Companies with a majority shareholder have a shareholder that owns more than 50% of the voting capital.

Market Capitalization						
LEVEL	Companies with majority shareholder		Companies without a majority shareholder		Total Sample	
	No. of firms	Market Capitaliz-ation in R$	No. of firms	Market Capitaliz-ation in R$	No. of firms	Market Capitalization in R$
Novo Mercado	27	189,048,042,839.36	65	240,244,243,754.94	92	429,292,286,594.30
Level 2	14	54,079,710,040.99	6	23,798,197,688.22	20	77,877,907,729.21
Level 1	31	631,755,247,320.61	13	246,945,774,507.31	44	878,701,021,827.92
Standard	133	793,629,042,667,36	50	129,693,328,935.93	183	923,322,371,603.29
TOTAL	205	1,668,512,042,868.32	134	640,681,544,886.40	339	2,309,193,587,754.72

Source: Author's calculations are based on Bovespa data on market capitalization dated Dec. 19, 2007. Bovespa, http://www.bovespa.com.br/indexi.asp.

TABLE 7: Listing History of Companies Listed on Novo Mercado, Level 2, and Level 1

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
NEW MARKET				
ABYARA PLANEJAMENTO IMOBILIARIO S.A.	Construction; Real Estate Construction	24/7/2006	27/7/2006	NO
AÇÚCAR GUARANI S.A.	Food Manufacturing; Sugar Manufacturing	20/7/2007	23/7/2007	NO
AGRA EMPREEN-DIMENTOS IMOB-ILIARIOS S.A.	Construction; Real Estate Construction	19/4/2007	26/4/2007	NO
AMERICAN BANKNOTE S.A.	Finance and Insurance; Credit Card Issuing	12/4/2006	27/4/2006	NO
AMIL PARTICI-PACOES S.A.	Health; Medical and Diagnostics Services	24/10/2007	29/10/2007	NO
B2W—COMP-ANHIA GLOBAL DO VAREJO	Retail trade; Miscellaneous products	26/7/2007	8/8/2007	NO
BCO BRASIL S.A.	Finance and Insurance Commercial Banking	20/7/1977	28/6/2006	YES_STAND
BCO NOSSA CAIXA S.A.	Finance and Insurance Commercial Banking	14/10/2005	28/10/2005	NO
BEMATECH IND E COM EQUIP. ELETRONIC S.A.	Manufacturing; Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	17/4/2007	19/4/2007	NO
BOLSA DE MERCA-DORIAS E FUTUROS-BMF S.A.	Financial Activities; Development and Management of Trading Systems; Clearing House Services for Securities and Derivative Products	28/11/2007	30/11/2007	NO
BOVESPA HOLDING S.A.	Financial Activities; Holding Company; Processing, Reserve and Clearing House Activities	23/10/2007	26/10/2007	NO
BR MALLS PARTICIPACOES S.A.	Real Estate and Rental and Leasing; Holding Company	4/1/2006	5/4/2007	NO
BRASCAN RESIDENTIAL PROPERTIES S.A.	Construction; Offices of Other Holding Companies	11/9/2006	23/10/2006	NO

TABLE 7 (Continued)

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
NEW MARKET				
BRASIL BROKERS PARTICIPACOES S.A.	Construction; Real Estate Construction; Real Estate Agents and Brokers; Real Estate Holdings	26/10/2007	29/10/2007	NO
BRASIL ECO-DIESEL IND COM BIO.OL.VEG. S.A.	Grain and Oilseed Milling	9/11/2006	22/11/2006	NO
BRASILAGRO - CIA BRAS DE PROP AGRICOLAS	Real Estate and Rental and Leasing; Agriculture Business	25/4/2006	2/5/2006	NO
CAMARGO CORREA DESENV. IMOBILIARIO S.A.	Construction; Real Estate Construction	29/1/2007	31/1/2007	NO
CIA BRAS DESENV. IMOBILIARIO TURISTICO	Insurance and Finance; Real Estate and Rental and Leasing	12/7/2007	16/07/2007	NO
CIA CONCESSÕES RODOVIÁRIAS	Highway, Street, and Bridge Construction; Holding Company	19/12/2000	01/02/2002	NO
CIA. HERING	Textile Mills; Clothing & Apparel Manufacturing	20/07/1977 26/1/2005	16/5/2007	YES_STAND
CIA. PROVIDÊNCIA INDÚSTRIA E COMÉRCIO	Plastics Pipe, Pipe Fitting, and Unlaminated Profile Shape Manufacturing; Commercial and Manufacturing	25/7/2007	27/7/2007	NO
CIA SANEAMENTO BASICO EST SAO PAULO	Administration of Air and Water Resource and Solid Waste Management Programs; Water and Sewer Line and Related Structures Construction	27/6/1994	24/4/2002	YES_STAND
CIA SANEAMENTO DE MINAS GERAISCOPASA MG	Administration of Air and Water Resource and Solid Waste Management Programs; Water and Sewer Line and Related Structures Construction	17/9/2003	8/2/2006	NO

TABLE 7 (Continued)

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
NEW MARKET				
COMPANY S.A.	Construction Real Estate Construction	3/9/2001	2/3/2006	NO
CONSTR UTORA TENDA S.A.	Construction; Real Estate Construction; Inc-orporation, Management, Real Estate Trading	11/10/2007	15/10/2007	NO
COSAN S.A. INDUSTRIA E COMERCIO	Food Manufacturing Sugar Manufacturing	26/10/2005	18/11/2005	NO
CPFL ENERGIA S.A.	Power and Communication Line and Related Structures Construction; Holdings	18/5/2000	29/9/2004	YES_ST AND
CR2 EMPREEN-DIMENTOS IMO-BILIARIOS S.A.	Construction; Real Estate Construction	16/4/2007	23/4/2007	NO
CREMER S.A.	Medical, and Hospital Supplies Manufacturing	30/6/2006	30/4/2007	NO
CSU CARDSYSTEM S.A.	Finance and Insurance Credit Card Issuing	25/4/2006	2/5/2006	NO
CYRELA COMMERCIAL PROPERT S.A. EMPR PART	Commercial and Industrial Buildings Rental; Shopping Centers, Warehouses	1/8/2007	9/8/2007	NO
CYRELA BRAZIL REALTY S.A. EMP-REEND E PART	Construction; Real Estate Construction	7/7/1994	21/9/2005	NO
DATASUL S.A.	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	30/5/2006	2/6/2006	NO
DIAGNOSTICOS DA AMERICA S.A.	Medical and Diagnostic Laboratories	5/11/2004	19/11/2004	NO
EDP - ENERGIAS DO BRASIL S.A.	Power and Communication Line and Related Structures Construction; Holdings	5/7/2005	13/7/2005	NO
EMBRAER-EMPRESA BRAS DE AERO-NAUTICA S.A.	Aircraft Manufacturing; Aircraft Engine and Engine Parts Manufacturing	23/5/2006	6/6/2006	NO

TABLE 7 (Continued)

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
NEW MARKET				
ETERNIT S.A.	Cement and Concrete Product Manufacturing and Wholesaler	17/11/ 1970*	17/8/2006	YES_ST AND
EVEN CONSTRU-TORA E INCORP-ORADORA S.A.	Construction; Real Estate Construction	2/3/2007	2/4/2007	NO
EZ TEC EMPREEND. E PARTICIPACOES S.A.	Construction	15/6/2007	22/6/2007	NO
FERTILIZANTES HERINGER S.A.	Fertilizer Manufacturing and Wholesaler	10/4/2007	12/4/2007	NO
GAFISA S.A.	Real Estate Property Managers; Residential Properties	21/2/1997	17/2/2006	NO
GENERAL SHOPPING BRASIL S.A.	Management of Companies and Enterprises; Management of Shopping Centers	26/7/2007	30/7/2007	NO
GRENDENE S.A.	Footwear Manufacturing; Rubber and Plastics Footwear Manufacturing	26/10/2004	29/10/2004	NO
GVT (HOLDING) S.A.	Telecommunications; Wired Telecommunic-ations Carriers; Holdings	9/6/2006	15/2/2007	NO
HELBOR EMPREEN-DIMENTOS S.A.	Real Estate Incorporation, Management, & Trading; Activities Related to Real Estate; Real Estate Agents and Brokers.	9/7/2007	29/10/2007	NO
IGUATEMI EMPRESA DE SHOPPING CENTERS S.A	Property Managers; Management Shopping Centers	2/2/2007	7/2/2007	NO
INDUSTRIAS ROMI S.A.	Industrial Machinery Manufacturing	19/4/1938*	23/3/2007	YES_ST AND
INPAR S.A.	Construction; Real Estate Construction	23/5/2007	6/6/2007	NO
JBS S.A.	Meat and Meat Product Merchant Wholesalers; Livestock Merchant Wholesalers	27/3/2007	29/3/2007	NO

TABLE 7 (Continued)

