Questionnaire on Enforcement Issues

Results

for Argentina, Brazil, Chile, Colombia and Peru

The Fifth Meeting of the
Latin American Corporate Governance Roundtable

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ARGENTINA

Legal, Regulatory and Institutional Framework for Enforcement – State of Play

What are the main institutions in your country devoted to enforcement of regulation related to corporate governance?

1. Administrative level

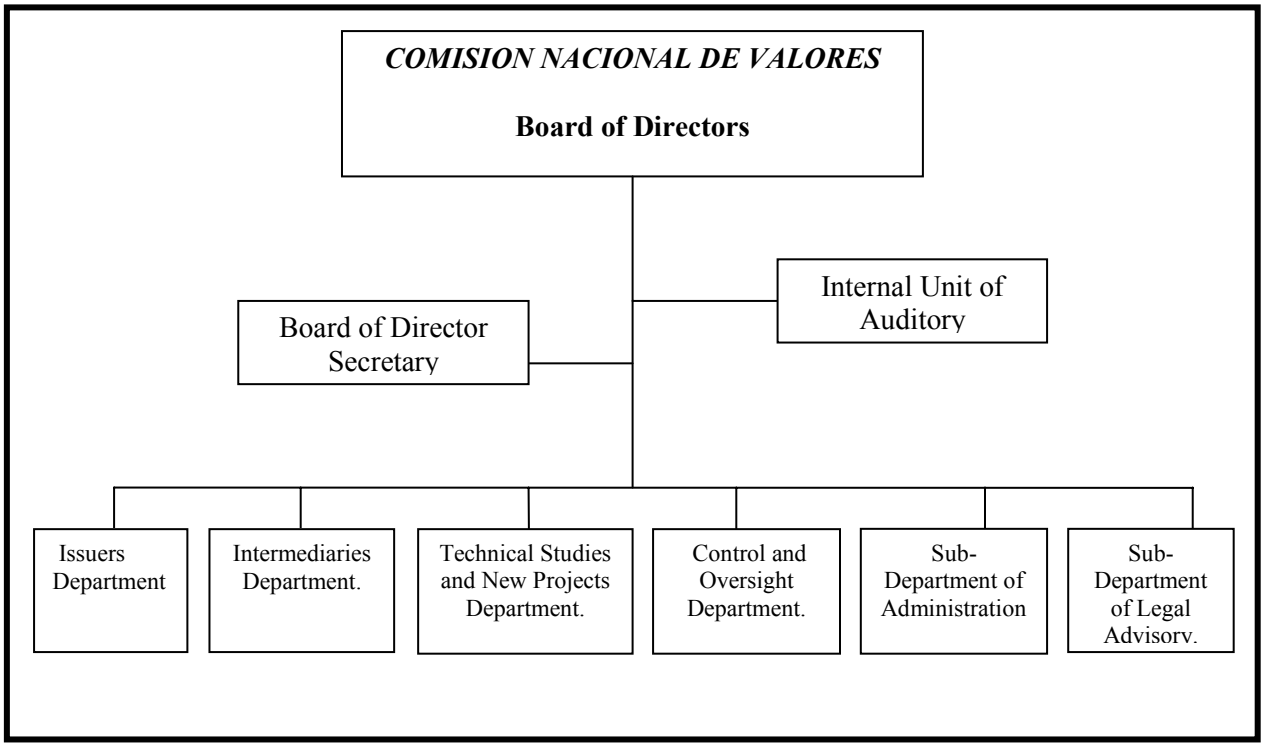
a. Responses should address each relevant body. How is it organized? How many people work in it? How much is the budget (in U$S). Is there independence in terms of funding, authority, and election of its head? Once appointed, are appointees subject to a fixed term?

The regulatory body is the "Comisión Nacional de Valores" (hereinafter "CNV"), an autarkic entity created in 1968, with jurisdiction covering the territory of the Argentine Republic, whose head is the Chairman of the Board of Commissioners composed, including the chairman, by five members (that can all be reelected), all appointed by the Executive Power for seven years. In this regard, it is interesting to note that at the time when the CNV was created, the Presidential term in the Executive Branch was six years, so that as a result of the disparity of both terms (the one of the Executive Branch and the one of the commissioners), stability and minimization of political influence was sought. After the constitutional amendment of 1994, the Presidential term was reduced to four years, but with the ability of reelection, so still with the new term, the disparity remains and so the political divorce from the nominations to the CNV. Perhaps as a consequence of these provisions, the CNV has remained as a non-political influenced, very technical and respected body within the administration, despite the turbulent political life of Argentina since 1968.

The CNV authorizes the public offering of all type of securities, except securities issued by governmental issuers, whether national (federal), provincial or municipal divisions. This occurs for constitutional reasons, since a national (federal) agency such as the CNV cannot control provincial or municipal entities that are autonomous from the national government. The CNV also regulates and supervises the circulation and negotiation of the securities with public offerings (now including governmental issues of any political division or subdivision whatsoever), and the secondary markets where these securities are traded. In this regard, it has to be mentioned that most of the markets are Self Regulated Organizations (SROs) which while regulated and supervised by the CNV, regulate and supervise their own members. That is the case of the Buenos Aires Stock Exchange (BASE), by far the most important exchange in Argentina, and the Mercado de Valores de Buenos Aires (the securities market within the BASE, and also by far the most important equities market in Argentina). Public offerings and trading of futures and options contracts is also under CNV jurisdiction, and so are the related futures exchanges (SROs).

Finally the CNV regulates and supervises the clearing and settlement houses and the securities depositaries (actually there is a single central securities depositary acting in Argentina).

The chart is the following:



Its permanent personnel are 115 people plus 27 non-permanent staff hired by CNV; 68% of them are university graduates.

The budget corresponding to the year 2004 of the CNV is US$2.644.334, which is part of the public budget ($3=U$S1).

The total amount of supervised entities by the CNV are:

Investment Funds	187
Rating Agencies	4
Exchanges and Securities Markets	20
Securities Issuers	
Domestic Equities	109
Foreign Equities	4
Private Bonds	64
Small and Mid sized companies Bonds	8
Fiduciaries	33
Grand Total	429

b. Description of the administrative procedures and sanctions.

i. Principal offences.

The principal offences, contained in the Decree 677/01 Chapter IX and in the CNV Regulations, are: insider trading, tipping, market manipulation and fraud, error or omission of an essential aspect in the information regarding the offering in the prospectus, prohibition to take part in the public offering without authorization.

ii. Is there an enforcement department? How many people are working on it?

CNV has an Enforcement Division named in the chart "Control and Oversight Department". There are 10 people working there; 7 of them are university graduates.

iii. Is there an explicit due process to sanction? Describe it.

There is an explicit due process to sanction, established by Act 17.811 amended by Decree 677/01.

Summary proceedings have to be brought on the basis of the conclusions of the investigation, by administrative initiative or for denunciation.

The investigation may conclude with a proposal of bringing charges to be evaluated by the Board of Directors of the CNV or dismiss the charges. Upon consideration of the proposal, the Board may decide the opening of the summary proceedings.

The summary proceedings shall be conducted by another office of the CNV, separate and independent from the one that brought the charges and there is a member of the Board that supervises each summary proceeding once initiated.

The Board of Directors of the CNV with the recommendations of the competent bodies, may dismiss the denunciation when the preliminary exam determines that the events do not constitute violations described by the applicable law or regulation. In such a case, notice of the decision shall be given to the denouncer, if that is the case, who may appeal the dismissal according to the provisions of the law.

Sanctions that may be applied are listed in Law 17811 article 10 and may be appealed to the Commercial Court (2nd.instance) in Buenos Aires or to the Federal Courts (2nd.instance) in the Provinces except for the warnings that may solely be reconsidered by the same CNV. Sanctions range from a warning through fines, up to banning of the public offering or the ability to be a member of boards or supervisory bodies of companies in the public offering system.

The CNV may, at any time prior to the summary proceedings, call for a hearing with the appearance of the parties involved in the investigation, to provide the explanations it deems necessary and also to reconcile or minimize the differences that may exist on matters of fact. If the investigated parties acknowledge the alleged events, the CNV may apply the corresponding penalties according to section 10 of the law without any further procedure.

Any time that in the judgment of the CNV there may be a systematic risk or any other serious financial threat involved, the CNV, or the respective SRO, may suspend in a preventive manner the public offering or the negotiation of a particular negotiable security, or forward contracts, futures and options of any nature whatsoever and the execution of any act submitted to its control or even the suspension of activities in a particular market. This may further be ordered when initiating an investigation or at any stage of the summary proceedings, and it shall not be extended once the investigation or the summary proceedings are concluded or after a year of its initiation. When it affects SROs, it may extend for a maximum period of THIRTY (30) days, except when the NATIONAL EXECUTIVE POWER extends the measure.

The CNV, or the respective SRO, may also temporarily interrupt the public offering of negotiable securities or forward contracts, futures and options of any nature whatsoever when the disclosure of relevant information is pending, or there are extraordinary circumstances that make the suspension advisable, until the reasons for suspension have been eliminated.

iv. Who is authorized to sanction?

The Board of Directors of the CNV applies the penalties.

v. How many fines or sanctions have been imposed through last year, the last three years? (If possible, please be specific regarding categorization of types of fines or sanctions imposed).

The detail of fines and sanctions imposed by the CNV since 2001 to 2004 is below.

YEAR		INICIATED	ENDED	DISMISSALS	WARNINGS	MANAGERS AND BOARD MEMBERS SUMARIES SANCTIONED (FINES)		DISMISSALS	EXCLUTIONS	BANNING OFF PUBLIC OFFERING	SUSPENSION	OTHERS	OBSERV.
2001		10	13	_	6	4	48	7	_	3	1	_	(*)
2002		24	25	1	5	18	143	4	_	1	_	_	
2003		18	14	4	7	5	44	1	_	_	1	_	(*)
2004	1st. Quarter	5	2		2	__	__	__	__	__	__	__	__
	2nd. Quarter	5	5		1	4	31	__	__	__	__	__	__
	3rd. Quarter	2	1			1	6	3	__	__	__	__	
Total up to 8/25/04		12	8		3	5	37	3	__	__	__	__	__
ii. Total		**65**	**60**	**5**	**21**	**32**	**272**	**15**		**4**	**2**		

(*) There are cases in which the sanction or the absolution were not total or partial.

vi. Amount of fines, highest, lowest permitted, and average in practice?

The amount of fines vary from ONE THOUSAND PESOS *($ 1,000) to ONE MILLION FIVE HUNDRED THOUSAND PESOS ($ 1,500,000) that may be raised to up to FIVE (5) times the amount of the benefit obtained or the damage suffered, as a consequence of the illegal action, if any of them is higher.
The average in practice is $20/30.000. Nevertheless, in 2003 the CNV imposed fines up to $800.000.
(*) $ 3 = US$ 1

vii. How many fines were collected, and how many have been appealed, in the last year? In the last three years?

In practice all the fines are appealed.
In 2001, 2 fines were collected.
In 2002, 2 fines were collected.
In 2003, 9 fines were collected.

Description of fines imposed in 2001-2002-2003-2004 (Updated to 08/25/04):

Year	Fines imposed	Fines appealed.	Resolutions of the de la CNV upheld by the Commercial Courts **(*)**	Resolutions of the CNV overturned by Commercial Courts.	Appeals with pending resolution.
2001	**4**	**4**	**2**	_	**2**
2002	**18**	**17**	**15**	_	**2**
2003	**5**	**4**	**1**	_	**3**
2004 (up to 8/25/04)	**5**	**4**	–	–	**4**
Total	**32**	**29**	**18**	_	**11**

(*) In the following cases the Commercial Court upheld the Administrative Sanctions, but decided to reduce the amount of the fines:

1. File Nº 239/00 (Res. Nº 14.078 of 12/28/01 applied a fine of $15.000.-), the Administrative Resolution was upheld but the fine was reduced to $8.000.-.
2. File Nº 1602/97 (Res. 14.214 of 6/04/02 applied a fine of $19.000.-), the Administrative Resolution was upheld but the fine was reduced to $8.000.-).
3. File Nº 126/02 (Res. Nº 14.232 of 6/27/02 applied a fine of $18.000.-), the Administrative Resolution was upheld but the fine was reduced to $8.000.-).

viii. Over the last three years, how many of the appealed sanctions have been dismissed or rejected by the courts? How many have been won by the administrative body?