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
NEW MARKET				
JHSF PARTICI-PACOES S.A.	Construction; Real Estate Construction	4/4/2007	12/4/2007	NO
KLABIN SEGALL S.A.	Construction; Real Estate Construction	14/8/2006	9/10/2006	NO
LIGHT S.A.	Power and Communication Line and Related Structures Construction; Holdings	25/11/ 1968*	22/02/2006	YES_STAND
LOCALIZA RENT A CAR S.A.	Passenger Car Rental	6/5/2005	23/5/2005	NO
LOG-IN LOGISTICA INTERMODAL S.A.	Water Transportation	4/6/2007	21/6/2007	NO
LOJAS RENNER S.A.	Department Stores	20/7/1977	1/7/2005	YES_STAND
LPS BRASIL - CONSULTORIA DE IMOVEIS S.A.	Construction Real Estate Construction	12/12/2006	18/12/2006	NO
LUPATECH S.A.	Industrial Machinery and Equipment	8/5/2006	15/5/2006	NO
M.DIAS BRANCO S.A. IND COM DE ALIMENTOS	Food Manufacturing	11/10/2006	18/10/2006	NO
MARFRIG FRIGORIFICOS E COM DE ALIM S.A.	Meat and Meat Product	18/6/2007	29/6/2007	NO
MARISA S.A.	Textile, Apparel and Footwear; Holding Company	13/06/2007	22/10/2007	NO
MRV ENGEN-HARIA E PARTICI-PACOES S.A.	Engineering Services	13/7/2007	23/7/2007	NO
MEDIAL SAUDE S.A.	Medical and Diagnostic Services	19/6/2006	28/9/2006	NO
METALFRIO SOLUTIONS S.A.	Household Refrigerator and Home Freezer Manufacturing	10/4/2007	13/4/2007	NO
MINERVA S.A.	Meat and Meat Product Merchant Wholesalers	18/7/2007	20/7/2007	NO
MMX MINERACAO E METALICOS S.A.	Mining (except Oil and Gas); Holdings	10/11/1998	24/7/2006	NO

TABLE 7 (Continued)

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
NEW MARKET				
MPX ENERGIA S.A.	Electric Power Holding Company	07/12/2007	14/12/2007	NO
NATURA COSMETICOS S.A.	Cosmetics, Beauty Supplies, and Perfume Wholesalers	21/5/2004	26/5/2004	NO
OBRASCON HUARTE LAIN BRASIL S.A.	Construction; Management Public Service	6/7/2005	15/7/2005	NO
ODONTOPREV S.A.	Health Care Plans; Dental Services	13/6/2006	1/12/2006	NO
PDG REALTY S.A. EMPREEND E PARTICIPACOES	Construction; Real Estate Construction	23/1/2007	26/1/2007	NO
PERDIGAO S.A.	Meat and Meat Product	24/6/1997*	12/4/2006	YES_STAND
PORTO SEGURO S.A.	Insurance; Health and Welfare Funds; Holdings	28/11/1997	22/11/2004	NO
POSITIVO INFORMATICA S.A.	Computer and Electronic Product Manufacturing	6/12/2006	11/12/2006	NO
PROFARMA DISTRIB PROD FARMACEUTICOS S.A.	Drugs and Druggists' Sundries Merchant Wholesalers	24/10/2006	26/10/2006	NO
REDECARD S.A.	Financial Transactions Processing, Reserve, and Clearinghouse Activities	11/7/2007	13/7/2007	NO
RENAR MACAS S.A.	Apple Orchards	28/12/2004	28/2/2005	NO
RODOBENS NEG-OCIOS IMO-BILIARIOS S.A.	Construction; Real Estate Construction	18/1/2007	31/1/2007	NO
ROSSI RESIDENCIAL S.A.	Construction; Real Estate Construction	1/7/1997	27/1/2006	YES_STAND
SAO CARLOS EMPREEND E PARTICIPACOES S.A.	Management, Rental, Selling and Purchase of Commercial Property	25/3/1991	14/12/2006	YES_STAND
SAO MARTINHO S.A.	Sugar and Ethanol (Alcohol) Manufacturing	7/2/2007	12/2/2007	NO
SATIPEL INDUSTRIAL S.A.	Paper and Paper Product Merchant Wholesalers	10/9/2007	21/09/2007	NO

TABLE 7 (Continued)

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
NEW MARKET				
SLC AGRICOLA S.A.	Corn, Cotton Manufacturing and Soybeans and Coffee Processing	12/6/2007	15/6/2007	NO
SPRINGS GLOBAL PARTICIPACOES S.A.	Textile and Fabric Finishing Mills	25/7/2007	27/7/2007	NO
TECNISA S.A.	Construction; Holding	9/1/2007	1/2/2007	NO
TEGMA GESTAO LOGISTICA S.A.	Highway, Street, and Bridge Construction	28/6/2007	3/7/2007	NO
TEMPO PARTICIP-ACOES S.A.	Healthcare; Hospital, Medical and Diagnostics Services; Holding Co.	4/1/2006	18/12/2007	NO
TPI - TRIUNFO PARTICIP. E INVEST. S.A.	Other Support Activities for Road Transportation; Management	5/12/2002	23/7/2007	NO
TOTVS S.A.	Computer Systems Design and Related Services	7/3/2006	9/3/2006	NO
TRACTEBEL ENERGIA S.A.	Electric Power Generation	28/5/1998	16/11/2005	YES_STAND
TRISUL S.A.	Construction; Real Estate Construction; Electric Power Generation and Distribution	10/10/2007	15/10/2007	NO
WEG S.A.	Motor Manufacturing; Holding	9/2/1982	22/7/2007	YES_STAND
LEVEL 2				
ALL AMERICA LATINA LOGISTICA S.A.	Construction and Transports; Management and Holdings	2/7/1998	25/6/2004	YES_STAND
ANHANGUERA EDUCACIONAL PARTICIPACOS S.A	Educational Services; Holdings	8/6/ 2001	12/3/ 2007	NO
BCO ABC BRASIL S.A.	Banking Services	23/7/ 2007	25/7/ 2007	NO
CENTRAIS ELET DE SANTA CATARINA S.A.	Power and Communication Line and Related Structures Construction; Holdings	26/3/1973*	26/6/2002	YES_STAND

TABLE 7 (Continued)

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
LEVEL 2				
ELETROPAULO METROP. ELET. SAO PAULO S.A.	Power and Communication Line and Related Structures Construction; Public Service Facilities	19/8/1993	13/12/2004	YES_STAND
EQUATORIAL ENERGIA S.A.	Power and Communication Line and Related Structures Construction; Holdings	30/3/2006	3/4/2006	NO
ESTACIO PARTICIP-ACOES S.A.	Educational Services; Holdings	26/7/2007	30/7/2007	NO
GOL LINHAS AEREAS INTEL-IGENTES S.A.	Scheduled Passenger Air Transportation; Manage-ment and Holdings	9/6/2004	24/6/2004	NO
KROTON EDUCA-CIONAL S.A.	Educational Services; Holdings	1/12/1998	23/07/2007	NO
MARCOPOLO S.A.	Bus and Other Motor Vehicle Transit Systems	20/7/1977	03/09/2002	YES_STAND
MULTIPLAN - EMPREEND IMOB-ILIARIOS S.A.	Real Estate and Management of Shopping Centers	25/7/2007	27/7/2007	NO
NET SERVICOS DE COMUNICACAO S.A.	Television Broadcasting; Cable and Other Sub-scription Programming	22/11/1994	27/06/2002	YES_STAND
SANTOS BRASIL PARTICIPAÇÕES S.A.	Metal Container Logistics Seaport	16/9/1997	13/10/2006	NO
SARAIVA S.A. LIVREIROS EDITORES	Books Printing; Books Seller	20/7/1977	7/4/2006	YES_STAND
SEB - SISTEMA EDUCACIONAL BRASILEIRO S.A	Educational Services; Holdings	9/11/1998	18/10/2007	NO
SUL AMERICA S.A.	Insurance; Offices of Other Holding Companies	3/10/2007	5/10/2007	NO
SUZANO PETRO-QUIMICA S.A.	Petrochemical Manufacturing	25/3/2002	25/11/2004	YES_STAND
TAM S.A.	Passenger Air Transportation; Goods Air Transportation	8/8/1997	14/6/2005	YES_STAND

TABLE 7 (Continued)

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
LEVEL 2				
TERNA PARTICIPACOES S.A.	Power and Communication Line and Related Structures Construction; Holdings	6/9/ 2006	27/10/ 2006	NO
UNIVERSO ONLINE S.A.	Broadcasting Internet; Internet Providers	14/12/2005	16/12/2005	NO
LEVEL 1				
ARACRUZ CELULOSE S.A.	Pulp, Paper, and Paperboard Mills	5/2/1980	16/4/2002	YES_STAND
BCO BRADESCO S.A.	Commercial Banking	20/7/1977	26/6/2001	YES_STAND
BCO CRUZEIRO DO SUL S.A.	Banking Services	13/6/2007	26/6/2007	NO
BCO DAYCOVAL S.A.	Finance Activities; Banking Services	27/6/2007	29/6/2007	NO
BCO ESTADO DO RIO GRANDE DO SUL S.A.	Banking Services	20/7/1977	31/7/2007	YES_STAND
BCO INDUSTRIAL E COMERCIAL S.A.	Banking Services; Investment Bank	17/09/2007	15/10/2007	NO
BCO INDUSVAL S.A.	Finance Activities	10/7/2007	12/7/2007	NO
BCO ITAU HOLDING FINANCEIRA S.A.	Banking Services	No date	26/6/2001	YES_STAND
BCO PANAMERI-CANO S.A.	Banking Services; Investment and Commercial Bank	12/11/2007	19/11/2007	NO
PARANAPANEMA S.A.	Primary Metal Manufacturing Cooper Goods; Holding	20/07/1977	03/12/2007	YES_STAND
BCO PINE S.A.	Investment Bank	27/3/2007	2/4/2007	NO
BCO SOFISA S.A.	Commercial Credit	26/4/2007	2/5/2007	NO
BRADESPAR S.A.	Investments; Holding	7/8/2000	26/6/2001	NO
BRASIL TELECOM PARTICIPACOES S.A.	Telecommunications; Wired Telecomm-unications Carriers	19/8/1998	9/5/2002	YES_STAND
BRASIL TELECOM S.A.	Telecommunications; Wired Telecomm-unications Carriers	27/3/1980	9/5/2002	YES_STAND

TABLE 7 (Continued)

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
LEVEL 1				
BRASKEM S.A.	Petrochemical Manufacturing; Basic Chemical Manufacturing	18/12/1978	13/2/2003	YES_STAND
CENTRAIS ELET BRAS S.A. - ELETROBRAS	Power and Communication Line and Related Structures Construction	28/1/1971	29/9/2006	YES_STAND
CESP – CIA ENERGETICA DE SAO PAULO	Power and Communication Line and Related Structures Construction; Commercial	27/9/1971	28/7/2006	YES_STAND
CIA BRASILEIRA DE DISTRIBUICAO	Food Retailer	4/4/1995	23/4/2003	YES_STAND
CIA ENERGETICA DE MINAS GERAIS - CEMIG	Power and Communication Line and Related Structures Construction	30/6/1971	17/10/2001	YES_STAND
CIA FIACAO TECIDOS CEDRO CACHOEIRA	Textile and Fabric Finishing Mills	11/8/1969	2/10/2003	YES_STAND
CIA TRANSMISSAO ENERGIA ELET PAULISTA	Power Generation; Power Transmission	14/7/1999	18/9/2002	YES_STAND
CIA VALE DO RIO DOCE	Iron Ore Mining; Iron Processing	2/1/1970	12/12/2003	YES_STAND
CONFAB INDUSTRIAL S.A.	Primary Metal Manufacturing	21/8/1980	19/12/2003	YES_STAND
DURATEX S.A.	Wood Product Manufacturing	26/4/1966	05/05/2005	YES_STAND
FRAS-LE S.A.	Vehicle Parts Manufacturing	20/7/1977	11/11/2004	YES_STAND
GERDAU S.A.	Primary Metal Manufacturing	3/9/1980	26/6/2001	YES_STAND
IOCHPE MAXION S.A.	Vehicle Parts Manufacturing; Rail Trailer Parts Manufacturing	17/7/1984	10/11/2005	YES_STAND
ITAUSA INVESTIMENTOS ITAU S.A.	Finances; Banking Services and Holdings	20/7/1977	26/6/2001	YES_STAND

TABLE 7 (Continued)

Company´s name	Sector Classification	Date of CVM Register (d /m /y)	Initial Date in the Special Segment	Previous Listing Standard Market
LEVEL 1				
KLABIN S.A.	Wood Product Manufacturing; Forestry and Logging	6/8/1997	10/12/2002	YES_STAND
MANGELS INDUSTRIAL S.A.	Primary Metal Manufacturing	28/12/1971	21/3/2003	YES_STAND
METALURGICA GERDAU S.A.	Primary Metal Manufacturing; Management and Holdings	17/5/1968	25/6/2003	YES_STAND
PARANA BCO S.A.	Finance; Banking Services	11/6/2007	14/6/2007	NO
RANDON S.A. IMPLEMENTOS E PARTICIP-ACOES	Vehicle Parts Manufacturing	5/2/1993	26/6/2001	YES_STAND
S.A. FABRICA DE PRODS ALIMENTICIOS VIGOR	Food Manufacturing; Dairy Products	21/2/1984	4/10/2001	YES_STAND
SADIA S.A.	Meat and Meat Product Merchant Wholesalers	27/12/2000	26/6/2003	YES_STAND
SAO PAULO ALPARGATAS S.A.	Rubber and Plastics Footwear Manufacturing	20/7/1977	15/7/2003	YES_STAND
SUZANO PAPEL E CELULOSE S.A.	Paper and Paper Product; Woods; Paper Mills	15/4/1992	8/5/2003	YES_STAND
ULTRAPAR PARTICIPACOES S.A.	Commercial and Industrial Holdings	27/9/1999	27/10/2005	YES_STAND
UNIBANCO HOLDINGS S.A.	Finances; Banking Services; Holdings	24/1/1995	26/6/2001	YES_STAND
UNIBANCO UNIAO DE BCOS BRASILEIROS S.A.	Finances; Investment Bank	20/7/1977	26/6/2001	YES_STAND
UNIPAR UNIAO DE IND PETROQ S.A.	Petrochemical Manufacturing	8/12/1971	24/11/2004	YES_STAND
USINAS SID DE MINAS GERAIS S.A.-USIMINAS	Primary Metal Manufacturing; Laminated Plans	11/04/1994	11/10/2007	YES_STAND
VOTORANTIM CELULOSE E PAPEL S.A.	Paper and Paper Product; Woods; Paper Mills	2/6/1986	14/11/2001	YES_STAND

Source: Author's elaboration is based on information available on the CVM and Bovespa's websites. Comissão de Valores Mobiliários, http://www.cvm.gov.br; Bovespa, http://www.bovespa.com.br/indexi.asp.

Note for TABLES 8-11: Direct Shareholding Composition of Firms

For these four tables, the definition of a company with a majority shareholder is one in which a single shareholder has more than fifty percent of the voting capital. Some of the companies may present fewer than three or five largest shareholders, and in these cases they are dropped from this classification.

TABLE 8: Direct Shareholding Composition of Firms Listed on Novo Mercado

NOVO MERCADO			
Companies with controlling shareholder (27)*			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	60.87%	0.00	60.87%
3 Largest	70.40%	0.00	70.40%
5 Largest	70.91%	0.00	70.91%
Companies without a controlling shareholder (65)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	26.23%	0.00	26.23%
3 Largest	47.28%	0.00	47.28%
5 Largest	54.73%	0.00	54.73%
Total Sample (92)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	36.39%	0.00	36.39%
3 Largest	52.38%	0.00	52.38%
5 Largest	56.16%	0.00	56.16%

Source: Author's calculations are based on ownership information available on the CVM website and Annual Information Reports referring to year-end 2006 and updated in 2007, except for company MPX whose ownership data come from its IPO prospectus (on Dec. 12th. 2007). Comissão de Valores Mobiliários, http://www.cvm.gov.br; PROSPECTO DEFINITIVO DE DISTRIBUIÇÃO PÚBLICA PRIMÁRIA DE AÇÕES ORDINÁRIAS DE EMISSÃO DA MPX ENERGIA S.A. (Dec. 12, 2007).

TABLE 9: Direct Shareholding Composition of Firms Listed on Level 2

LEVEL 2			
Companies with controlling shareholder (14)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	75.91%	19.93%	48.83%
3 Largest	96.08%	24.21%	52.28%
5 Largest	97.93%	33.20%	59.21%

Companies without a controlling shareholder (6)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	38.84%	15.88%	26.45%
3 Largest	65.56%	18.52%	39.52%
5 Largest	82.10%	30.08%	52.12%

TABLE 9 (Continued)

LEVEL 2			
Total Sample (20)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	64.79%	18.72%	42.11%
3 Largest	83.87%	21.93%	47.18%
5 Largest	91.60%	31.95%	56.37%

Source: Author's calculations are based on ownership information available on the CVM website and Annual Information Reports referring to year-end 2006 and updated in 2007. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 10: Direct Shareholding Composition of Firms Listed on Level 1

LEVEL 1			
Companies with controlling shareholder (31)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	76.07%	8.13%	39.33%
3 Largest	89.27%	20.76%	53.35%
5 Largest	92.75%	34.16%	63.15%
Companies without a controlling shareholder (13)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	32.31%	4.72%	19.27%
3 Largest	64.20%	6.36%	35.42%
5 Largest	76.83%	16.01%	47.60%
Total Sample (44)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	63.14%	7.12%	33.40%
3 Largest	81.14%	16.09%	47.54%
5 Largest	84.79%	25.08%	55.37%

Source: Author's calculations are based on ownership information available on the CVM website and Annual Information Reports referring to year-end 2006 and updated in 2007. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 11: Direct Shareholding Composition of Firms Listed on the Standard Market

STANDARD			
Companies with controlling shareholder (133)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	77.48%	27.00%	58.58%
3 Largest	89.72%	43.31%	69.78%
5 Largest	92.22%	47.20%	71.25%
Companies without a controlling shareholder (50)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	33.62%	11.15%	24.42%
3 Largest	67.64%	26.51%	51.57%
5 Largest	78.80%	37.42%	66.18%

TABLE 11 (Continued)

STANDARD			
Total Sample (183)			
Shareholder	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	65.50%	22.65%	49.23%
3 Largest	81.64%	37.30%	63.06%
5 Largest	85.19%	42.31%	68.64%

Source: Author's calculations are based on ownership information available on the CVM website. Annual Information Reports referring to year-end 2006 and updated in 2007. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

Note for TABLES 12-14: Direct Shareholding Composition of Firms (Accounting for Shareholders' Agreement)

For these tables, a company with a majority shareholder is defined as one in which a single shareholder has more than fifty percent of the voting capital.