Description of Sanctions imposed in 2001- 2002- 2003- 2004

Year	Sanctions applied (Chapter 10, Act Nº 17.811)	Sanctions appealed to Commercial Courts.	Sanctions of warning appealed, rejected by the CNV.	Sanctions applied by the CNV upheld by the Commercial Courts.	Resolutions of the CNV applying revoked sanctions.	Appeals with pending resolution.
2001 [1[1]]	**13**	**5**	**1**	**3**	_	**2**
2002	**24**	**19**	**1**	**15**	_	**4**
2003[2[2]]	**13**	**4**	**1**	**1**	_	**3**
2004 (up to 8/25/04)	**8**	**4**	_	_	_	**4**
Total	**58**	**32**	**3**	**19**		**13**

During 2003, 15 administrative sanctions were appealed in the Commercial Court. The judiciary upheld those administrative resolutions, and in four cases the Court claimed that it did not have jurisdiction over the matter and stated that the files would be turned in by the plaintifs to the Federal Courts located in the Provinces.
Finally, two cases were admitted by the Supreme Court that has not issued a verdict yet.
(Source, CNV Public Register of Sanctions)

c. Judicial power (civil courts and penal courts)

i. Are some or most judges trained on Financial and Capital Markets issues?

The judicial power is divided in different specialized fora. One of the fora is the commercial forum, competent, among other commercial matters, in financial and capital markets issues. However there is neither an specific court nor judges specially trained on financial or capital markets matters.

ii. Are there specialized courts dealing with capital market matters?

There are not specialized courts dealing with capital market matters. However, it is important to mention that the Decree 677/01 (Chapter X, Section 38), established a mandatory arbitration. Within a term of SIX (6) months as from the publication of that Decree, SROs that run markets should have established a permanent Arbitration Panel to which all entities whose shares, negotiable securities, forward contracts futures contracts and options are listed or negotiated therein and all broker, dealers and other intermediaries acting therein, shall be mandatory subject in their relations with the shareholders, investors or clients. All actions derived from Act No. 19,550 (Corporations Law) and amending regulations, shall be comprised in this arbitration jurisdiction, even claims for objecting resolutions of corporate organs and liability actions against its members or other shareholders, as well as nullity actions of clauses of the by-laws or regulations; in general all private law conflicts. However, in all cases, shareholders, investors and clients in conflict with the entity or the intermediary, shall be granted the right to opt for seek remedy in the competent Judicial Court instead of the Arbitration Panel.

Disputes related to public law, like sanctions, cannot be solved by private arbitration.

All the SROs included in section 38 of the Decree N 677/01 created the Arbitral Court, except Mendoza Stock Exchange, that will have it organized by October of this year and La Rioja Stock Exchange because it is not trading yet.

[1[1]] There is an absolution in File Nº 178/99 (Resolution Nº 14.099 of 01/22/02)

[2[2]] There is an absolution in File Nº 697/01 (Resolution Nº 14.696 del 5/12/03)

iii. How long do appeals processes last in the courts?

If the cases are not complex, the appeals processes may last one year in the Commercial Courts. Otherwise, the process may take not less than two or three years if the case is not taken to the Supreme Court in which case, is difficult to forecast a time schedule but, to obtain a Supreme Court judgment will take not less than another year or more.

d. Private enforcement (arbitration and self regulatory institutions)

i. Does Private Arbitration exist to solve corporate-related disputes between companies? Between companies and shareholders?

There are some Arbitration Courts, like the one created by the Buenos Aires Stock Exchange ("Tribunal de Arbitraje General de la Bolsa de Comercio de Buenos Aires") which is probably the most prestigious arbitration entity in Argentina with a long lasting history of performance since its beginning in 1969.

ii. Are they oriented just to solve private conflict or do they include public disputes?

As it was answered previously, private arbitration is not allowed to solve disputes related to Public Law.

iii. Are shareholders conflicts solved by means of Private Arbitration?

Shareholders conflicts can be solved by private arbitration or by competent legal courts. Anyway, the Decree 677/01 (Section 38) has to be considered, as we referred in the paragraph c. ii. of the questionnaire.

e. Self regulatory Institutions, like stock exchanges

i. How many sanctions have been applied the last year, the last three years?

As it was already pointed out, the Buenos Aires Stock Exchange ("BASE") is by far the most active exchange in Argentina. BASE is a self-regulatory organization having authority over the companies listed therein. In 2001, the BASE applied 5 (five) suspensions and 1 (one) cancellation of authorization to negotiate securities.
In 2002, the BASE applied 15 (fifteen) suspensions and 2 (two) cancellations.
In 2003, the BASE applied 5 (five) suspensions.
During this year the BASE has applied 3 (three) suspensions and 1 (one) cancellation.

Regarding the Mercado de Valores de Buenos Aires (Merval, the securities market within the BASE where most of the equities trading made in Argentina takes place) in the last year, 2 (two) sanctions were applied, while in the last three years, 16 (sixteen) sanctions were applied. Merval is an SRO that regulates its own members, acting as brokers within the securities market of the BASE.

Finally, the Mercado Abierto Electrónico SA (market where most of the governmental debt is traded, hereinafter MAE), applied in 2000, 3 (three) warnings; in 2001, imposed 3 (three) warnings, and in 2003, there are 2 (two) sanctions with pending resolution.

i. How many investigation procedures have been opened in the last year, the last three years?

In the last year, Merval pursued 2 (two) investigation process, while in the last three years the Security Market opened 6 (six) investigation process.

The disparity between the six investigation procedures begun during the last three years and the sixteen sanctions applied by the Merval (see preceding subparagraph **iii**) during the same period of time is due to the fact that during such period some previously opened procedures were resolved.

Finally, the MAE opened, in 2000, 5 (five) investigation process; in 2001 pursued 4 (four) investigation process, and in 2003, opened 3 (three) investigation process.

f. Case Studies

Can you suggest one or two case study experiences that may be helpful in illustrating the effectiveness (and difficulties) related to corporate governance enforcement in your country that potentially could be presented and discussed at the next Roundtable meeting? Please describe the offense and if resolved, how it was resolved (six lines maximum for each case).

Terrabusi Case. On July 11th, 1997, CNV determined that the board of directors and some important managers of the company, all of them together holding the controlling interest of Terrabusi, that were negotiating confidentially the transference of their controlling stake to Nabisco Corporation, were, contemporaneously, dealing in the market with those securities by selling when the market price was over the price dealt with the potential buyer and buying shares when the market price were below the price dealt at the different stages of the negotiation ("insider trading" violating the rule of "disclose or refrain from dealing in the market"). The decision was appealed and the Commercial Court upheld, on December 5th, 1997, the administrative resolution. Finally, the Supreme Court (September,2001), overturned the sanction imposed by the CNV on the grounds that it was not proof that the sanctionees dealt in the market to take an advantage because of the information they had, on the negotiation with Nabisco. The judgment of the Supreme Court was divided because the minority voted for maintaining the CNV´s poena, but with the vote of the majority the Supreme Court again turned over the case to another Commercial Appeal Court, which decided, following the guidelines fixed by the Supreme Court, to revoke the CNV´s resolution. Now the case is again in appeal before the Supreme Court, now appealed by the CNV, but it is unlikely that this appeal will succeed.

Disco`s Case. At the end of 2002, CNV imposed $ 60.000 (USD 20.000 approximately) fine to the members of the Board of Directors of Disco and to the members of the Oversight Committee on the grounds that they infringed Disclosure Duties set forth by regulations. The resolution was appealed to the Commercial Court. The Court, in July of 2003, upheld the sanction. On October, 2003, the same Court rejected a recourse of the defendants to take the case to the Supreme Court.

Encouraging the Emergence of Active and Informed Owners

Institutional Investors are generally minority shareholders; nevertheless they are the larger and the most sophisticated among them. To the extent they are active investors, they act in a proper way to create value for the fund, on behalf of the beneficial owners, and generate positive externalities for the market.

In some countries PFs are participants in the market, as equity holders and bondholders; PFs there fore should have incentives to perform as active inverstors. In other countries Pension Funds are not allowed to buy shares or even private bonds; then the incentive to act is lower.

Questions:

2. **Describe the main Institutional Investors, like Pension Funds (PFs) and other large investors. Please provide market indicators like percentage of stocks and bonds held by PFs or other institutional investors in relation to the market or specific corporations.**

The Argentinean spectrum of Institutional Investors is integrated mainly by Pension Funds (AFJP's, that stands for Administradoras de Fondos de Jubilaciones y Pensiones), with a portfolio $ 48.000.000.000 (approximately USD 16.000.000.000), equivalent to approximately 15 % of the Argentinean GDP.

Pension Funds invest approximately 10 % of their portfolio in equity of the 30 listed companies, 64% in governmental debt (short and long term debt and performing and defaulted debt included),approximately 5% is deposited in the banking system, 2,5% is invested in Argentinean Investment Funds, and approximately 9% is invested in equities, debt and funds from abroad

In addition, Investment Funds (FCI's, which stands for Fondos Comunes de Inversión) are also deemed Institutional Investors, with a portfolio of approximately $ 4.900.000.000 (USD 1.689.655.100), similar to 1.6 % of the Argentinean GDP. Investment Funds approximately invest in equity 9.5 % of their portfolio. The average of the stake held by all Investments Funds does not exceed 1 % of the equity of 27 listed issuers.

a.

i. What have institutional investors done to support better corporate governance? What constraints do they have, what are they allowed to do, and why do they behave the way that they do? More specifically: are PFs or other institutional investors allowed to invest in equity?

Pension Funds and Investment Funds, and their respective Associations, have actively taken part in workshops, events and seminars, in order to create decision-making groups aiming to prop up and foster the incorporation of corporate governance rules to those companies that participate in the capital market.

All Institutional Investors are allowed to invest in equities with certain restraints. The issuer shall be a Corporation authorized by the CNV to make public offer of its shares. On top of that Pension Funds are able to invest in Stocks no more than 50 % of the Fund. If we talk about share issues by privatized companies, Pension Funds can invest up to 20% of its assets in those shares. In any case, the shares neither have to grant economic privileges nor multiple votes. In addition, the regulations state that Pension Funds are not able to hold more than 7 % of the Fund in one single particular issuer.

Each AFJP is allowed to have just one Fund so that limits the possibility to set different investment policies considering different approaches to risk on the side of the contributors to the Fund. In other countries, such as Chile, it has been decided to switch into a multiple fund scheme. Chile has at the moment a five funds per AFJP system, ordered from the highest risk to the most conservative one. These schemes allow the beneficiary to direct and choose the investment option.

The financial troubles of the Public Sector led to the AFJPs Superintendence to make direct decisions over the Funds administered by AFJP, which were considered as a source of finance for the government. The high exposure to the Argentinean Sovereign Debt ended up affecting the beneficiaries of the funds. In order to avoid the interference in the investment decisions made by Pension Funds, it is necessary to overhaul the regulations, in order to set forth clear rules that, among others, declare and guarantee the independence of the Pension Funds Superintendence.

Moreover, the regulations imposed on Pension Funds the goal to reach a minimum performance. This means that each Pension Fund must, in a determined period, reach a performance rate that exceeds the average performance of the Pension Funds less a rate of 5 %. If that is not reached, then the AFJP has to make contributions to compensate the difference. The consequence of this regulation is to induce the AFJPs to replicate the portfolio of the biggest AFJPs, in a man-made effect which is not convenient for the efficiency of the pension system, nor for the well-functioning of the capital market in general.

On the side of the Investment Funds, they are also able to invest in shares, which will never exceed 10 % of the total equity of the same issuer, in accordance with the last balance sheet. However, Investment Funds are not able to invest more than 20% of their assets in securities issued by the same issuer or other issuers that pertain to the same economic group of corporations.

Finally, the Investment Funds shall neither acquire the shares of the Manager Controlling Company nor the Depository Controlling Company for a sum of money that exceeds 2 % of its capital or its liabilities. In any case, those shares will be deprived of voting rights while those shares are held by the Fund.

ii. Are PFs or other institutional investors allowed or required to vote in Shareholder´s meetings?

In accordance with the Corporations Act (19550), the Investment Funds Act (N 24.083) and the Pension Funds Act (N 24.241), either Investment Funds or Pension Funds have the right (not the obligation) to vote in shareholder's meetings of the issuer, but it is necessary to point out that neither Pension Funds nor Investment Funds can vote more than 5 % (five) of the total votes of the capital stock in circulation of a company in any particular shareholders meeting

Moreover, Pension Funds are only compelled to assist in shareholders meetings when the stake they hold exceeds 2 % of the issuer equity. Different from Pension Funds, Investment Funds are not obliged to take part in the shareholders meeting of the issuer.

iii. Do PFs have an Investment Corporate Governance Code?

No they do not.

iv. Do they elect Independent Directors in Shareholder´s meeting?

Neither Pension Funds nor Investment Funds are obliged or have a particular right to appoint directors. Of course under those circumstances it is clear they are not obliged to elect independent directors. Some Pension Funds have been granted by some issuers that received Pension Fund investments the right to elect independent directors. In this respect it is important to note that Argentinean Corporation Law does not require the appointment of independent directors or of a certain number of independent directors. However, Decree 677/01 introduced the Audit Committee as mandatory for open companies and that such committee shall have a majority of independent directors. The concept of an independent director is defined under the CNV regulations.

v. Are Independent Directors elected by PFs integrated into Director or Audit Committees?

See preceding answers.

vi. Are they active in takeover or selling assets processes?

Not in particular.

vii. Does PF regulation require Corporate Governance standards?

No.

viii. What legal or regulatory constraints do they face that may hamper active ownership? On the other hand, is the regulatory framework adequate to foster Corporate Governance and active Institutional Investors?

While there are not particular constraints to active ownership by Institutional Investors neither there is a regulatory framework fostering active participation of those.

b. Case Studies

Can you suggest one or two case study experiences involving institutional investor influence on corporate governance enforcement in your country that may be helpful in illustrating constraints and/or incentives for strengthening corporate governance that potentially could be presented and discussed at the next Roundtable meeting? Please describe in six lines maximum for each case.

1784 S.A. Case.

The CNV, carrying out a routine inspection in order to determine why in the secondary market were taking place operations over certain governmental bonds (Letras de Tesorería) at prices much higher than those prices fixed for the primary market (at that time the Central Bank regularly made auctions to sell new issues of "Letras de Tesorería"), found out that 1784 S.A. (the Managing Company of the fund) bought initially those bonds to the branch of Bank Boston N.A. in Argentina (BKB), the depository of the funds managed by

1784 S.A., at primary market prices, but later on, 1784 S.A. and BKB wound up the transaction and celebrated a new one at much higher prices.

For that reason, on June 3rd, 2004, CNV found that the Managing Company (1784 S.A.) of the fund, the members of its board of directors and BKB, and its representative in Argentina, had infringed among others, their fiduciary duties, and compelled them to pay a fine of $ 800.000 (US$ 267.000 approximately). The decision was appealed to the Commercial Court which has not issued a verdict yet.

Buenos Aires, September 15, 2004

Guillermo A. Fretes

BRAZIL

Legal, Regulatory and Institutional Framework for Enforcement – State of Play

What are the main institutions in your country devoted to enforcement of regulation related to corporate governance?

A foreword to enforcement

Three main institutions have powers to enforce corporate governance related laws and regulation, each one with its specific tools and scope of action: a) the judiciary power, mostly acting through state and federal law courts; b) the Securities and Exchange Commission of Brazil (Comissão de Valores Mobiliários – CVM); and c) self-regulatory institutions such as the Bolsa de Valores de São Paulo (Bovespa) Stock Exchange.

The traditional view of corporate governance enforcement as arising only from the application of corporate law and its respective regulation in a supporting role is no longer enough to give a complete picture of the enforcement issue. Modern corporate governance enforcement is a threefold collaborative process that also comprises privately organized institutions, self-regulatory corporate governance rules and advisory activities, rather than only punitive ones. Therefore, it is important to make a few comments on these three points.

The presence of privately organised institutions and their respective level of activism is one of the most relevant factors that may boost corporate governance enforcement. In Brazil, there could be no better evidence of it than the role played by the Brazilian Institute of Corporate Governance – IBGC. Having launched its own corporate governance code (the "IBGC's Code of Best Practices", currently in its third revised edition) and demonstrating an increasing array of training and advocacy activities, the IBGC became, indeed, a benchmark regional partner of World Bank and OECD.

Self-regulatory corporate governance rules also gave a major contribution to enforcement. We mention the three new market segments created by Bovespa – the special corporate governance Levels 1 and 2, and the Novo Mercado – as a turning point for Brazilian capital markets. As it is known, each of those market segments requires progressively stricter listing standards of corporate governance. The three IPOs occurred in Brazil during the last semester took place in the top market segments of Bovespa, establishing landmark cases, and another set of IPOs are expected to occur in the following months (all of them contemplate listing in one of these special market segments). If a company wishes to list itself in any of the special segments, it must execute an agreement with Bovespa, which sets forth a commitment to comply with far-reaching corporate governance standards. Voluntary contractual commitment has proven to be a very effective, cost-efficient and smooth means of achieving spontaneous compliance and, therefore, we place it as a powerful mechanism of enforcement.

Finally, as to the third issue, we point out that the advisory activity of CVM has surged in the last years. CVM' staff is increasingly asked to provide advisory support to investor and to answer complaints related to market practices. There seems to be a trend that such advisory activity becomes as important as punitive actions taken by the CVM. We believe this to be an improvement towards enforcement, especially because it enhances preventive measures, working as a means to avoid occurrence of future disputes and damages to the markets.

From the CVM perspective, we also cite two main constraint factors to enforcement. Although the CVM has adequate enforcement powers, it does not have direct access to information protected by the bank secrecy law, which is only granted through the judiciary branch on a case-by-case basis or through the cooperation of the Central Bank. This situation often gives rise to difficulties when investigations are being carried out. The law should permit the CVM to have direct access to data that is protected by bank secrecy as long as such requests can be justified as part of an ongoing investigation or is made at the request of foreign

authorities as part of a Memorandum of Understanding (Convênio). Moreover, the capacity to use such powers effectively in developing enforcement actions is severely compromised by a lack of human and financial resources. The staff of the CVM should be reinforced and new staff recruited, particularly in critical areas such as for inspections and more complex types of off-site surveillance.

1. Administrative level

a. Responses should address each relevant body. How is it organized? How many people work in it? How much is the budget (in US$). Is there independence in terms of funding, authority, and election of its head? Once appointed, are appointees subject to a fixed term?

The Board of the CVM is made up of a Chairman and four Directors nominated by the President of Brazil and approved by the Senate. All must have a good reputation and proven experience in the securities market. The mandate of each is five years, with one member of the Board to be nominated each year. Members of the Board will only lose their mandate if they resign, or if they are convicted by a court of law or in administrative disciplinary proceedings (Law 6385/76 – the "Securities Act" - article 6, as amended). Importantly, members of the Board of the CVM and its staff are not legally protected to carry out their duties in good faith.

Law 10411 of February 26, 2002 granted the CVM independent administrative authority, fixed the terms in office and created needed stability for Directors of the CVM. Before the enactment of this statute, there has never been a case of removal of a CVM's Chairman, even in the pre-privatisation period, when the largest Brazilian companies were state-owned listed ones, under the CVM's supervision.

CVM has 11 (eleven) different divisions, all of them placed at the same hierarchical level, and each of them headed by chief staff members called "Superintendents". Superintendences are the following: Corporate Finance, International Affairs, On-Site Inspections, Accounting and Auditing Ruling, Investors and Intermediaries Regulation, Market Development, Administrative/Financial Department, Market Surveillance, Computer Systems, Public Offerings and Registrations and Investor Assistance. CVM also has two regional branches, one located in Brasília and the other located in São Paulo. Chiefs of both regional offices have Superintendent status.

The CVM is accountable to the Ministry of Finance and must report to the Ministry's Department of Internal Control and to Congress, whenever required by its activities. A team of governmental auditors is regularly placed in the CVM's headquarters, usually for a two-week period, in order to write a thorough report on the accomplishment of its activities. This report may or may not have recommendations concerning CVM activities. If so, changes will be required to be implemented before the next audit. There are two or three of these audits each year. The final report summarizes the entire auditing procedures, including recommendations and changes implemented, and is sent to the Court of Public Account to be filed. The annual accounts of the CVM are also audited by the Court of Public Account. The annual accounts and report on the activities of the institution are available to the public and are published and placed on the Internet. Decisions of the CVM are subject to judicial review.

Currently the CVM has 324 effective civil servants (hired through a mandatory public exam) and 101 temporary civil servants (perform temporary trustee functions and therefore are waived of passing public exams). Because 62 civil servants cumulate effective and temporary trustee positions, the total workforce of CVM sums up 363 members. Effective and temporary positions are irrespective of their hierarchical level. In addition to this number, CVM is entitled to fill up 107 new effective positions. Although the Commission has already carried out the necessary public exam, approved candidates could not be appointed up to now due to a pending legal suit brought by one of the failed candidates, which is expected to be ruled by the end of this year. Should these new positions be confirmed, the CVM staff will be raised to 470 people.

2004 CVM's budget, as approved by the Annual Budget Federal Law, amounts R$ 75,413,644.00 (US$ 25,781,139.56, converted by the 2.92 dollar exchange rate).

CVM supervises the following entities:

(Date as of August 2004)

Funds	Listed companies	Regulated[1]	Total
6,321	682	2,205	9,208

b. Description of the administrative procedures and sanctions.

i. Principal offences

A violation of any provision of the Law 6.404/76 (the "Company Law") and its respective regulation applicable to a listed company, as well as to its shareholders, directors and officers, is reputed to be an offence subjected to the CVM's ruling. Abuse of power[3] and the non-compliance with mandatory reporting requirements are examples of offences that may be investigated and submitted to CVM. Recent legislative changes (law 10303 of October 31,2001 and law 10411 of February 26, 2002) also defined and toughened the capital market crimes where a five-year prison sentence can now be imposed in cases involving market manipulation, use of inside information etc, as opposed to house detention.

A violation of any provision set forth by the Securities Act is also regarded unlawful. Non-equitable treatment or unfair practices are among the main examples. The Securities Act grants the CVM substantial and comprehensive enforcement powers. These include:

- *Investigative power to obtain data, information, documents, statements and records from persons involved in the relevant activity or who may have information relevant to the inquiry (Section 9);*
- *The power to seek orders and to take other actions to ensure compliance with its regulatory, administrative and investigative powers (Section 9, § 1);*
- *The power to impose sanctions: warnings, fines, suspension from duties of director of market intermediaries and public companies, temporary disqualification from occupying managerial positions in market intermediaries and public companies, suspension or cancellation of licenses of market intermediaries that are licensed by CVM itself (e.g., fund managers, custodians – Section 11). It is worth to note that relating market intermediaries that are licensed exclusively by the Central Bank (brokers and dealers) the power to revoke those licenses remains with the Central bank. So, if CVM finds that the license of a broker or a dealer should be revoked, it has to demonstrate it to the Central Bank and to move the Central Bank to take that action;*
- *The power to refer matters for criminal prosecution (Section 12);*
- *The power to order the suspension of trading in securities (Section 9º, § 1º - I);*
- *The power to enter into enforceable settlements (Section 11, § 5º).*

[3] The concept of abuse of power involves a number of conducts, such as (i) to orient the company to an aim different from the corporate purposes or harmful to national interests, to favour other Brazilian or foreign companies to the detriment of the interest of minority shareholders in the profits or properties of the company or to the interest of national economy; (ii) promote the liquidation of a prosper company, or the transformation, merger, consolidation or spin-off of the company, with an aim of obtaining for its own benefit or for the benefit of others, an undue advantage, to the detriment of the remaining shareholders, of the company's workers or investors in the company's securities, (iii) to promote an amendment to the by-laws, issuance of securities, or adoption of policies and decisions contrary to the company's interest and aimed at causing loss to minority shareholders, company's workers or investors in the company's securities; (iv) elect administrator (director) or member of the Fiscal board knowing hat the person is moral or technically inapt; (v) induce, or attempt to induce, administrators or members of the Fiscal Board to practice illegal act or promote, in breach of the legal and statutory duties and against the company's interest, its ratification by the shareholders' meeting; (vi) contract with the company, directly or through others in favoured conditions or not in arms' length; (vii) approve or cause irregular management accounts to be approved, for personal favour, or abstain from investigation denunciations which he knows or should know to be substantiated, or that justify grounded suspicion of irregularity; (viii) subscribe for shares in a capital increase, with payment in properties strange to the company's purposes. Other examples of abuse of power are provided for in CVM Instruction No. 323 of January 24, 2000.

ii. Is there an enforcement department? How many people are working on it?

None of our departments is specifically empowered of enforcing rules. Each division is supposed to supervise, investigate, answer consultations and, should it be the case, recommend imposition of penalties related to its own area of specialization. Although we consider the creation of an enforcement division to be a positive move, we note that the current system takes advantage of deep technical expertise developed by each division team, which so far has proven to favour the solidity and quality in of the CVM's decisions.

iii. Is there an explicit due process to sanction? Describe it.