TABLE 12: Direct Shareholding Composition of Firms Listed at Novo Mercado (Accounting for Shareholders' Agreement)

NEW MARKET					
Companies with a controlling shareholder (27)		Companies without a controlling shareholder (65)		Total Sample (92)	
Share-holder	*voting capital (mean)*	*Shareholder*	*voting capital (mean)*	*Share-holder*	*voting capital (mean)*
Largest	60.87	Largest	26.23	Largest	36.39

Companies with a controlling shareholder taking into account share-holders' agreements (47)		Companies without a controlling shareholder taking into account shareholders' agreements (45)		Total Sample taking into account shareholders' agreements (92)	
Share-holder	*voting capital (mean)*	*Shareholder*	*voting capital (mean)*	*Share-holder*	*voting capital (mean)*
Largest Block	62.74	Largest Block	26.98	Largest Block	45.25
Companies that ended up with a controlling shareholder taking into account shareholders' agreements					
Share-holder	*No. of firms*	*voting capital not taking into account shareholder agreements (mean)*		*voting capital taking into account shareholder agreements (mean)*	
Largest Block	20	28.06		65.27	

Source: Author's calculation based on shareholders' agreements available on the CVM website. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 13: Direct Shareholding Composition of Firms Listed on Level 2 (Accounting for Shareholders' Agreement)

LEVEL 2					
Companies with a controlling shareholder (14)		Companies without a controlling shareholder (6)		Total Sample (20)	
Share-holder	*voting capital (mean)*	*Shareholder*	*voting capital (mean)*	*Share-holder*	*voting capital (mean)*
Largest	75.91	Largest	38.84	Largest	64.79
Companies with a controlling shareholder taking into account share-holders' agreements (18)		Companies without a controlling shareholder taking into account shareholders' agreements (2)		Total Sample taking into account shareholders' agreements (20)	
Share-holder	*voting capital (mean)*	*Shareholder*	*voting capital (mean)*	*Share-holder*	*voting capital (mean)*
Largest Block	72.19	Largest Block	46.29	Largest Block	69.60
Companies that ended up with a controlling shareholder taking into account shareholder agreements					
Share-holder	*No. of firms*	*voting capital not taking into account shareholder agreements (mean)*		*voting capital taking into account shareholder agreements (mean)*	
Largest Block	4	35.11		55.86	

Source: Author's calculation based on shareholders' agreements available on the CVM website. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 14: Direct Shareholding Composition of Firms Listed on Level 1 (Accounting for Shareholders' Agreement)

LEVEL 1					
Companies with a controlling shareholder (31)		Companies without a controlling shareholder (13)		Total Sample (44)	
Share-holder	*voting capital (mean)*	*Shareholder*	*voting capital (mean)*	*Share-holder*	*voting capital (mean)*
Largest	76.07	Largest	31.26	Largest	63.14
Companies with a controlling shareholder taking into account share-holders' agreements (40)		Companies without a controlling shareholder taking into account shareholders' agreements (3)*		Total Sample taking into account shareholders' agreements (43)*	
Share-holder	*voting capital (mean)*	*Shareholder*	*voting capital (mean)*	*Share-holder*	*voting capital (mean)*
Largest Block	74.99	Largest Block	42.94	Largest Block	72.75

TABLE 14 (Continued)

LEVEL 1			
Companies that ended up with a controlling shareholder taking into account shareholders' agreements (9)			
Share-holder	*No. of firms*	*voting capital not taking into account shareholder agreements (mean)*	*voting capital taking into account shareholder agreements (mean)*
Largest Block	9	27.00	70.09

Source: Author's calculation based on shareholders' agreements available on the CVM website. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 15: Composition of Controlling Groups and Largest Shareholders in Novo Mercado

NEW MARKET (92)			
***Companies with controlling shareholders* (27)**			
Shareholder	**Direct Structure (8)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0	0
Foreign	1	52.06	52.06
Individual or family	3	62.82	62.82
Government	4	60.83	60.83
Shareholder	**Indirect Structure (19)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	2	64.29	64.29
Individual or family	17	61.89	54.37
Government	0	0	0
Shareholder	**Total Sample (27)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	3	60.21	60.21
Individual or family	20	62.03	55.64
Government	4	60.83	60.83
***Companies without controlling shareholders* (65)**			
Shareholder	**Direct Structure (31)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	4	9.95	9.95
Foreign	17	22.40	22.40
Individual or family	9	23.01	23.01
Government	1	49.50	49.50

TABLE 15 (Continued)

NEW MARKET (92)			
***Companies without controlling shareholders* (65)**			
Shareholder	**Indirect Structure (34)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	2	37.52	18.09
Foreign	4	22.45	22.45
Individual or family	28	37.07	33.29
Government	0	0	0
Shareholder	***Total Sample (65)***		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	6	19.14	12.66
Foreign	21	22.41	22.41
Individual or family	37	33.65	30.79
Government	1	49.50	49.50
***Companies with and without controlling shareholders* (92)**			
Shareholder	**Direct Structure (39)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	4	9.95	9.95
Foreign	18	24.05	24.05
Individual or family	12	32.96	32.96
Government	5	58.56	58.56
Shareholder	**Indirect Structure (53)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	2	37.52	18.09
Foreign	6	36.40	36.40
Individual or family	45	46.44	41.26
Government	0	0	0
Shareholder	**Total Sample (92)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	6	19.14	12.66
Foreign	24	27.14	27.14
Individual or family	57	43.61	39.51
Government	5	58.56	58.56

Source: Annual Information Reports referring to year-end 2006 available in CVM website. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 16: Composition of Controlling Groups, Largest Shareholders and Market Capitalization in the Novo Mercado

Novo Mercado			
Companies with controlling shareholders (27)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	0	0.00	0,00
Foreign	3	17,096,422,523.52	9.04
Individual or family	20	77,545,682,907.49	41.02
Government	4	94,405,937,408.35	49.94
TOTAL	27	189,048,042,839.36	100
Companies without controlling shareholders (65)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	6	64,746,363,054.48	26.95
Foreign	21	76,726,010,803.99	31.94
Individual or family	37	93,115,605,752.27	38.76
Government	1	5,656,264,144.20	2.35
TOTAL	65	240,244,243,754.94	100
Total Sample (92)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	6	64,746,363,054.48	15.08
Foreign	24	93,822,433,327.51	21.86
Individual or family	57	170,661,288,659.76	39.75
Government	5	100,062,201,552.55	23.31
TOTAL	92	429,292,286,594.30	100

Source: Author's calculation based on market capitalization provided by Bovespa for Dec. 19th, 2007. Bovespa, http://www.bovespa.com.br.

TABLE 17: Composition of Controlling Groups and Largest Shareholders in Level 2

LEVEL 2 (20)			
Companies with controlling shareholders **(14)**			
Shareholder	**Direct Structure (6)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	3	75.39	50.79
Individual or family	2	92.48	71.10
Government	1	50.18	20.20

TABLE 17 (Continued)

LEVEL 2 (20)			
***Companies with controlling shareholders* (14)**			
Shareholder	**Indirect Structure (8)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	1	61.34	6.34
Individual or family	6	80.02	48.60
Government	1	70.02	16.38
Shareholder	**Total Sample (20)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0	0
Foreign	4	71.88	39.68
Individual or family	8	83.13	54.22
Government	2	60.10	16.38
***Companies without controlling shareholders* (6)**			
Shareholder	**Direct Structure (3)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	1	32.78	26.98
Individual or family	2	44.20	15.79
Government	0	0.00	0.00
Shareholder	**Indirect Structure (3)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	0	0.00	0.00
Individual or family	3	45.80	25.59
Government	0	0.00	0.00
Shareholder	**Total Sample (6)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	1	32.78	26.98
Individual or family	5	45.16	21.67
Government	0	0.00	0.00
***Companies with and without controlling shareholders* (20)**			
Shareholder	**Direct Structure (9)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	4	64.74	44.84
Individual or family	4	68.34	43.44
Government	1	50.18	20.20

TABLE 17 (Continued)

LEVEL 2 (20)			
Companies with and without controlling shareholders (20)			
Shareholder	**Indirect Structure (11)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	1	61.34	6.34
Individual or family	9	68.61	40.93
Government	1	70.02	16.38
Shareholder	**Total Sample (20)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	5	64.06	37.14
Individual or family	13	68.53	41.70
Government	2	60.10	18.29

Source: Annual Information Reports referring to year-end 2006 available in CVM website. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 18: Composition of Controlling Groups, Largest Shareholders and Market Capitalization in the Level 2

LEVEL 2			
Companies with controlling shareholders (14)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	0	0.00	0.00
Foreign	4	13,164,547,105.35	24.34
Individual or family	8	29,029,333,846.20	53.68
Government	2	11,885,829,089.44	21.98
TOTAL	14	54,079,710,040.99	100
Companies without controlling shareholders (6)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	0	0.00	0.00
Foreign	1	3,281,505,350.79	13.79
Individual or family	5	20,516,692,337.43	86.21
Government	0	0.00	0.00
TOTAL	6	23,798,197,688.22	100
Total Sample (20)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	0	0.00	0.00
Foreign	5	16,446,052,456.14	21.12
Individual or family	13	49,546,026,183.63	63.62
Government	2	11,885,829,089.44	15.26
TOTAL	20	77,877,907,729.21	100

Source: Author's calculation based on market capitalization provided by Bovespa for Dec. 19th, 2007. Bovespa, http://www.bovespa.com.br.