The CVM has the power to conduct any kind of inspection at any moment. As a rule, inspections are not made on a routine basis, only when collection of evidence is necessary, as a part of an already initiated investigation. Therefore, the stock exchange, the futures exchange and their clearing houses are obligated to send reports on a regular basis, concerning their self-regulatory duty, and the activity of their members. Additional data may be required from the financial intermediaries or any investors, at any time. In the case of requiring additional data from investors, there must be an ongoing inquiry. Information related to the secondary trading is available to CVM, even through the same on-line trading system used by the stock exchange. Inspections may be initiated without previous announcement.

According to item V of Section 8 of the Securities Act, when establishing inspection priorities, the CVM must focus on the companies that did not present any profit in its balance sheet and/or did not pay their investors the minimum required dividend.

All reports and related documents collected during inspections are kept for a certain period administratively determined, as set forth in the Decree 2182/97. The regulator based on the inspection results, may initiate an administrative inquiry ("inquérito administrativo") or a punitive administrative procedure ("processo administrativo sancionador"), which on its turn may decide to impose fines or other penalties, whenever any irregularity is identified. The results may also be communicated to the Public Prosecutor's Office ("Ministério Público"), to the Pension Funds Regulator ("SPC"), to the Central Bank ("Banco Central"), to the Money Laundering Enforcement Agency ("COAF") or to the local Internal Revenue Authority ("Receita Federal"), depending on the circumstances. Only the exchanges and the clearing houses send these reports to CVM. The other financial intermediaries must send their financial data to the Central Bank.

The administrative inquiry is technically defined as an investigative phase led by a specially designated inquiry commission ("Comissão de Inquérito") that generally precedes the punitive administrative procedure. The punitive administrative procedure is the contentious phase that takes place after the accused receives an official notice to present his defence. It may be initiated after the conclusion of an administrative inquiry or by means of an accusatory injunction. Accusatory injunctions are launched on a case-by-case basis, whenever there are enough documental indications of authorship and materiality as to the allegedly unlawful situation. During the contentious phase, each of the parties may request the production of proofs deemed necessary to fully exercise defence rights, similarly to a judicial lawsuit. CVM's Board of Commissioners is empowered to realize the first judgment of a punitive administrative procedure, provided that an interested party may bring an appeal against the decision before the national financial system council of appeals ("conselho federal de recursos do sistema financeiro nacional").

iv. Who is authorised to sanction?

The Board of Commissioners of CVM has power to judge securities law offenders. Penalties range from warnings and fines to disaccreditation.

v. How many fines or sanctions have been imposed through last year, the last three years? (If possible, please be specific regarding categorisation of types of fines or sanctions imposed.)

Types of sanctions provided for the Securities Act. The Securities Act has empowered the CVM to punish by issuing the following penalties:
II – fine, which shall not exceed:
I – warning;
a) R$ 500,000.00 (five hundred thousand Brazilian reais)[4]
b) 50% of the amount of the securities issuing or of the irregular operation; or
c) three times the amount of the economic advantage gained or loss avoided due to the violation.
Should the offence be repeated, the fines can be imposed and multiplied up to three times.
III – suspension from duties of a director or member of the inspection committee of a public company, from an entity taking part of the distribution system, or from other bodies which require authorization by, or registration with the CVM;
IV – temporary disqualification, up to a maximum period of 20 years, from occupying the posts mentioned in the previous item;
V – suspension of the authorization or registration for the execution of the activities covered by law;
VI – cancellation of the registration or of the authorization to carry out the activities covered by Law;
VII – temporary prohibition, up to a maximum period of 20 years, from practicing certain activities or transactions, to the entities that compose the distribution system or other entities that depend on authorization by, or registration with the CVM;
VIII – temporary prohibition, for a maximum period of 10 years, to operate, directly or indirectly, in one or more types of transaction in the securities market.

- *Number of fines. There are two kinds of fines that may be imposed by the CVM: a) the so-called obligatory fines ("multas cominatórias"); and b) fines imposed as an outcome of an administrative inquiry or a punitive administrative procedure opened by the CVM. Obligatory fines are financial charges imposed whenever somebody fails to attend, or cause a delay in complying with any CVM order of any type. Obligatory fines may be caused by an existing administrative inquiry or punitive administrative procedure, but are not necessarily related to it.*

Quantity of fines imposed by the CVM[5]

(2001 – 2003)

PARTICIPANT / ORIGIN	2001	2002	2003
AUDITORS	125	141	57
FISCAL FAVORED COMPANY	0	0	1
LISTED COMPANY	543	927	1.296
REAL ESTATE FUNDS (F.I.I.)	0	0	49
FUNDS OF FUNDS (FIC-FITVM)	281	16	7
FUNDS OF FUNDS (FIQ-FMIA)	11	0	0
MUTUAL FUNDS (FITVM)	1.078	102	71
STOCK FUNDS (FMIA)	12	0	0
STOCK FUNDS (FMIA-CL)	132	0	0
FGTS FUNDS (FMP-FGTS)	10	10	14
ADMINISTRATIVE INQUIRIES AND PUNITIVE ADMINISTRATIVE PROCEDURES	150	74	146
OTHERS[6]	36	77	56
TOTAL	2.378	1.347	1.697

[4] - $ 171.000 (one hundred thousand dollars)

[5] Please, note the referred difference between obligatory fines and fines imposed by an administrative inquiry or punitive administrative procedure.

[6] Others may include brokerage firms, portfolio managers, custody agents, etc.

Administrative inquiries and punitive administrative procedures ruled by the CVM

(2001 – 2003)

	2001	2002	2003
ADMINISTRATIVE INQUIRIES AND PUNITIVE ADMINISTRATIVE PROCEDURES	83	55	60

Observations: These figures comprise all the administrative inquiries ruled in the 2001 – 2003 period, irrespective of their final decision and no matter their date of origin, meaning that an administrative suit ruled in 2003 may have begun in any previous year, even before 2001.
Also, as explained in the introductory remarks on the advisory and consulting activities, we believe that the matters decided by the CVM's Board of Commissioners should be somehow considered within enforcement statistics. CVM's Board considered 663 matters in 2001, 845 in 2002 and 592 in 2003.

Types and number of sanctions imposed on administrative inquiries and punitive administrative procedures ruled by the CVM (2001 – 2003)

SANCTION	2001	2002	2003
NOT GUILTY / EXCLUSION	213	86	117
FINES	131	55	127
WARNINGS	90	25	36
SUSPENSION	1	3	2
TEMPORARY DESQUALIFICATION	34	9	19
TEMPORARY PROHIBITION	0	0	10

Observations: Any sanction imposed by the CVM through an administrative inquiry or punitive administrative procedure is deemed to be a penalty applied against a related unlawful practice under the matters subjected to the Commission's attributions.
These figures comprise all sanctions imposed by the CVM on administrative inquiries or punitive administrative procedures during the 2001 – 2003 period, irrespective of their final decision and no matter their date of origin, meaning that a sanction imposed in 2003 may refer to an event that occurred in any previous year, even before 2001.
These numbers include: a) single sanction imposed by CVM on each single company or individual, meaning that if more than one person receives a sanction, each sanction is separately counted; b) a single company or individual may accrue more than one sanction, if he is involved in an event that gives cause to more than one infraction.

vi. $ amount of fines, highest, lowest permitted, and average in practice?

DISCLAIMER: Please note that during 2002 Brazil has been through a huge currency devaluation (24%). The average exchange rate (R$/US$) was 2.35, 2.92, 3.07 and 2.92 in 2001, 2002, 2003 and 2004 respectively.

Amount (US$) of obligatory fines imposed by the CVM

(2001 – 2003)

OBLIGATORY FINES	2001	2002	2003
HIGHEST	25.511	20.497	34.511
LOWEST	21	9	8
AVERAGE	1.576	1.201	1.141
TOTAL	3.512.190	1.528.686	1.769.980

Observations: These figures comprise all the obligatory fines imposed by the CVM during the 2001 – 2003 period, irrespective of their final decision and no matter their date of origin, meaning that an obligatory fine imposed in 2003 may refer to a event occurred in any previous year, even before 2001.
These numbers include obligatory fines imposed by the CVM on a single company or individual, per each single event or behaviour, meaning that: a) a single event may result in more than one fine if it involves more than one company or individual; b) a single company or individual may be fined more than once by CVM, if he is involved in an event that gives cause to more than one misconduct.

Amount (US$) of fines imposed by the CVM on administrative inquiries and punitive administrative procedures (2001 – 2003)

OBLIGATORY FINES	2001	2002	2003
HIGHEST	2.069.659,00	22.453.371,00	9.176.668,00
LOWEST	359,25	718,50	359,25
AVERAGE	220.935,53 (during the whole 2001 – 2003 period)		
TOTAL	81.746.144,31 (during the whole 2001 – 2003 period)		

Observations: These figures comprise all fines imposed by the CVM on administrative inquiries or punitive administrative procedures during the 2001 – 2003 period, irrespective of their final decision and no matter their date of origin, meaning that a fine imposed in 2003 may refer to a event occurred in any previous year, even before 2001.
These numbers include fines imposed by the CVM on a single company or individual, per each unlawful infraction or behaviour, meaning that: a) a single event may result in more than one fine if it involves more than one company or individual; b) a single company or individual may be fined more than once by CVM, if he is involved in an event that gives cause to more than one infraction.

vii. How many fines were collected, and how many have been appealed, in the last year? In the last three years?[7]

Collected obligatory fines imposed by the CVM (quantity and amount (US$)

(2001 – 2003)

PARTICIPANT	2001	2002	2003
AUDITORS	16 fines 9.397,00	37 fines 23.794,00	43 fines 74.440,00
FISCAL FAVORED COMPANY	0	0	0
LISTED COMPANY	281fines 185.082,00	259 fines 252.855,00	397 fines 304.475,00
REAL ESTATE FUNDS (F.I.I.)	0	0	29 fines 7.815,00
FUNDS OF FUNDS (FIC-FITVM)	48 fines 76.873,00	12 fines 15.988,00	4 fines 651,00
FUNDS OF FUNDS (FIQ-FMIA)	1 fine 765,00	0	47 fines 38.287,00
MUTUAL FUNDS (FITVM)	230 fines 258.426,00	68 fines 54.797,00	2 fines 1.498,00
STOCK FUNDS (FMIA)	3 fines 6.973,00	0	0
STOCK FUNDS (FMIA-CL)	11 fines 12.330,00	0	0
FGTS FUNDS (FMP-FGTS)	0	10 fines 18.789,00	6 fines 9.279,00
OTHERS[8]	11 fines 36.226,00	30 fines 95.347,00	26 fines 61.566,00

[7] See previous footnote.
[8] Others may include brokerage firms, portfolio managers, custody agents, etc.

TOTAL	586.072,00 (601)	461.571,00 (416)	498.010,00 (554)

Observations: These figures do not necessarily refer to obligatory fines collected in the same year of its imposition, meaning that they can comprise fines imposed in previous periods whose payment was only received in one of the 2001, 2002 or 2003 years. These numbers include each single fine collected by each single company or individual, and are counted per each single event or occurrence.

Quantity of cancelled obligatory fines imposed by the CVM

(2001 – 2003)

PARTICIPANT	2001	2002	2003
AUDITORS	48	45	12
FISCAL FAVORED COMPANY	0	0	1
LISTED COMPANY	58	159	181
REAL ESTATE FUNDS (F.I.I.)	0	0	18
FUNDS OF FUNDS (FIC-FITVM)	166	8	0
FUNDS OF FUNDS (FIQ-FMIA)	8	0	0
MUTUAL FUNDS (FITVM)	791	69	14
STOCK FUNDS (FMIA)	0	0	0
STOCK FUNDS (FMIA-CL)	52	0	0
FGTS FUNDS (FMP-FGTS)	4	0	5
OTHERS[9]	15	37	21
TOTAL	1.142	318	252

Observations: Cancellation of obligatory fines occurs in the case the aggrieved party brings an appeal against a CVM imposition and such appeal succeeds in a superior administrative or judicial body.

These numbers include cancellations obtained by a single company or individual against each single fine, meaning that if more than one person is affected by a fine imposition, all of them appeal against the imposition, and all of their appeals succeed, each victory is separately counted.
Also, these figures do not necessarily refer to obligatory fines cancelled in the same year of its imposition, meaning that they can comprise fines imposed in previous periods whose appeal only succeeded in one of the 2001, 2002 or 2003 years.

Quantity of cancelled fines imposed by the CVM in administrative inquiries or punitive administrative procedures (2001 – 2003)

PARTICIPANT / ORIGIN	2001	2002	2003
ADMINISTRATIVE INQUIRIES AND PUNITIVE ADMINISTRATIVE PROCEDURES	8	4	14

Observations: Cancellation of fines imposed in administrative inquiries or punitive administrative procedure occurs whenever a CVM ruling is appealed by the aggrieved party and such appeal finally succeed in a superior administrative or judicial body.

This number includes cancellations obtained: a) by a single company or individual against each single fine, meaning that if the same process involves more than one person, all of them appeal against the decision, and all of their appeals succeed, each victory is separately counted; b) by a single company or individual, per each unlawful infraction or behaviour, meaning that the same event may cause one or more cancellations, if such event gives cause to more than one infraction.
Also, these figures do not necessarily refer to fines cancelled in the same year of its imposition, meaning that they can comprise fines imposed in previous periods whose appeal only succeeded in one of the 2001, 2002 or 2003 years.

[9] Others may include brokerage firms, portfolio managers, custody agents, etc.

Quantity of suspended fines imposed by the CVM in administrative inquiries or punitive administrative procedures (2001 – 2003)

ORIGIN	2001	2002	2003
ADMINISTRATIVE INQUIRIES AND PUNITIVE ADMINISTRATIVE PROCEDURES	53	0	19

Observations: Fines imposed in administrative inquiries or punitive administrative procedures are categorized as suspended until the aggrieved party's appeal is definitely ruled by a superior administrative or judicial body.

These numbers include suspensions obtained: a) by a single company or individual against each single fine, meaning that if the same process involves more than one person and all of them appeal against the decision, each appeal shall be separately counted; b) by a single company or individual, per each unlawful infraction or behaviour, meaning that the same event may cause one or more suspensions if such event gives cause to more than one appealed infraction.

Also, these figures do not necessarily refer to fines suspended in the same year of its imposition, meaning that they can comprise fines imposed in previous periods whose suspension was only obtained in one of the 2001, 2002 or 2003 years.

Collected fines imposed by the CVM in administrative inquiries or punitive administrative procedures (quantity and amount (US$)

(2001 – 2003)

ORIGIN	2001	2002	2003
ADMINISTRATIVE INQUIRIES AND PUNITIVE ADMINISTRATIVE PROCEDURES	22 fines 29.371,00	10 fines 22.663,00	25 fines 62.169,00

Observations: Fines imposed in administrative inquiries or punitive administrative procedures are categorized as suspended until the aggrieved party's appeal is definitely ruled by a superior administrative or judicial body.

These numbers include suspensions obtained: a) by a single company or individual against each single fine, meaning that if the same process involves more than one person and all of them appeal against the decision, each appeal shall be separately counted; b) by a single company or individual, per each unlawful infraction or behaviour, meaning that the same event may cause one or more suspensions if such event gives cause to more than one appealed infraction.

Also, these figures do not necessarily refer to fines suspended in the same year of its imposition, meaning that they can comprise fines imposed in previous periods whose suspension was only obtained in one of the 2001, 2002 or 2003 years.

Total amount of collected fines almost tripled from 2001 and 2002 to 2003. This difference may be explained by the following reasons: a) The Securities Act was reformed in 1997 by the Law 9.457/97 raising the amount of fines possible to be imposed by the CVM and also introducing the possibility of even increasing such fines in the case of a repeated misconduct; b) the last administrative inquiries and punitive administrative procedures referring to facts or events that happened before the legislative change were ruled by the CVM around 2001 and 2002 – such estimates are based on the usual five year prescription period, counted as of 1997, as well as on the instruction and investigation procedures normally adopted in those cases; c) the CVM cannot initiate any executive action to collect an imposed fine once its ruling is finally reviewed by the superior administrative court, and this final revision takes an average of one year and half to two years to be finished. Therefore, only from 2003 on it is possible to observe an increase in cases decided under the new legal provisions of the Securities Act. Due to these considerations, it is our belief that these figures will significantly increase in the years to follow, providing a more balanced proportion between imposed and collected fines.

These numbers do not include the amounts collected by the CVM in the Consent Decrees it is allowed to execute in some legally provided circumstances, upon the CVM's Board of Commissioner's decision. These Consent Decrees may involve, among other actions, a wide variety of compensation alternatives and, in some cases, they may include the donation of funds by the parties to charity programs and institutions, as well as the indemnification of the expenses that the CVM has incurred with the process up to the moment.

viii. Over the last three years, how many of the appealed sanctions have been dismissed or rejected by the courts? How many have been won by the administrative body?

- *Administrative appeals. Consider the following observations as to the Tables 1 to 3 herein bellow: a) final, maintained and reversed rules refer to the same appeals mentioned in the first column ("nº of appeals"); b) number of appeals refer to each single appeal brought by a company or by an individual against each single sanction imposed, meaning that if the same administrative inquiry or punitive administrative procedure involves more than one person and all of them appeal against the decision, each appeal shall be separately counted; c) number of appeals is considered per each imposed sanction, meaning that the same event may give cause to more than one sanction, depending on the unlawful infraction or behaviour.*

Table 1 - 2001

Sanctions applied by the CVM in administrative inquiries or punitive administrative procedures and appealed before superior administrative bodies

SANCTION DESCRIPTION	Nº OF APPEALS	FINAL RULINGS	MAINTAINED RULINGS	REVERSED RULINGS
NOT GUILTY / EXCLUSIONS	193	135	127	8
WARNINGS	35	32	24	8

FINES	114	87	74	13
DISQUALIFICATIONS	16	14	13	1
PROHIBITIONS	0	0	0	0
SUSPENSIONS	1	1	1	0

Table 2 – 2002

Sanctions applied by the CVM in administrative inquiries or punitive administrative procedures and appealed before superior administrative bodies

SANCTION DESCRIPTION	Nº OF APPEALS	FINAL RULINGS	MAINTAINED RULINGS	REVERSED RULINGS
NOT GUILTY / EXCLUSIONS	81	44	39	5
WARNINGS	6	2	0	0
FINES	66	21	14	7
DISQUALIFICATIONS	6	3	3	0
PROHIBITIONS	0	0	0	0
SUSPENSIONS	1	0	0	0
LICENSE ANNULLING	2	0	0	0

Table 3 – 2003

Sanctions applied by the CVM in administrative inquiries or punitive administrative procedures and appealed before superior administrative bodies

SANCTION DESCRIPTION	Nº OF APPEALS	FINAL RULINGS	MAINTAINED RULINGS	REVERSED RULINGS
NOT GUILTY / EXCLUSIONS	106	6	0	6
WARNINGS	18	4	0	0
FINES	87	0	0	0
DISQUALIFICATIONS	19	0	0	0
PROHIBITIONS	9	0	0	0
SUSPENSIONS	2	0	0	0

As detailed herein bellow ((c), (iii)), appeals processes usually last several years before Brazilian Courts till they reach a final and definitive decision. Therefore, whatever its final results may be (whether dismissed, rejected or accepted), and besides referring to the same time frame (2001 – 2003) these numbers do not compare with neither the number of judiciary appeals brought by the parties against a CVM decision, nor with the number of administrative suits ruled by the CVM.

Nevertheless, aiming at attending to your request, we opted to provide the total numbers of legal lawsuits filed by a party against a CVM sanction during the 2001 – 2003 period, which equals 20. CVM has won 11 of the cases. 9 lawsuits have not been decided yet, and on 5 of these ones, the plaintiff achieved a preliminary injunction by the Court in order to suspend, partially or fully, as the case may be, the effects of the CVM's sanction until a final judiciary decision is reached. Preliminary injunctions do not address the merits of a cause and, therefore, may be altered at any time.

RESULT	*2001*	*2002*	*2003*
CVM's victory	*3*	*2*	*6*
Preliminary injunction	*3*	*1*	*1*
Waiting for final decision	*2*	*1*	*1*

c. Judicial power (civil courts and penal courts)

i. Are some or most judges trained on Financial and Capital Markets issues?

Judges are not obliged to have any particular training on Financial and Capital Markets issues other than those regularly rendered by the standard university mandatory disciplines. The lack of education in the area of securities matters and finance has hindered the effectiveness of the CVM in enforcing both administrative and criminal actions.

ii. Are there specialized courts dealing with capital market matters?

In general the judicial system is not specialized to deal with corporate and financial cases. However, a couple of years ago, an experiment has begun in Rio de Janeiro, which has introduced a new specialized commercial court empowered of judging cases involving corporate disputes. This court is taking on the commercial cases and is not dealing with civil cases, thereby enhancing speed and efficiency. Another way of improving the capacity of the judicial system to deal with financial issues would be for them to get advice from CVM on the grounds of "amicus curiae"[10].

iii. How long do appeals processes last in the courts?

These figures widely vary among each State. Just to cite São Paulo and Rio de Janeiro, the two main centres of economic activity, we estimate the medium time of an appeal to be around 6 years in the former and about three years in the later. These estimates refer to appeals addressed to the State Courts. The Federal Courts, which deal with suits involving any federal organ or entity, have different timeframes. Additionally, such estimates do not consider the time eventually passed when, after the judgement by the State Court, another appeal is directed to the Brazilian Supreme Courts. Those are indeed increasingly rare hypothesis only allowed in very strict cases.

d. Private enforcement (arbitration and self regulatory institutions).

i. Does Private Arbitration exist to solve corporate-related disputes between companies? Between companies and shareholders?

Yes. Companies may opt to stipulate in their bylaws that any disputes between the company and its shareholders or between controlling and minority shareholders, which seek disposable rights, may be submitted to arbitration. In this sense, Law No. 9,307/96, which regulates arbitration in Brazil, was ruled valid and compatible with the Brazilian Federal Constitution by the Federal Supreme Court, which recognized the binding force of arbitration clauses set forth in private legal business. More specifically, for the Novo Mercado, the BOVESPA, the company, the controlling shareholder, management, and the Fiscal Board members must undertake to refer to arbitration any and all disputes or controversies arising out of the listing rules of the Novo Mercado.

ii. Are they oriented just to solve private conflict or do do they include public disputes?

[10] The CVM, upon request, may take part in legal disputes involving the securities market. Its activities can range from the collection of evidence to the issuance of legal opinions. In those cases, it acts as "amicus curiae" assisting the Judiciary.

They could include also public disputes, but we are unaware of any recent case involving a public entity. The main criterion for a dispute to be solved by arbitration is not the private or public nature of the entity involved, but rather the private nature of the rights discussed in the dispute. As long as it involves disposable rights, a controversy may be directed to a private arbitration solution. Companies may stipulate in their bylaws that disputes between the company and its shareholders or between controlling and minority shareholders be submitted to arbitration[11]. Once the parties agree formally to arbitration, the rulings are binding and cannot be appealed.

iii. Are shareholders conflicts solved by means of Private Arbitration?

Yes.

e. Self regulatory Institutions, like stock exchanges

i. How many sanctions have been applied the last year, the last three years?

First we note that the wording "sanction" may lack proper meaning vis-à-vis to the goals of this questionnaire (which we understand to be of an assessment of enforcement "state-of-play"). As a matter of fact, there are several preventive measures that may be adopted in order to avoid market damages as well as potentially unlawful events[12]. Such preventive measures are a trait of current CVM's and Bovespa's actions and are aligned with utmost regulatory and self-regulatory tools. Therefore, in order to give a proper idea of enforcement stage we opted to describe herein each single action taken by Bovespa aiming at applying its rules and regulations, as well as at preventing the occurrence of potential market irregularities, as to the following table:

Self-regulatory Activity			
	2003	***2002***	***2001***
Formal requests for clarifications from companies	*2,126*	*2,757*	*2,879*
Suspensions of trading of listed companies	*54*	*91*	*229*
Analysis of atypical transactions	*18,502*	*17,781*	*5,869*
Transactions sent to auction	*33,099*	*29,874*	*34,733*
Transactions cancelled by decision of BOVESPA	*16,336*	*25,269*	*32,842*
Reports sent to the CVM	*215*	*249*	*277*
Routine auditing at Brokerage Firms	*67*	*53*	*114*
Internal control auditing at Brokerage Firms (compliance)	*72*	*40*	*60*
Specific checking at Brokerage Firms (guarantee funds)	*25*	*34*	*176*
Internal audits	*21*	*N/A*	*33*

A further clarification must be done as to the before mentioned suspension of trading of listed companies. Trading suspensions may commonly refer to stock exchanges operational procedures, mandatory legal or regulatory compliance, as well as to penalties imposed for irregular behavior. The same suspension order may be caused by one or more reasons. We provide herein bellow a more detailed description of suspension orders:

Suspension of trading of listed companies			
	2003	***2002***	***2001***
Bovespa's trading operational procedures	*19*	*14*	*102*

[11] Unless the dispute involves a violation of any public order rule, in which case the Brazilian jurisdiction can not be suppressed.

[12] To have a detailed description of Bovespa's self-regulatory activities and procedures, please, refer to the Annex 1, herein attached.