TABLE 19: Composition of Controlling Groups and Largest Shareholders in Level 1

Changing the Paradigm of Stock Ownership
29:439 (2009)

LEVEL 1 (44)			
***Companies with controlling shareholders* (31)**			
Shareholder	**Direct Structure (7)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0.00	0.00
Foreign	1	99.22	38.99
Individual or family	2	76.64	54.69
Government	4	74.56	29.04
Shareholder	**Indirect Structure (24)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	3	48.01	13.89
Foreign	2	75.36	36.85
Individual or family	19	75.60	34.49
Government	0	0	0
Shareholder	**Total Sample (31)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	3	48.01	13.89
Foreign	3	83.31	37.56
Individual or family	21	75.70	36.41
Government	4	74.56	29.04
***Companies without controlling shareholders* (13)**			
Shareholder	**Direct Structure (2)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	1	49.77	49.08
Foreign	0	0	0
Individual or family	1	30.78	18.95
Government	0	0	0
Shareholder	**Indirect Structure (11)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	2	65.02	22.27
Foreign	1	21.57	11.03
Individual or family	8	51.96	30.81
Government	0	0	0
Shareholder	**Total Sample (13)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	3	59.93	31.20
Foreign	1	21.57	11.03
Individual or family	9	49.61	29.49
Government	0	0	0

TABLE 19 (Continued)

LEVEL 1 (44)			
***Companies with and without controlling shareholders* (44)**			
Shareholder	**Direct Structure (9)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	1	49.77	49.08
Foreign	1	99.22	38.99
Individual or family	3	61.35	42.78
Government	4	74.56	29.04
Shareholder	**Indirect Structure (35)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	5	58.40	17.24
Foreign	3	57.43	28.24
Individual or family	27	68.60	33.40
Government	0	0	0
Shareholder	**Total Sample (44)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	6	53.97	22.55
Foreign	4	67.88	30.93
Individual or family	30	67.87	34.34
Government	4	74.56	29.04

Source: Annual Information Reports referring to year-end 2006 available in CVM website. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 20: Composition of Controlling Groups, Largest Shareholders and Market Capitalization in the Level 1

LEVEL 1			
Companies with controlling shareholders (31)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	3	293,689,552,246.58	46.49
Foreign	3	15,675,512,187.34	2.48
Individual or family	21	265,475,374,283.31	42.02
Government	4	56,914,808,603.38	9.01
TOTAL	31	631,755,247,320.61	100
Companies without controlling shareholders (13)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	3	129,480,474,380.80	52.43
Foreign	1	26,432,048,308.20	10.70
Individual or family	9	91,033,251,818.31	36.86
Government	0	0.00	0.00
TOTAL	13	246,945,774,507.31	100

TABLE 20 (Continued)

LEVEL 1			
Total Sample (20)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	6	423,170,026,627.38	48.16
Foreign	4	42,107,560,495.54	4.79
Individual or family	30	356,508,626,101.62	40.57
Government	4	56,914,808,603.38	6.48
TOTAL	44	878,701,021,827.92	100

Source: Author's calculation based on market capitalization provided by Bovespa for Dec. 19th, 2007. Bovespa, http://www.bovespa.com.br/indexi.asp.

TABLE 21: Composition of Controlling Groups and Largest Shareholders in the Standard Market

STANDARD COMPANIES (183)			
***Companies with controlling shareholders* (133)**			
Shareholder	**Direct Structure (29)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	2	95.60	63.25
Foreign	9	76.13	63.30
Individual or family	7	75.55	44.79
Government	11	75.19	63.45
Shareholder	**Indirect Structure (104)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	8	49.91	34.46
Foreign	18	81.97	69.44
Individual or family	71	71.50	45.97
Government	7	68.54	44.79
Shareholder	**Total Sample (133)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	10	59.05	40.22
Foreign	27	80.03	67.39
Individual or family	78	71.87	45.86
Government	18	72.61	58.07
***Companies without controlling shareholders* (50)**			
Shareholder	**Direct Structure (23)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	3	19.66	18.14
Foreign	4	40.35	30.07
Individual or family	16	28.78	19.84
Government	0	0	0

TABLE 21 (Continued)

STANDARD COMPANIES (183)			
Companies without controlling shareholders (50)			
Shareholder	**Indirect Structure (27)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	0	0	0
Foreign	6	71.79	62.72
Individual or family	21	56.83	37.61
Government	0	0	0
Shareholder	**Total Sample (50)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	3	19.66	18.14
Foreign	10	59.22	49.66
Individual or family	37	44.70	29.93
Government	0	0	0
***Companies with and without controlling shareholders* (183)**			
Shareholder	**Direct Structure (52)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	5	50.04	36.18
Foreign	13	65.13	53.08
Individual or family	23	43.02	27.43
Government	11	75.19	63.45
Shareholder	**Indirect Structure (131)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	8	49.91	34.46
Foreign	24	79.42	67.76
Individual or family	92	68.15	44.06
Government	7	68.54	44.79
***Companies with and without controlling shareholders* (183)**			
Shareholder	**Total Sample (183)**		
	No. of Firms	Voting capital (mean)	Total capital (mean)
Institutional	13	49.96	35.12
Foreign	37	74.40	62.60
Individual or family	115	63.13	40.74
Government	18	72.61	38.07

Source: Annual Information Reports referring to year-end 2006 available in CVM website. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

Changing the Paradigm of Stock Ownership
29:439 (2009)

TABLE 22: Composition of Controlling Groups, Largest Shareholders and Market Capitalization in the Standard Market

STANDARD			
Companies with controlling shareholders (133)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	10	19,571,494,252.55	2.47
Foreign	27	287,885,347,991.44	36.27
Individual or family	78	37,182,969,910.46	4.69
Government	18	448,989,230,512.91	56.57
TOTAL	133	793,629,042,667.36	100
Companies without controlling shareholders (50)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	3	1,921,836,112.68	1.48
Foreign	10	73,849,331,727.51	56.94
Individual or family	37	53,922,161,095.74	41.58
Government	0	0.00	0.00
TOTAL	50	129,693,328,935.93	100
Total Sample (183)			
Shareholder	No. of Firms	Market Capitalization in R$	%
Institutional	13	21,493,330,365.23	2.33
Foreign	37	361,734,679,718.95	39.18
Individual or family	115	91,105,131,006.20	9.87
Government	18	448,989,230,512.91	48.63
TOTAL	183	923,322,371,603.29	100

Source: Author's calculation based on market capitalization provided by Bovespa for Dec. 19th, 2007. Bovespa, http://www.bovespa.com.br/indexi.asp.

TABLE 23: Mechanisms of Separation Between Control and Ownership in Brazil

ALL COMPANIES (339)				
Shareholders	Firms with pyramidal structure		voting capital/total capital	
	No of firms	percentage	No of firms	percentage
Institutional	15	4.42	18	5.31
Foreign	34	10.03	39	11.50
Individual or family	173	51.03	148	43.66
Government	8	2.36	20	5.90
Total Sample	230	68.84	225	66.37

Source: Author's calculations are based on information available on the CVM website. Comissão de Valores Mobiliários, http://www.cvm.gov.br.

TABLE 24: Types of Shareholders' Agreements

		Type of Shareholders' Agreements			
No. of comp-anies	**Name of companies**	Purchase sale of shares	Preference to purchase shares	Voting rights	Control Exercise
16	Abyara Planejamento Imobiliário S.A. **(NM)** Brasil Ecodiesel Ind. Com. Bio. Ol. Veg. S.A. **(NM)** Cia. Concessões Rodoviárias **(NM)** CPFL Energia S.A. **(NM)** CSU Cardsystem **(NM)** EZ TEC Empreendimentos e Participações S.A. **(NM)** Positivo Informática S.A. **(NM)** Redecard S.A. **(NM)** Rodobens Negócios Imobiliários S.A. **(NM)** ALL América Latina Logística S.A. **(L 2)** Marcopolo S.A. **(L 2)** Multiplan Empreendimentos Imobiliários S.A. **(L 2)** Aracruz Celulose S.A. **(L 1)** Banco Industrial e Comercial S.A. **(L 1)** BRADESPAR S.A. **(L 1)** Sadia S.A. **(L 1)**		X	X	X
12	Açúcar Guarani S.A. **(NM)** Brasil Brokers Participações S.A. **(NM)** Cia. Providência Indústria e Comércio **(NM)** Cyrela Brazil Realty S.A. Empreendimentos e Participações **(NM)** Even Construtora e Incorporadora S.A. **(NM)** Light S.A. **(NM)** Natura Cosméticos S.A. **(NM)** Tempo Participações S.A. **(NM)** Santos-Brasil S.A. **(L 2)** Cia. Fiação Tecidos Cedro Cachoeira **(L 1)** Iochpe-Maxion S.A. **(L 1)** Usiminas S.A. **(L 1)**	X	X	X	X

TABLE 24 (Continued)

		Type of Shareholders' Agreements			
No. of comp-anies	**Name of companies**	Purchase sale of shares	Preference to purchase shares	Voting rights	Control Exercise
03	Agra Empreendimentos Imobiliários S.A. (**NM**) Odontoprev S.A. (**NM**) Perdigão S.A. (**NM**)		X	X	
03	Brasilagro – Cia. Brasileira de Propriedades Agrícolas (**NM**) Inpar S.A. (**NM**) Medial Saúde S.A. (**NM**)	X	X	X	
02	Indústrias Romi S.A. (**NM**) Banco Bradesco S.A. (**L 1**)	X	X		
02	Grendene S.A. (**NM**) Banco Indusval (**L 1**)			X	X
02	EDP – Energias do Brasil S.A. (**NM**) Itaúsa Investimentos Itaú S.A. (**L 1**)	X		X	X
01	Bolsa de Mercadorias & Futuros – BM&F S.A. **(NM)**	X			
01	LPS Brasil – Consultoria de Imóveis S.A. **(NM)**	X		X	

Source: Author's elaboration is based on Shareholders' Agreements available on the CVM website, visited between Sept. and Dec. 2007. Comissão de Valores Mobiliários, http://www.cvm.gov.br. NM – Novo Mercado; L 2 – Level 2; L 1 – Level 1.