Material fact sheet publication (required by the company, by the CVM, or caused by the publication of a material fact sheet)	*11*	*6*	*16*
Waiting for: material fact sheet publication, general meeting calling or general meeting decisions, answers to Bovespa's or CVM's consultations	*10*	*17*	*41*
Bankruptcy requirement	*12*	*6*	*4*
CVM's determination	*0*	*5*	*3*
Delisting	*0*	*8*	*18*
Corporate reorganization (concordata) requirement	*1*	*0*	*0*
Moving from Bovespa to the Over-the-Counter Market	*0*	*0*	*2*
Cancellation of trading authorization (due to lack of actualization)	*7*	*10*	*0*
Termination of services agreement (absence of stockholders department)	*1*	*5*	*0*
Miscellaneous	*3*	*0*	*11*
Total	*68*	*71*	*197*

ii. How many investigation procedures have been opened in the last year, the last three years?

Please, refer to the question (ii), above.

f. Case Studies

Can you suggest one or two case study experiences that may be helpful in illustrating the effectiveness (and difficulties) related to corporate governance enforcement in your country that potentially could be presented and discussed at the next Roundtable meeting? Please describe the offence and if resolved, how it was resolved (six lines maximum for each case).

CVM enforcement actions may be preventive or punitive (art. 124, § 5º, inc. I and II, Law 6,404/76, as amended, and Instruction CVM nº 372, June 28, 2002).
As to the preventive action, CVM may increase from 15 to up to 30 days the minimum legal period the company has to publish the first calling of any general meeting, be it extraordinary or common, counted as of the date that the mandatory documents related to the meeting were made available to the shareholders. The Commission also may interrupt for up to 15 days the course of an extraordinary meeting that was already called. Both these hypotheses are subject to the CVM's Board decision and apply only to listed companies but there are some important differences in each case. Whereas in the first one the legal provision refers to operations whose complexity and nature demand longer time to be fully understood and analysed by the shareholders; the later is based on the CVM's need to better understand and study the operation to be proposed to the general meeting, in order, should it be the case, to inform the company, until the end of the interruption period, the reasons why the Commission believes that such operation violates legal or regulatory rules. It must be noted, henceforth, that this last power granted to the CVM involves an appraisal of the operation, requires a merit decision by the regulator and results in a prohibition to the company to carry on the desired operation.

- *Acquisition of Tele Centro Oeste Celular Participações S/A (TCOC) by Telesp Celular Participações S/A (TCP) - A two-step acquisition type :*

TCP acquired the control of TCOC and launched the mandatory tender offer to extend 80% of the price paid for the controlling shares to the common minority shareholders. In conjunction to the acquisition of control, TCP anticipated that, subsequently to the tender offer, it would carry on an operation to transform TCOC into a wholly owned subsidiary of TCP, throughout the acquisition of the remaining shares. The ratio price of the exchange of TCOC's shares by TCP's ones was divulgated since then. This was a controversial case because there was a huge difference between the price paid for the common shares and the one TCP was willing to pay for the remaining shares. Preferred minority shareholders of TCP filed a complaint asking the CVM to interrupt the calling period of the extraordinary meeting called

to appreciate the operation. Their request argued against the delay between the first and the second step of the operation and also complained about the fact that, by the time the operation was first announced, TCP failed to disclose the criteria used to calculate the ratio price that would govern the migration from one company to another. After ordering the interruption of the extraordinary meeting, the CVM concluded, by a majority of its Board, that the operation was not legal. The TCOC and TCP could have challenged CVM's conclusion under Brazilian courts, and could have also insisted on carrying the operation, but decided not to do so.

As to the punitive action, it can be mentioned as a sample of the CVM ex-post enforcement power the case known as "Bombril-Cirio" (Administrative inquiry nº 04/99). In this case, the CVM found Mr. Sérgio Cragnotti, the controlling shareholder of Bombril S/A (after named Bombril-Cirio S/A), guilty of abuse of control and the administrators also guilty of cooperating with the occurrence of such situation and imposed on them fines, prohibitions and disqualifications sanctions. The penalties were grounded on: a) the execution of agreements between the controlling company and one of its controlled subsidiaries, under conditions deemed unfavourable to the other shareholders; b) the adoption of policies and decisions that were undertaken not in the best interest of the company itself, but rather in the interest of other companies owed by the controlling shareholder; c) the vote given by the director elected by the controlling shareholder in a situation that he should have abstained himself because of the existence of a conflict of interest; and d) the deviation of company resources through lending agreements that provided funds to companies owned by the controlling shareholder.

Questions:

2. **Describe the main Institutional Investors, like Pension Funds (PFs) and other large investors. Please provide market indicators like percentage of stocks and bonds held by PFs or other institutional investors in relation to the market or specific corporations.**

The largest institutional investors in Brazil are PFs. The number of existing PFs amounts to 337 and they manage R$216.6bn as of Dec 2003. Only 26.7% of this total or R$58bn, corresponds to equity holdings and this figure is highly leveraged by Previ, the largest PF with R$58bn under management and 59% of it in equities. Excluding Previ, equity holdings drop to 14.6% (R$32bn) of total PFs` investments.

Table – 10 largest PFs and % of investments in equities

PF – Main Sponsor	Total investments in R$mm	% in equities
Previ – Banco do Brasil	57,854	59.3
Petros – Petrobras	21,853	19.3
Funcef – Caixa Economica	14,941	17.9
Sistel - Telemar	10,934	24.5
Valia – CVRD	5,232	25.2
Centrus – Central Bank	5,152	41.2
Itaubanco - Itau	5,110	7.9
Forluz - Cemig	3,506	1.4
Real Grandeza - Furnas	2,985	14.1
Fapes – BNDES	2,484	30.7

Source: Revista Investidor Institucional

Total market capitalization was R$676.7bn in 2003. There is no precise figure about the free-float, but rough estimates point to 35% (R$237bn). Thus, PFs (including Previ) would be responsible for almost 25% of Brazil's free float. However, this is not a totally correct estimate since many pension funds are also part of the controlling groups of some companies (such as CVRD and Perdigão).

According to Anbid, the national investment banking association, as of July 2004, local asset managers hold R$552.5bn in several different types of funds (fixed income, equity, derivatives, mixed). Only 6.2%, or R$34bn, of this amount corresponds to equity investment funds, whereas the bulk of it, 57% is invested in

fixed income funds. Please note that this R$552.5bn includes a significant portion of the R$240bn managed by PFs, which actually choose investment banks to manage part of their fixed income and equity investments.

According to Bovespa, during 2003, local institutional investors were responsible for 27.7% of the total stock exchange traded volume. Some 26.3% was traded by individual investors. 24.7% corresponds to foreign investors, whereas 18% was traded by financial institutions and the remaining 3.7% by corporations. This profile has been changing significantly. Institutional and individual investors have been gaining more participation in equity markets at the expense of financial institutions. In Dec 2001, institutional investors were responsible for only 16% of the total traded volume, individual investors for 21.7%, foreign investors for 25%, financial institutions for 34.2% and corporations for 3%. Although foreign investors have been maintaining their share in total traded volume, the inflow of foreign resources to the Brazilian stock exchange was record in 2003, registering a net value of R$7.5bn.

Thus, I would say that the largest institutional investors in the Brazilian equity markets are PFs, foreign investors and local asset managers, respectively.

i. What have institutional investors done to support better corporate governance? What constraints do they have, what are they allowed to do, and why do they behave the way that they do? More specifically: Are PF or other institutional investors allowed to invest in equity?

Pension Funds:

Until 2001-02, PFs' participation in CG discussions and/or CG real cases was nil. It was only at the end of 2002 that they started to get involved in CG cases. As long-term investors, they realized the need to take more safeguards about the companies they invest in. Some of them have published CG Codes.

However, the way PFs' directors are elected and report to SPC (the Social Security Secretariat) does not give them the right incentives to further adoption of GC investment rules. PFs' directors are usually appointed by the Sponsor company (which most of them are Public Companies) and some directors are elected by participants, but their term doesn't last too long (some 2-to-4 years). This is a short mandate when compared to their investment period in most companies and obviously it is not long enough to allow for a continuous CG effort. In addition to that, the SPC and even the plans' participants frequently require PFs to report positive performance on an annual basis, which can be very complicated in a heavy equity invested PF.

Most recently, some large PFs, such as Petros, Previ and Funcef started to take action against controlling shareholders in companies they believe their rights were harmed (Brasil Telecom, Bombril, Ambev,TRO).

In my opinion, PFs could give stronger signs of adhering to CG principles if the companies they control migrate to Novo Mercado highest levels (Level 2 and NM). PFs control CVRD and Perdigão, which are very important companies in Brazil's stock exchange.

Mutual Funds, Hedge Funds:

Independent asset managers took the lead in CG in Brazil. As early as 1994-95, they started to spread the concept of adopting measures to align the interests of minority and controlling shareholders. Some investment cases are described in the end of this questionnaire.

As for non-independent mutual funds, some have an active stance, but most of them are still very passive, especially in participating in general shareholders meeting. Part of this can be attributed to the fact that the largest assets managers are part of big Financials conglomerates that have a clear conflict when the funds they manage invest on companies that act as clients when using other banking activities.

Every kind of institutional investor is allowed to invest in equity. In the case of PFs, specific legislation allows them to invest up to 35% of total net worth in equities. This limit can be raised to 45% if the companies in which they invest adhere to Bovespa's Level 1 of the Novo Mercado segment (specific rules of CG) which have now some 31 companies. It can also be raised to 50% in the case of invested

companies adopting the Level 2 principles and the Novo Mercado rules (the highest level of Bovespa CG rules). In these levels we have 8 listed companies.

ii. Are PF or other institutional investors allowed or required to vote in Shareholders' meetings?

They are not required, but they have to inform how they voted in every shareholders meeting. In the case of PFs, the local secretariat requires them to inform participants on an annual basis. As for asset managers, CVM instruction # 377/02 demands funds to inform semi-annually how they voted in the meetings in which they took part. Another requirement of this instruction is that the Offering Memorandum clarifies the policies related to voting on shareholders meetings

iii. Do PFs have an Investment Corporate Governance Code?

The three largest PFs have CG Codes (Previ, Petros and Funcef).

Petros launched its CG Code in December 2002.

Funcef and Previ did it in the first half of 2004

iv. Do they elect Independent Directors in Shareholder's meetings?

PFs always elect directors in GSM if they are allowed to (see the Corporate Law for specific minimum voting and non-voting shareholdings required to elect Board members). However, most directors are PFs' ex-employees, their sponsor's ex-employees or even current employees of PFs. Thus, it is hard to describe them as independent.

Independent asset managers try to gather other institutional investors to elect Board members. In this case, the preference is for independent directors. One reason lies behind CVM Instruction 358/02. It is not totally clear, but some asset managers feel that they cannot trade a company's shares in the 15 days preceding quarterly results release (black out period) if they have employees and/or partners seated in this company's Board. They cannot also trade shares in the event of insider information (any relevant fact that can significantly affect share price). Since investors are allowed to invest and withdraw on a daily basis, it makes it nearly impossible to completely cease trading for 15 days in a company already owned by the fund. Not to mention that this "non-trading" period can be highly harmful to the fund's performance. Thus, asset managers in general elect independent board members when they feel that this will create value for companies they invest in.

v. Are Independent Directors elected by PF integrated into Director or Audit Committees?

Once again, PFs mostly elect "non-independent" members (to Audit Committees too) since they are somehow linked to PFs.

vi. Are they active in takeover or selling assets processes?

Since every Brazilian company has a defined group or single controlling shareholder, it is virtually impossible to start a takeover process through listed shares acquisition.

PFs frequently promote block trades in the market. Whenever they intend to sell a large stake in a company they engage in a registered secondary offer.

vii. Does PF regulation require Corporate Governance standards?

Yes, in the sense that they can increase their investments in equity if they invest in companies adopting higher CG principles (measured by Bovespa CG Code). Answer to question 2.i addresses this issue in more detail.

viii. What legal or regulatory constraints do they face that may hamper active ownership? On the other hand, is the regulatory framework adequate to foster Corporate Governance and active Institutional Investors?

I don't see any legal or regulatory constraint preventing or hampering PFs from playing a more active role in equity ownership. However, the SPC should change the way it requires PFs to show accountability. As I mentioned before, SPC starts to act very hard on PFs showing annual performance below the actuarial benchmark (a normal situation in highly equity invested PFs – actuarial benchmark is usually some inflation index plus 6%-to-8% p.a.) In some cases, SPC starts a very intimidating investigation over the "underperformance" of PFs.

In the case of asset managers, the only constraint is CVM instruction 358/02. Differently from PFs employees, asset managers usually have more experience in CG cases and clearly have a remuneration structure that creates incentives to increase shareholder value.

b. Case Studies

Can you suggest one or two case study experiences involving institutional investor influence on corporate governance enforcement in your country that may be helpful in illustrating constraints and/or incentives for strengthening corporate governance that potentially could be presented and discussed at the next Roundtable meeting? Please describe in six lines maximum for each case.

Editora and Livraria Saraiva

Independent shareholders have been playing an active role in the company since 1995.

Controlling shareholders established from the outset that asset managers would have "a say" in capital allocation and structure, executives' remuneration and investor communication. Minority shareholders held a seat on the company's Advisory Board since 1996, and have taken part in their main strategic decisions regarding capital allocation (expansion of the chain of stores and the acquisition of a publishing company), capital structure (obtaining lines of finance from BNDES and IFC) and the implementation of a stock-option plan for executives. Minority shareholders also led negotiations with the controlling shareholders that resulted in significant changes in the company by-laws. This benefit was extended to all shareholders and was reflected in the company's market valuation. The main achievements were:

- Preferred shareholders were granted a tag-along with a 10% discount. This was the FIRST company in Brazil in which non-voting shares have tag-along rights set in its Bylaws, and in more favorable conditions than what was won by minority voting shareholders in the recent law reform.
- A limit to cash availability in the company was established, above which dividend payment becomes mandatory.

Asset managers have also played a strong role in bringing the company closer to the capital market, which has had a consistent impact, over the years, in increasing the liquidity and appreciation of the stock. The company's results have evolved in an extremely positive manner.

Elevadores Atlas

Industrias Villares was an operating and holding company. Its main business was specialty steels manufacturing, but there were several others. One of them was Elevadores Atlas, then a division, dedicated to elevators manufacturing and maintenance.

Elevadores Atlas was an outstanding business. Its cash flow came essentially from the maintenance of an installed base of over 40,000 elevators in the country. They were market leaders, with recurring revenues and a very protected business. Atlas was a "pearl" in the middle of a not very exciting business.

In early 1995, Industrias Villares got into a critical cash situation and the controlling family had to accept two new shareholders. Sul América (insurance company) and Acesita (steel manufacturer) capitalized the company, subscribing voting shares, and shared the company control with the Villares family.

At this point in time, it became clear that this was a very unstable situation. Acesita was clearly interested in the steel business only, while Sul América was a financial player naturally seeking the best alternative to profit and exit the operation. To a group of independent asset managers ("the group"), it was clear that the

Atlas division alone was worth much more than all the rest of the company, and that a spin-off should be highly effective and unlock value.

The group acquired a minority-preferred stake in the market in 1995 and paid several visits and phone calls to Paulo Villares (CEO of the holding company) and Plinio Mussetti (CEO of the Atlas Division), discussing the idea. In 1996 Elevadores Atlas was spun off. The group was invited to sit on Atlas' board of directors in 1998 and participated in the negotiation of a shareholders agreement and in a large corporate restructuring.

As a board member, the group participated in all the discussions that led to the implementation of a stock option plan for the company's key executives and in the discussions that culminated with the decision to look for a strategic alliance for the company. In 1999 the group participated actively in the process that resulted in the sale of Elevadores Atlas to the Swiss company, Schindler.

Elevadores Atlas was one of the most complete CG investment cases. Investing in a solid business and actively participating in all phases, independent asset managers holding minority stakes multiplied the capital initially invested in Villares by 10 times in three and a half years.

ANNEX 1
- BOVESPA'S SELF-REGULATORY ACTIVITY -

Under the supervision and monitoring of the CVM, Bovespa conducts self-regulatory activities aiming at maintaining and protecting an equitable market, ensuring properly conducted trading and fair price formation. Approximately 80 professionals of various levels of expertise are engaged in these activities. Market surveillance procedures occur at four interconnected stages, as follows:

1. Prior to the Trading Session

The Bovespa selects news on listed companies. Material facts are analyzed as to their authenticity, scope, causes, effects and consequences of the information published in the press. Depending on the results of this analysis, special trading procedures are developed, which may rule the suspension of trading for a fixed or undetermined period of time. Likewise, bovespa releases company –related information and events – such as transactions, transfer of shareholding control, and payment of shareholders' rights – to the press and electronic news agencies.

2. During the Trading Session

Bovespa's trading system is previously programmed to stop trading that infringes specific parameters established by the CVM and by Bovespa's Operation Regulations. In these cases, after an electronic message is sent to market participants (brokers, news agencies, exchanges and the CVM), the deals are submitted to an immediate auction or to an auction within a specified term.

3. After the Trading Session

After trading has ended and investors have been identified, the deals that have presented atypical price and volume fluctuations are analyzed. Foreign capital inflow and the type of investors trading on the cash and forward markets are also analyzed. Transactions undertaken outside the established parameters, with regard to the quantity traded by a single investor or group of investors are cancelled and sent to auction.

4. Auditing of Trading Activities

Bovespa's audit is conducted internally on the basis of information extracted from its record and electronic systems. External auditing is conducted through audits carried out directly at Brokerage Firms. The main purpose of the audit is to ensure that trading operations are being legally and regularly carried out by brokerage firms.

CHILE

Legal, Regulatory and Institutional Framework for Enforcement – State of Play

What are the main institutions in your country devoted to enforcement of regulation related to corporate governance?

1. Administrative level

a. Responses should address each relevant body. How is it organized? How many people work in it? How much is the budget (in US$). Is there independence in terms of funding, authority, and election of its head? Once appointed, are appointees subject to a fixed term?

The Head of the regulatory body (Superintendencia de Valores y Seguros, SVS) is the Superintendent, who is appointed by the Executive Power (Chilean President), who can freely remove him. There is no fixed term for the SVS Chair or Board.

The budget of the SVS is US$ 9.080.528. It is part of the public budget, meaning that this is not an independent budget. Its personnel are 246 people; 70% are professionals and the employees are mainly auditors, commercial engineer and lawyers.

TOTAL AMOUNT OF SUPERVISED ENTITIES BY THE SVS

Entity	Standing Number	COMMENTS
Securities Registry	541	* Included: 12 Securitizations companies 5 Non-life Insurance Co. 3 Life Insurance Co.
Foreign Securities	25	9 Mutual funds shares 1 close-end fund share 9 Investment Fund shares 3 ADR 1 Class of Stock
Securities Intermediaries	49	7 Broker Dealers 42 Stock Brokers
External Auditors	515	383 Entities 132 Natural Persons
Mutual Fund Managers	5	
General Fund Managers	22	
Investment Fund Managers	12	
Housing Fund Managers	2	
Foreign Investment Fund Managers	4	
Securitization Firms	13	
Mutual Funds	231	
Investment Funds	44	
Foreign Investment Funds	14	
Housing Funds	8	
Non-Life Insurance Companies	23	
Life Insurance Companies	31	
Insurance Intermediaries	2365	
Insurance Claims Adjusters	186	
Mortgage Loans Managers	16	
Risk Rating Agencies	3	
Reinsurance Intermediaries	45	
Attorneys Endowed with Proxy Powers	47	

b. Description of the administrative procedures and sanctions.

i. Principal offences

The principal offences are contained in the Securities Market Law (# 18.045), including insider trading, tipping, front running, different kinds of market abuse, fraud committed by fund managers, false statements and certifications to market and SVS, misleading information and filing to SVS, market manipulation, conflicts of interest, tender offers which have not complied with legal requisites, use of securities in custody of a broker dealer or a depository trust company.

ii. Is there an enforcement department? How many people are working on it?

Yes, SVS created an enforcement department in November 2001. Eight officials are currently working in that new department.

iii. Is there an explicit due process to sanction? Describe it.

There are several guaranties imposed by Constitution and law. Specifically, the Administrative Procedure Law (#19.880) defines minimal requirements which must be considered in certain processes. The Congress is discussing a new law which will govern definitively the investigation procedures.

The process led by SVS to impose a sanction is:

The first step consists in gathering information to determine whether Securities Rules have been broken. The second step consists of notifying the accused party of the charges, according to the conclusions obtained in the previous step, with the objective that the party receiving the formal communication has the chance to defend himself as well as to require the arrangements that he thinks are necessary to defend his actions or reject the charges. This step begins the public part of the process and enables entities under SVS surveillance to have an active role.

Once the due process arrangements concerning the accused party have been fulfilled, SVS makes a determination to either close the investigation or impose a sanction.

Entities which received a fine or other sanction can ask the Superintendent to reconsider and/or file a legal suit against the sanction imposed by SVS.

The processes of gathering information are charged with the Divisions of Surveillance and Enforcement. The investigation procedure is carried out by the Enforcement Division.

The sanction is determined by the Superintendent and a committee comprised of the Superintendent, the Securities deputy chairman and the head of the Legal Department.

iv. Who is authorized to sanction?

The Superintendent

v. How many fines or sanctions have been imposed through last year, the last three years? (If possible, please be specific regarding categorisation of types of fines or sanctions imposed.)

SVS has imposed during the last year (2003) 16 significant sanctions, over US$ 3000. However, many additional “small” sanctions or reprimands have been imposed for cases for which the fault is trivial. The detail is below.

Types of Fines or Sanctions Imposed

Year	2000	2001	2002	2003	2004	TOTAL	TOTAL AMOUNT (US$)	AVERAGE AMOUNT
CENSORSHIPS	0	24	86	32	2	142	X	X
SUSPENSION	0	0	0	6	0	6	X	X
SANCTIONS BY AMOUNT (US$)								
(0-3000)	0	1	3	51	65	120	94920	791
(3000– 15000)	6	5	1	11	8	31	233650	7537
(15000– 30000)	2	0	0	1	1	4	83636	20909
(30000 and more)	0	7	0	5	2	14	5448314	389165
TOTAL FINES	8	13	4	68	76	169	X	X
Average Amount (US$)	10288	16951	2257	77022	3746			

Source: SVS (Superintendencia de Valores y Seguros).

vi. $ Amount of fines, highest, lowest permitted, and average in practice?

There is not an official classification of fines. The amount can be up to U.F. 15.000 (US$ 387,500 approximately), and in repeat cases that amount can be tripled. Also the amount can be up to 30% of the irregular operation. The highest penalty was applied in the "Chispas" case for 55 million US dollars in 1997. The detail is above.

vii. How many fines were collected, and how many have been appealed, in the last year? In the last three years?

Thirty-eight (38) out of 68 fines imposed last year have been paid. *In the last three years (2001-2003), 41 out of 85 have been paid*

viii. Over the last three years, how many of the appealed sanctions have been dismissed or rejected by the courts? How many have been won by the administrative body?

Six cases in the last three years have been appealed in the courts. One sanction, the "Chispas Case", has been upheld in favor of the SVS in the appeal court, which is the second instance, overturning the decision of the first instance tribunal that rejected the administrative sanction applied by SVS. Another sanction was resolved against the SVS in the first instance. Four are still in the process of appeal.

c. Judicial power (civil courts and penal courts)

i. Are some or most judges trained on Financial and Capital Markets issues?

Most of the Judges have not received a special training on Financial and Capital Markets issues.

ii. Are there specialized courts dealing with capital market matters?

There are not specialized courts on Capital Markets matters.

iii. How long do appeals processes last in the courts?

The appeals process can last at least two or three years in the first instance. And two or three years more before the appeals court.

d. Private enforcement (arbitration and self regulatory institutions).

i. Does Private Arbitration exist to solve corporate-related disputes between companies? Between companies and shareholders?

Yes, there is Private Arbitration to solve disputes among affected parties.

ii. Are they oriented just to solve private conflict or do they include public disputes?

Private arbitration is mainly oriented toward solving private disputes; groups of shareholders can use it to solve their disputes with a company or its administration. But the practice in Chile has been that shareholder disputes involving publicly listed companies have been addressed in the Courts. In the case of sanctions applied by the SVS, the appealing procedures have to be done before the courts.

iii. Are shareholders conflicts solved by means of Private Arbitration?

No. The practice in Chile is that Shareholders Conflicts are generally addressed in the Courts. Nevertheless, that kind of conflicts can be solved by private arbitration.

e. Self regulatory Institutions, like stock exchanges

i. How many sanctions have been applied the last year, the last three years?

One sanction has been applied during the last three years.

ii. How many investigation procedures have been opened in the last year, the last three years?

Seven in the last three years.

f.Case Studies

Can you suggest one or two case study experiences that may be helpful in illustrating the effectiveness (and difficulties) related to corporate governance enforcement in your country that potentially could be presented and discussed at the next Roundtable meeting? Please describe the offence and if resolved, how it was resolved (six lines maximum for each case).