TABLE 25: Types of Clauses in Shareholders' Agreements that Bind Directors' Votes

Subjects that Bind Directors' Votes In Shareholders Agreements	No. of Com-panies	Name of Companies	Listing Segment
Alienation, leasing, disposal, placement of financial burden over goods and rights of the company– related to its assets (cont. below)	14 (cont. below)	*Brasil Brokers Participações S.A.*	NM
		Brasilagro -Cia. Brasileira Prop. Agrícolas S.A.	NM
		Cia. Providência Ind. Com.	NM
		CPFL Energia S.A	NM
		CSU Cardsystem S.A.	NM
		Inpar S.A.	NM
		Light S.A.	NM
		Medial Saúde S.A.	NM
		Tempo Participações S.A.	NM
		ALL América Latina Logística S.A.	L 2

TABLE 25 (Continued)

Subjects that Bind Directors' Votes In Shareholders Agreements	No. of Com-panies	Name of Companies	Listing Segment
Alienation, leasing, disposal, placement of financial burden over goods and rights of the company– related to its assets (cont. from above)	14 (cont. from above)	*Multiplan Empreendimentos Imobiliários S.A.*	L 2
		Santos-Brasil S.A.	L 2
		Iochpe-Maxion S.A.	L 1
		Usiminas S.A.	L 1
Distribution of earnings, dividends, interest rates over own capital	11	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		Brasil Brokers Participações S.A.	NM
		Brasilagro-Cia. Brasileira Prop. Agrícolas S.A.	NM
		CPFL Energia S.A	NM
		CSU Cardsystem S.A.	NM
		Inpar S.A.	NM
		Light S.A.	NM
		Perdigão S.A.	NM
		Tempo Participações S.A.	NM
		Santos-Brasil S.A.	L 2
		Usiminas S.A.	L 1
Entering into general contracts within value range/maximum term stipulated in the shareholders' agreements	10	*Brasil Brokers Participações S.A.*	NM
		Cia. Providência Ind. Com.	NM
		CSU Cardsystem S.A.	NM
		Light S.A.	NM
		Medial Saúde S.A.	NM
		Tempo Participações S.A.	NM
		Multiplan Empreendimentos Imobiliários S.A.	L 2
		Santos-Brasil S.A.	L 2
		Iochpe-Maxion S.A.	L 1
		Usiminas S.A.	L 1
		Brasil Brokers Participações S.A.	NM
Approval of annual, semi annual and pluriannual budgets / Business plans (cont. below)	10 (cont. below)	*Brasilagro -Cia. Brasileira Prop. Agrícolas S.A.*	NM
		Cia. Providência Ind. Com.	NM
		CPFL Energia S.A	NM
		Light S.A.	NM

TABLE 25 (Continued)

Subjects that Bind Directors' Votes In Shareholders Agreements	No. of Com-panies	Name of Companies	Listing Segment
Approval of annual, semi annual and pluriannual budgets / Business plans (cont. from above)	10 (cont. from above)	*Tempo Participações S.A.*	NM
		Multiplan Empreendimentos Imobiliários S.A.	L 2
		Santos-Brasil S.A.	L 1
		Iochpe-Maxion S.A.	L 1
		Usiminas S.A.	L 1
		Brasil Brokers Participações S.A.	NM
Issuance of securities	09	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		Cia. Providência Ind. Com.	NM
		CSU Cardsystem S.A.	NM
		Light S.A.	NM
		Medial Saúde S.A.	NM
		Tempo Participações S.A.	NM
		Santos-Brasil S.A.	L 2
		Usiminas S.A.	L 1
Election or dismissal of managers	08	*Brasilagro -Cia. Brasileira Prop. Agrícolas S.A.*	NM
		Cia. Providência Ind. Com.	NM
		CPFL Energia S.A.	NM
		Light S.A.	NM
		Medial Saúde S.A.	NM
		Perdigão S.A.	NM
		Tempo Participações S.A.	NM
		Iochpe-Maxion S.A.	L 1
Liquidation, dissolution, merger, incorporation, and transformation of the company	06	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		CSU Cardsystem S.A.	NM
		Light S.A.	NM
		Perdigão S.A.	NM
		ALL América Latina Logística S.A.	L 2
		Usiminas S.A.	L 1
Nomination or dismissal of independent auditors (cont. below)	06 (cont. below)	*Brasilagro -Cia. Brasileira Prop. Agrícolas S.A.*	NM
		Cia. Providência Ind. Com.	NM
		CPFL Energia S.A	NM
		CSU Cardsystem S.A.	NM

TABLE 25 (Continued)

Subjects that Bind Directors' Votes In Shareholders Agreements	No. of Com-panies	Name of Companies	Listing Segment
Nomination or dismissal of independent auditors (cont. from above)	06 (cont. from above)	*Light S.A.*	NM
		Multiplan Empreendimentos Imobiliários S.A.	L 2
Plans of judicial or extra judicial reorganization, or bankruptcy	06	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		Brasilagro -Cia. Brasileira Prop. Agrícolas S.A.	NM
		CSU Cardsystem S.A.	NM
		Light S.A.	NM
		ALL América Latina Logística S.A.	L 2
		Usiminas S.A.	L 1
Amortization, redemption or acquisition of shares to be held by corporate treasury or to be cancelled	06	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		CPFL Energia S.A	NM
		CSU Cardsystem S.A.	NM
		Light S.A.	NM
		Perdigão S.A.	NM
		Tempo Participações S.A.	NM
Acquisition of shareholding participation in other companies	06	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		CPFL Energia S.A	NM
		Inpar S.A.	NM
		Light S.A.	NM
		Perdigão S.A.	NM
		Santos-Brasil S.A.	L 2
Establishing/providing warranties by the company	05	*Brasil Brokers Participações S.A.*	NM
		CPFL Energia S.A.	NM
		CSU Cardsystem S.A.	NM
		Santos-Brasil S.A.	L 2
		Iochpe-Maxion S.A.	L 1
Changes in the Bylaws	05	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		Brasilagro -Cia. Brasileira Prop. Agrícolas S.A.	NM
		CSU Cardsystem S.A.	NM
		Light S.A.	NM
		Usiminas S.A.	L 1
Transactions between the company and shareholders or their related parties (cont. below)	05 (cont. below)	*Brasil Brokers Participações S.A.*	NM
		Light S.A.	NM
		Medial Saúde S.A.	NM

TABLE 25 (Continued)

Subjects that Bind Directors' Votes In Shareholders Agreements	No. of Com-panies	Name of Companies	Listing Segment
Transactions between the company and shareholders or their related parties (cont. from above)	05 (cont. from above)	*Multiplan Empreendimentos Imobiliários S.A.*	L 2
		Santos-Brasil S.A.	L 2
Creation of corporate groups (joint ventures, or strategic alliances)	04	*Brasilagro –Cia. Brasileira Prop. Agrícolas S.A.*	NM
		Cia. Providência Ind. Com.	NM
		Light S.A.	NM
		Santos-Brasil S.A.	L 2
Purchase of new shares by the company	04	*Cia. Providência Ind. Com.*	NM
		CSU Cardsystem S.A.	NM
		Multiplan Empreendimentos Imobiliários S.A.	L 2
		CPFL Energia S.A.	NM
Compensation policy and benefits for managers and board members	04	*CSU Cardsystem S.A.*	NM
		Cia. Providência Ind. Com.	NM
		Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.	NM
		Multiplan Empreendimentos Imobiliários S.A.	L 2
Determination of the criteria for establishing managers' remuneration	04	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		Cia. Providência Ind. Com.	NM
		Tempo Participações S.A.	NM
		Iochpe-Maxion S.A.	L 1
Changes in the corporation's business	04	*CSU Cardsystem S.A.*	NM
		Light S.A.	NM
		Perdigão S.A.	NM
		Usiminas S.A.	L 1
Issuance of new classes of shares	04	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		Light S.A.	NM
		Perdigão S.A.	NM
		Usiminas S.A.	L 1
Reduction of/raising social capital	04	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		CSU Cardsystem S.A.	NM
		Light S.A.	NM
		Usiminas S.A.	L 1

TABLE 25 (Continued)

Subjects that Bind Directors' Votes In Shareholders Agreements	No. of Com-panies	Name of Companies	Listing Segment
Entering into transactions between the company, its controlling, affiliated or controlled companies	04	*Cia. Providência Ind. Com.*	NM
		CSU Cardsystem S.A.	NM
		Inpar S.A.	NM
		Tempo Participações S.A.	NM
Increase of capital within the limits of the authorized capital	04	*Brasilagro –Cia. Brasileira Prop. Agrícolas S.A.*	NM
		CPFL Energia S.A.	NM
		Inpar S.A.	NM
		Iochpe-Maxion S.A.	L 1
Changes in accounting policies	03	*Cia. Providência Ind. Com.*	NM
		Light S.A.	NM
		Tempo Participações S.A.	NM
Creation/ extinction of controlling companies	03	*Brasilagro –Cia. Brasileira Prop. Agrícolas S.A.*	NM
		Cia. Providência Ind. Com.	NM
		CPFL Energia S.A.	NM
Making other businesses than those related to the corporate purpose	03	*Inpar S.A.*	NM
		ALL América Latina Logística S.A.	L 2
		Multiplan Empreendimentos Imobiliários S.A.	L 2
Initiating suits/ arbitration procedures in which the company is a party	02	*CSU Cardsystem S.A.*	NM
		Multiplan Empreendimentos Imobiliários S.A.	L 2
Alienation of shares by the Company or their subsidiaries	02	*ALL América Latina Logística S.A.*	L 2
		Santos-Brasil S.A.	L 2
Creation/liquidation, acquisition and alienation of subsidiaries	02	*Brasilagro –Cia. Brasileira Prop. Agrícolas S.A.*	NM
		Iochpe-Maxion S.A.	L 1
Proxy authorization conferred to any person in order to decide about any subject that requires shareholders' votes or alienation of assets	02	*Brasilagro –Cia. Brasileira Prop. Agrícolas S.A.*	NM
		Tempo Participações S.A.	NM
Installation/ election of members of the fiscal board	02	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
		Perdigão S.A.	NM
Election of board members	02	*Medial Saúde S.A.*	NM
		Perdigão S.A.	NM

TABLE 25 (Continued)

Subjects that Bind Directors' Votes In Shareholders Agreements	No. of Com-panies	Name of Companies	Listing Segment
Remuneration of board	02	*Tempo Participações S.A.*	NM

members		*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
Decision of omitted cases	02	*Santos-Brasil S.A.*	L 2
		Tempo Participações S.A.	NM
Offering call options or subscription of shares to managers, board members, and employees of the company	02	*Brasil Brokers Participações S.A.*	NM
		Tempo Participações S.A.	NM
Changes in the number of managers and board members	01	*Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.*	NM
Issuance of non-voting shares or increase in the number of classes of existing non-voting shares	01	*Perdigão S.A.*	NM
Issuance of subscription bonuses	01	*CPFL Energia S.A.*	NM
Changes in the terms of contracts on permission of public services	01	*CPFL Energia S.A*	NM
Detailing matters for committee analysis	01	*CPFL Energia S.A.*	NM
Remuneration of committee members	01	*CPFL Energia S.A.*	NM
Entering/ altering contracts of personal insurance of the CEO or other key manager of the company	01	*CSU Cardsystem S.A.*	NM
Hiring consulting service of third parties not expressed in the company's plans	01	*Multiplan Empreendimentos Imobiliários S.A.*	L 2
Creation of Founder's shares (shares with special rights)	01	*Perdigão S.A.*	NM
Creation of committees and technical or advisory commissions	01	*Santos-Brasil S.A.*	L 2
Contracting, altering, breaching shareholders' agreements or any fiduciary business	01	*Santos-Brasil S.A.*	L 2

TABLE 25 (Continued)

Subjects that Bind Directors' Votes In Shareholders Agreements	No. of Com-panies	Name of Companies	Listing Segment
Rules for issuance and cancellation of Units	01	*Santos-Brasil S.A.*	L 2
Creation of capital reserve for contingencies or any kind of operation which may result in a reduction of the profits that shall be distributed among the shareholders	01	*Light S.A.*	NM
Register of securities offerings or going private transactions	01	*Light S.A.*	NM

Source: Author's elaboration is based on. shareholders agreements available on the CVM Website. Comissão de Valores Mobiliários, http://www.cvm.gov.br. NM – New Market; L 2– Level 2;L 1 – Level 1.

TABLE 26: Adoption (and Types) of Poison Pills Clauses (Pills) by Companies Listed on Novo Mercado, Level 2 and Level 1

Companies Listed	**Super Tag-Along**	**Types Of Pills**	**Threshold Of Pills**		**Types Of Penalty Clauses**
			Type A	**Type B**	
NOVO MERCADO					
Abyara Planejamento Imobiliário S.A.	Yes	-	-	-	-
Açúcar Guarani S.A.	Yes	-	-	-	-
Agra Empreendimentos Imobiliários S.A.	Yes	A	20%	-	1 and 2
American Banknote S.A.	Yes	A and B	20%	10%	1 and 2
Bematech Indústria e Comércio de Equipamentos Eletrônicos S.A.	Yes	A	25%	-	1
Bolsa de Mercadorias & Futuros S.A.	Yes	-	-	-	-
Bovespa Holding S.A.	Yes	A	20%		1
BR Mall Participações S.A.	Yes	-	-	-	-
Brasil Brokers Participações S.A.	Yes	A	20%	-	1
Brasil Ecodiesel Indústria e Comércio de Biocom-bustíveis e Óleos Vegetais S.A.	Yes	A and B	30%	10%	1 and 2

TABLE 26 (Continued)

Companies Listed	**Super Tag-Along**	**Types Of Pills**	**Threshold Of Pills**		**Types Of Penalty Clauses**
			Type A	**Type B**	
NOVO MERCADO					
Brasilagro – Companhia Brasileira de Propriedades Agrícolas	Yes	A	20%	-	1 and 2
Companhia Brasileira Desenvolvimento Imobiliário e Turístico	Yes	A	35%	-	1
Companhia Concessões Rodoviárias	Yes	-	-	-	-
Companhia Hering	Yes	A	20%	-	1
Companhia Providência Indústria e Comécio	Yes	-	-	-	-
Company S.A.	Yes	A	20%	-	1
Construtora Tenda S.A.	Yes	A	20%	-	1
COSAN S.A. Indústria e Comércio	Yes	-	-	-	-
CPFL Energia S.A.	Yes	-	-	-	-
CR2 Empreendimentos Imobiliários S.A.	Yes	-	-	-	-
Cremer S.A.	Yes	A	20%	-	1
CSU Cardsystem S.A.	Yes	-	-	-	-
Cyrela Brazil Realty S.A. Empreendimentos e Participações	Yes	-	-	-	-
Cyrela Commercial Property S.A. Empre-endimentos e Participações	Yes	A	15%	-	1 and 2
Datasul S.A.	Yes	A and B	15%	5%	1 and 2
Diagnósticos da América S.A.	Yes	A	15%	-	1 and 2
Drogasil S.A.	Yes	-	-	-	-
EDP - Energias do Brasil S.A.	Yes	-	-	-	-
Embraer – Empresa Brasileira de Aeronáutica S.A.	Yes	A	35%	-	1
Eternit S.A.	Yes	-	-	-	-
Even Construtora e Incorporadora S.A.	Yes	A	20%	-	1
EZ TEC Empreendimentos e Participações S.A.	Yes	A and B	15%	8%	1 and 2
Gafisa S.A.	Yes	-	-	-	-
Grendene S.A.	Yes	-	-	-	-

TABLE 26 (Continued)

Companies Listed	Super Tag-Along	Types Of Pills	Threshold Of Pills		Types Of Penalty Clauses
			Type A	Type B	
NOVO MERCADO					
GVT Holding S.A.	Yes	A and B	15%	9.9%	1
Helbor Empreendimentos S.A.	Yes	A	20%	-	1 and 2
Indústrias Romi S.A.	Yes	A	15%	-	1 and 2
Inpar S.A.	Yes	A and B	20%	10%	1 and 2
Klabin Segall S.A.	Yes	A and B	15%	5%	1 and 2
Light S.A.	Yes	-	-	-	-
Localiza Rent a Car S.A.	Yes	B	-	10%	1
Log-In Logística Intermodal S.A.	Yes	A	35%	-	1 and 2
Lojas Renner S.A.	Yes	A	20%	-	1 and 2
LPS Consultoria de Imóveis S.A.	Yes	A and B	20%	8%	1 and 2
Lupatech S.A.	Yes	A	20%	-	1
Medial Saúde S.A.	Yes	A	20%	-	1
Metalfrio Solutions S.A.	Yes	-	-	-	-
MRV Engenharia S.A.	Yes	B	-	10%	1
Natura Cosméticos S.A.	Yes	A and B	15%	30%	1
Odontoprev S.A.	Yes	A	15%	-	1 and 2
PDG Realty Empreendimentos e Participações S.A.	Yes	-	-	-	-
Perdigão S.A.	Yes	A	20%	-	1 and 2
Porto Seguro S.A.	Yes	B	-	10%	1
Positivo Informática S.A.	Yes	A	10%	-	1 and 2
Profarma Distribuidora de Produtos Farmacêuticos S.A.	Yes	A and B	20%	10%	1 and 2
Redecard S.A.	Yes	A	26%	-	1
Renar Maçãs S.A.	Yes	-	-	-	-
Rodobens Negócios Imobiliários S.A.	Yes	A and B	15%	5%	1 and 2
Rossi Residencial S.A.	Yes	B	-	15%	1
São Carlos Empreendimentos e Participações S.A.	Yes	A	25%	-	1
São Martinho S.A.	Yes	A	10%	-	1
SLC Agrícola S.A.	Yes	A	20%	-	1
Tegma Gestão Logística S.A.	Yes	-	-	-	-
Tempo Participações S.A.	Yes	A	20%	-	1

TABLE 26 (Continued)

Companies Listed	Super Tag-Along	Types Of Pills	Threshold Of Pills		Types Of Penalty Clauses
			Type A	Type B	
NOVO MERCADO					

Totvs S.A.	Yes	A and B	20%	8%	1 and 2
LEVEL 2					
ALL América Latina Logística S.A.	-	-	-	-	-
Kroton Educacional S.A.	Yes	A	15%	-	1
Marcopolo S.A.	Yes	-	-	-	-
Multiplan S.A.	Yes	A	20%	-	1 and 2
Santos-Brasil S.A.	Yes	A	20%	-	1
Saraiva S.A.	Yes	-	-	-	-
LEVEL 1					
Aracruz Celulose S.A.	-	-	-	-	-
Banco Bradesco S.A.	-	-	-	-	-
Banco Industrial e Comercial S.A.	Yes	-	-	-	-
Banco Indusval S.A.	Yes	-	-	-	-
Banco Panamericano S.A.	Yes	-	-	-	-
BRADESPAR S.A.	-	-	-	-	-
Companhia de Fiação e Tecidos Cedro e Cachoeira	-	-	-	-	-
Iochpe-Maxion S.A.	-	-	-	-	-
Itaúsa Investimentos Itaú S.A.	-	-	-	-	-
Metalúrgica Gerdau S.A.	-	-	-	-	-
Paranapanema S.A.	Yes	-	-	-	-
Sadia S.A.	-	-	-	-	-
Usinas Siderúrgicas de Minas Gerais S.A.	-	-	-	-	-

'Types of Penalty Clauses' are the penalties for breaching a poison pill clause.

Source: Author's elaboration based on the bylaws of eighty-four companies available on the CVM website. Comissão de Valores Mobiliários, http://www.cvm.gov.br. Bylaws available in the Annual Information Reports referring to year-end 2006, visited between Sept. 2007 and Dec. 2007.

TABLE 27 Cross-Listing in Other Jurisdictions

We consider a cross-listing to be in the same time period as the IPO on Bovespa's special segments if it occurred concomitantly/before/or within three months after the IPO.

Listing Segment	Firms	CROSS-LISTING REGIME	NYSE	OTC	NASDAQ	GLOBAL	ISSUANCE DATE	LATIBEX	ISSUANCE DATE (LATIBEX)	Cross-listing in the same time period as the IPO?
NOVO MERCADO	OBRASCON HUARTE LAIN BRASIL S.A.	144A Reg S				X	July 13, 2005			YES
	BRASIL ECODIESEL	144A Reg S				X	Nov. 22, 2006			YES
	COPASA S.A	144A Reg S				X	Feb. 6, 2006			YES
	CSU CARD-SYSTEM S.A.	144A Reg S				X	Apr. 27, 2006			YES
	SAO CARLOS EMPREEND-IMENTOS E PARTICI-PACOES SA	144A Reg S				X	Dec. 18, 2006			YES
	AGRA EMPRE-ENDIMENTOS IMOBILIARIOS S.A.	144A Reg S				X	Apr. 30, 2007			YES
	B2W – COMPANHIA GLOBAL DO VAREJO	144A Reg S				X	Aug. 13, 2007			YES
	BR MALLS PARTICIP-ACOES SA	144A Reg S				X	Apr. 11, 2007			YES
	CAMARGO CORREA DES-ENVOLV-IMENTO IMOB-ILIARIO SA	144A Reg S				X	Feb. 2, 2007			YES
	CREMER SA	144A Reg S				X	May 2, 2007			YES
	INPAR SA	144A Reg S				X	June 13, 2007			YES
	JHSF PARTIC-IPACOES SA	144A Reg S				X	Apr. 16, 2007			YES
	REDECARD S/A	144A Reg S				X	July 17, 2007			YES

Changing the Paradigm of Stock Ownership
29:439 (2009)

TABLE 27 (Continued)

Listing Segment	Firms	CROSS-LISTING REGIME	NYSE	OTC	NASDAQ	GLOBAL	ISSUANCE DATE	LATIBEX	ISSUANCE DATE (LATIBEX)	Cross-listing in the same time period as the IPO?
NOVO MERCADO	TECNISA SA	144A Reg S				X	Feb. 5, 2007			YES
	TRIUNFO PARTICIPA-COES E INVEST-IMENTOS SA	144A Reg S				X	July 25, 2007			YES
	SPRINGS GLOBAL PARTICI-PACOES SA	144A Reg S				X	July 31, 2007			YES
	CYRELA COMMERCIAL PROPERTIES S.A.	I / OTC 144A/ Reg S		X		X	Aug. 14, 2007			YES
	CYRELA BRAZIL REALTY S.A.	I / OTC 144A/ Reg S		X		X	May 5, 2004			YES
	TRACTEBEL ENERGIA SA	I / OTC		X			June 27, 2002			YES
	DIAGNOST-ICOS DA AMERICA SA	144A/ Reg S		X			Nov. 23, 2004			YES
	MEDIAL SAUDE S.A.	144A/ Reg S		X			Sept. 26, 2006			YES
	MMX MINERACAO E METALICOS SA	I / OTC 144A/ Reg S		X		X	Feb. 5, 2007			NO
	ROSSI RESID-ENCIAL S.A.	I / OTC		X			Apr. 21, 2000			YES
	TEMPO PART-ICIPAÇÕES S.A.	144A/ Reg S		X			Dec. 21, 2007			YES
	EMPRESA BRASILEIRA DE AERO-NAUTICA SA	III / NYSE	X				July 21, 2000			YES
	PERDIGAO SA	II / NYSE	X				Oct. 20, 2000			YES

TABLE 27 (Continued)

Listing Segment	Firms	CROSS-LISTING REGIME	NYSE	OTC	NASDAQ	GLOBAL	ISSUANCE DATE	LATIBEX	ISSUANCE DATE (LATIBEX)	Cross-listing in the same time period as the IPO?
NOVO MERCADO	CIA DE SANEAMENTO BASICO DO ESTADO DE SAO PAULO	III / NYSE	X				May 9, 2002			YES
	CPFL ENERGIA SA	III / NYSE	X				Sept. 28, 2004			YES
	GAFISA S.A.	III / NYSE	X				Mar. 21, 2007			NO
LEVEL 2	ALL-AMERICA LATINA LOGISTICA	144A/ Reg S				X	June 29, 2004 & Mar. 29, 2005			YES
	SANTOS-BRASIL SA	144A/ Reg S				X	Dec. 11, 2007			YES
	ANHANGUERA EDUCACIONAL PARTICIP-ACOES SA	144A/ Reg S				X	Mar. 14, 2007			YES
	NET SERVICOS DE COMUN-ICACAO SA	III / Nasdaq			X		Dec. 17, 2001	X	July 7, 2000	YES
	CELESC – CENTRAIS ELECTRICAS DA SANTA CATARINA, S.A.	I / OTC		X			June 12, 2002			YES
	SARAIVA SA LIVREIROS EDITORES	I / OTC 144A/ Reg S		X		X	Sept. 20, 2000 & Apr. 11, 2006			YES
	GOL LINHAS AEREAS INT-ELIGENTES AS	III / NYSE	X				June 29, 2004			YES
	TAM S.A.	III / NYSE	X				Mar. 15, 2006			NO
	SEB - SISTEMA EDUCACIONAL BRASILEIRO S.A.	144A/ Reg S				X	Oct. 22, 2007			YES

TABLE 27 (Continued)

Listing Segment	Firms	CROSS-LISTING REGIME	NYSE	OTC	NASDAQ	GLOBAL	ISSUANCE DATE	LATIBEX	ISSUANCE DATE (LATIBEX)	Cross-listing in the same time period as the IPO?
LEVEL 1	BRADESPAR S/A	I / OTC				X	May 21, 2001	X	July 10, 2001	YES
	COMPANHIA ENERGETICA DE SAO PAULO (CESP)	I / OTC		X			June 1, 1994 & Sept. 24, 1999			YES
	ELETROBRAS: CENTRAIS ELETRICAS BRASILEIRAS S.A.	I / OTC		X			Dec. 1, 1994	X	Sept. 14, 2000	YES
	USINAS SIDERUR-GICAS DE MINAS GERAIS	I / OTC 144A/ Reg S		X		X	Sept. 1, 1994; Sept. 25, 2001; May 2, 2007; Nov. 20, 2007	X	July 5, 2005 May 3 2007	YES
	SUZANO DE PAPEL E CELULOSE	I / OTC		X			Oct. 1, 1993			YES
	IOCHPE MAXION SA	I / OTC		X			Apr. 1, 1994			YES
	KLABIN SA	I / OTC		X			Dec. 1, 1994			YES
	PARANAP-ANEMA SA	I / OTC		X			Dec. 21, 2000			YES
	ARACRUZ CELULOSE SA	III / NYSE	X				May 25, 1992	X	Dec. 1, 1999	YES
	CIA BRASIL-EIRA DE DISTRIBUICAO GRUPO PAO DE ACUCAR	III / NYSE	X				May 28, 1997			YES

TABLE 27 (Continued)

Listing Segment	Firms	CROSS-LISTING REGIME	NYSE	OTC	NASDAQ	GLOBAL	ISSUANCE DATE	LATIBEX	ISSUANCE DATE (LATIBEX)	Cross-listing in the same time period as the IPO?
LEVEL 1	GERDAU SA	II / NYSE	X				Mar. 10, 1999	X	Dec. 2, 2002	YES
	ULTRAPAR PARTICIP-ACOES S.A.	III / NYSE	X				Oct. 6, 1999			YES
	CIA VALE DO RIO DOCE	II / NYSE III / NYSE	X				June 20, 2000 & Mar. 27, 2002	X	Feb. 10, 2000 Mar. 21, 2002	YES
	BANCO BRADESCO SA	II / NYSE	X				Nov. 21, 2001	X	Feb. 16, 2001	NO
	BRASIL TELECOM SA	II / NYSE	X				Nov. 16, 2001 & Aug. 1, 2002			YES
	BRASIL TELE-COM PART-ICIPACOES SA	II / NYSE	X				Nov. 16, 2001 & Aug 1, 2002			YES
	CEMIG - COMPANHIA ENERGETICA DE MINAS GERAIS	II / NYSE	X				Sept. 19, 2001 & June 12, 2007	X	July 12, 2002	YES
	UNIAO DE BANCOS BRAS-ILEIROS SA	III / NYSE	X				Mar. 27, 2001			YES
	BANCO ITAU HOLDING FIN-ANCEIRA S/A	II / NYSE	X				Feb. 21, 2002			NO
	SADIA SA	II / NYSE	X				Dec. 30, 2002	X	Nov. 15, 2004	YES
	VOTORANTIM CELULOSE E PAPEL SA	III / NYSE	X				May 17, 2002			NO
	BRASKEM SA	III / NYSE	X				Sept. 17, 2003	X	Aug. 10, 2003	YES

TABLE 27 (Continued)

Sources: Author's elaboration based on information available on the CVM website, the JP Morgan ADR website, the Bank of New York ADR website, and the Latibex website, visited between September 2008 and February 2009. Comissão de Valores Mobiliários, http://www.cvm.gov.br; JP Morgan—Welcome

to adr.com, http://www.adr.com/; ADRs (Depositary Receipts): Global Investing and Personal Finance with the Bank of New York Mellon, http://www.adrbny.com; Latibex—Mercado de valores latinoamericanos en Euros, http://www.latibex.com. Information on cross-listing exchanges, levels, and dates comes from the Bank of New York ADR website, the Citibank ADR website, the CVM website, the Deutsche Bank ADR website, and the JP Morgan ADR website. ADRs (Depositary Receipts): Global Investing and Personal Finance with the Bank of New York Mellon, http://www.adrbny.com; Citi—Depositary Receipt Services, http://wwss.citissb.com/adr/www/brokers/index.htm; Depositary Receipts with Deutsche Bank, www.adr.db.com; Comissão de Valores Mobiliários, http://www.cvm.gov.br; JP Morgan—Welcome to adr.com, http://www.adr.com. (Discrepancies between these sources were reconciled by contacting companies directly.).