- "Chispas" Case. SVS determined that the CEO and other important managers of an issuer, who were negotiating the strategic alliance with a foreign company at the same time, were illegally self-dealing the sale of their own shares to the same company as well as the virtual control exercised by them using some legal restrictions applicable to institutional investors. The SVS decision was appealed in court and overturned, but then upheld at the higher court.

- "Inverlink Case". SVS determined that a broker dealer was getting money from the public through transactions which were hidden from SVS surveillance, and they were not disclosed in their financial statements. Furthermore, some members of that broker dealer got and used time deposits of third parties for their own purpose.

Encouraging the Emergence of Active and Informed Owners

Institutional Investors are generally minority shareholders; nevertheless they are the larger and the most sophisticated among them. To the extent they are active investors, they act in a proper way to create value for the fund, on behalf of the beneficial owners, and generate positive externalities for the market.

In some countries PFs are participants in the market, as equity holders and bondholders; PFs therefore should have incentives to perform as active investors. In other countries Pension Funds are not allowed to buy shares or even private bonds; then the incentive to act is lower.

Questions:

2. Describe the main Institutional Investors, like Pension Funds (PFs) and other large investors. Please provide market indicators like percentage of stocks and bonds held by PFs or other institutional investors in relation to the market or specific corporations.

A feature of Chilean capital markets is the emergence of large and increasingly sophisticated institutional investors. The most dominant are the private pension fund managers created by the 1981 pension reform, which replaced a state, managed defined benefit plan with a mandatory individually capitalized defined contribution system to which all Chilean workers invest 10 per cent of their incomes.

Such pension funds increased their share of GDP from 11% in 1985 to more than 50% in 2004 and are expected to approach the size of GDP by the time the system reaches a steady state. By the end of October 2003 they amounted to US$46.8 billion.

Others institutional investors are Insurance Companies. They are very active in the debt market; their assets are valued at 18% of GDP. Mutual Funds or open ended funds, representing 9% of GDP. And Investment Funds or closed ended fund assets are 2% of GDP.

i. What have institutional investors done to support better corporate governance? What constraints do they have, what are they allowed to do, and why do they behave the way that they do? More specifically: Are PF or other institutional investors allowed to invest in equity?

All Institutional Investors are allowed to invest in equities without regulatory limits. In particular, Pension fund have been allowed to invest in shares of companies since 1985. Nowadays, pension fund managers are offering five different kinds of funds (A, B, C, D and E). The main difference among them is the share of the total assets invested in equity. According to the type of pension fund, the limits are:

a) Maximum Limits per instrument (as a function of the Value of the Fund)

Type of Fund	A	B	C	D	E
Equity	60%	50%	30%	15%	0%

Actual percentages of these pension funds invested in equities are as follows, an average of 13% across the five:

Fund A	Fund B	Fund C	Fund D	Fund E
20.65	18.23	14.01	9.09	0

b) Maximum Limits per issuer

5% of the value of each type of pension fund[13].

7% of the company shares for the total pension funds under the same pension fund manager.

ii. Are PF or other institutional investors allowed or required to vote in Shareholders' meetings?

Yes. According to the Pension System Act, the AFP's have the duty to attend and vote in the Shareholder's meetings. A provision in pension fund legislation allows such funds to act in concert and elect directors (who may not be related to the controlling shareholder) through cumulative voting. They generally do so in larger public companies. In addition, if a fund owns more than one per cent of the company's equity, it is legally obliged to attend shareholder meetings and vote its shares. While only required to disclose the manner in which it votes to its regulatory authority, such funds generally make their votes public at the meetings. In the case of mutual funds, they have to vote for non-controller candidates to the board as well.

iii. Do PFs have an Investment Corporate Governance Code?

There isn't a Corporate Governance Code, but the pension funds administrators are building a set of explicit rules about selection of the members of the board in the companies in which pension funds invest.

iv. Do they elect Independent Directors in Shareholder's meetings?

Yes, there are special provisions in order to regulate the vote of the pension funds administrators (AFPs) in elections of the boards of companies. The rules encourage voting for the most suitable directors, as long as they are not related to the controllers of the company.

v. Are Independent Directors elected by PF integrated into Director or Audit Committees?

Yes. There are 643 directors integrated into Director or Audit Committees; out of these 280 are independent, or 44%.

vi. Are they active in takeover or selling assets processes?

Yes, normally they are the counterpart in takeover processes.

vii. Does PF regulation require Corporate Governance standards?

The requirements for Corporate Governance standards are related to their fiduciary responsibilities as managers and to procedures to vote for the election of board members and in shareholders meetings. There is no explicit statement on Corporate Governance.

viii. What legal or regulatory constraints do they face that may hamper active ownership? On the other hand, is the regulatory framework adequate to foster Corporate Governance and active Institutional Investors?

The Law does set out a role for pension funds in shareholders meetings and board elections. Nonetheless, the regulatory framework could be improved in many aspects. For instance, PFs are not allowed to consult among themselves in advance regarding their voting decisions, which would strengthen their ability as minority shareholders to influence governance. Independent Directors elected by Pension Funds are not considered as independent in the board of subsidiaries, diminishing the capacity of PFs to play a monitoring role. In short, there is no provision to foster Corporate Governance,

[13] This limit is reduced for low liquidity shares and for companies where the ownership is concentrated.

with the exception of the procedures requiring pension funds to vote in the election of board members and to attend shareholders meetings.

Finally, during this year some PFs have created Corporate Governance Codes for PF and Mutual Funds, which establish the framework affecting directors elected by PFs, and the behavior that they must have.

b. Case Studies

Can you suggest one or two case study experiences involving institutional investor influence on corporate governance enforcement in your country that may be helpful in illustrating constraints and/or incentives for strengthening corporate governance that potentially could be presented and discussed at the next Roundtable meeting? Please describe in six lines maximum for each case.

Pension funds were very active in negotiating the tender offer price for Gener, an electrical power firm. As a result of this negotiation, they got substantial increases in the price.

ANNEX

CENSORSHIPS (2000-2003)

FECHA	NOMBRE O RAZON SOCIAL	TIPO SANCION	INFRACTOR
08.05.2001	SOCIEDAD EDUCACIONAL Y COLEGIO FRANCISCO DE MIRANDA S.A.	CENSURA	GERENE GENERAL
20.10.2001	SCL TERMINAL AEREO SANTIAGO S.A. SOCIEDAD CONCESIONARIA	CENSURA	GERENTE GENERAL
20.10.2001	SCL TERMINAL AEREO SANTIAGO S.A. SOCIEDAD CONCESIONARIA	CENSURA	GERENTE GENERAL
20.12.2001	INMOBILIARIA ARABE S.A.	CENSURA	GERENTE GENERAL
20.12.2001	FABRICA VICTORIA DE PUENTE ALTO S.A. TEXTIL	CENSURA	GERENTE GENERAL
20.12.2001	INMOBILIARIA FRONTERA COUNTRY CLUB S.A.	CENSURA	GERENTE GENERAL
20.12.2001	TELEMERGIA CHILE S.A.	CENSURA	GERENTE GENERAL
20.12.2001	S.A. CONSTRUCCION Y RENTA (EN LIQUIDACION)	CENSURA	GERENTE GENERAL
20.12.2001	EMPRESA DE AGUA POTABLE S.M.P. S.A.	CENSURA	GERENTE GENERAL
20.12.2001	CARBONIFERA VICTORIA DE LEBU S.A.	CENSURA	GERENTE GENERAL
20.12.2001	CALAF S.A.C.I	CENSURA	GERENTE GENERAL
20.12.2001	EMPRESA PORTUARIA COQUIMBO	CENSURA	GERENTE GENERAL
20.12.2001	SOCIEDAD CHAÑAR S.A. DE INVERSIONES	CENSURA	GERENTE GENERAL
20.12.2001	INMOBILIARIA DEPORTIVA UNION ESPAÑOLA S.A.	CENSURA	GERENTE GENERAL
20.12.2001	CONCESIONARIA AGUAS DEL MAULE S.A.	CENSURA	GERENTE GENERAL
20.12.2001	CONCESIONARIA AGUAS DE LA ARAUCANIA S.A.	CENSURA	GERENTE GENERAL
20.12.2001	AGUAS DEL VALLE S.A.	CENSURA	GERENTE GENERAL
20.12.2001	AGUAS DEL BOSQUE S.A.	CENSURA	GERENTE GENERAL
20.12.2001	WORLDXCHANGE COMMUNICATIONS S.A.	CENSURA	GERENTE GENERAL
20.12.2001	CLUB HIPICO DE ANTOFAGASTA S.A.	CENSURA	GERENTE GENERAL
20.12.2001	INMOBILIARIA AUDAX S.A.	CENSURA	GERENTE GENERAL
20.12.2001	SAC CHILE S.A.	CENSURA	GERENTE GENERAL
20.12.2001	INMOBILIARIA CLUB CONCEPCION S.A.	CENSURA	GERENTE GENERAL
20.12.2001	HIPODROMO DE ARICA S.A.	CENSURA	GERENTE GENERAL
03.01.2002	APLICA A CLASIFICADORA DE RIESGO HUMPHREYS LTDA.	CENSURA	
22.02.2002	DE EMPRESA NACIONAL DE ELECTRICIDAD S.A.	CENSURA	GERENTE GENERAL
22.02.2002	DE ABN AMRO SECURITIZADORA S.A.	CENSURA	GERENTE GENERAL
22.02.2002	CONCESIONARIA AGUAS DE LA ARAUCANÍA S.A.	CENSURA	GERENTE GENERAL

22.02.2002	**AGUAS DE LA ARAUCANÍA S.A.**	**CENSURA**	GERENTE GENERAL DE
22.02.2002	**AGUAS DE LILEN S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**AGUAS DEL BOSQUE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**AGUAS DEL VALLE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**AGUAS DE LA FRONTERA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**AGUAS NUEVO SUR, ARAUCANÍA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**ALEX SERRI GALLEGOS GERENTE GENERAL DE AGUAS NUEVO SUR, MAULE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**AT&T CHILE LONG DISTANCE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**CHILE CIENTO OCHENTA Y NUEVE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**COLEGIO BRITANICO ST. MARGARET´S S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**CONCESIONARIA AGUAS DEL MAULE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**EMPRESA DE SERVICIOS SANITARIOS DEL MAULE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**EMPRESA DE TRANSPORTES DE SEÑALES S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**EQUS S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**ESTADIO ISRAELITA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**FORESTAL CARAMPANGUE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**EMILIO OLIVARI CROVETO GERENTE GENERAL DE INMOBILIARIA CASA DE ITALIA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA CLUB DE GOLF Y DEPORTES CHICUREO S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA CRAIGHOUSE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA DEL ARRAYAN S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA INSTITUTO DE PREVISIÓN S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**ALEJANDRO PALMA STEVENSON GERENTE GENERAL DE INMOBILIARIA LEÑADURA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA PROHOGAR S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA UNION ESPAÑOLA DE VALPARAISO S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INVERSIONES COBRE DOS S.A. EN LIQUIDACIÓN**	**CENSURA**	GERENTE GENERAL
22.02.2002	**LIGA DE DEPORTES LA REINA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**MICARRIER TELECOMUNICACIONES S.A.**	**CENSURA**	GERENTE GENERAL

22.02.2002	**NEW WORLD TELECOM S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**QUILAGUAS S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**HS.A. DE DEPORTES CASCADA DE EL SALTO**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SAC CHILE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**S.A.C.I. FALABELLA**	**CENSURA**	GERENTE GENERAL
22.02.2002	**DE SADIA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SERVIHABIT S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SIF SOCIEDAD INVERSORA FORESTAL S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD CHAÑAR DE INVERSIONES S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD CONCESIONARIA AEROSUR S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD EDUCACIONAL APOQUINDO LTDA. Y CIA. C.P.A. Nº 1.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD EDUCACIONAL APOQUINDO LTDA. Y CIA. C.P.A. Nº 2.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD EDUCACIONAL Y COLEGIO FRANCISCO DE MIRANDA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD INMOBILIARIA DE LEASING HABITACIONAL CHILE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD RECREATIVA Y DEPORTIVA UNIVERSIDAD DE CONCEPCIÓN S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**TELEMERCADOS EUROPA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**TERMAS Y AGUAS DE PANIMAVIDA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**TRANSA SECURITIZADORA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**VERTIENTES DEL MAULE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**WORLDXCHANGE COMMUNICATIONS S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**PRINCE OF WALES COUNTRY CLUB S.A. INMOBILIARIA**	**CENSURA**	GERENTE GENERAL
22.02.2002	**JUSTICE TELECOM INTERNATIONAL LARGA DISTANCIA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**DE BANCHILE SECURITIZADORA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**COLEGIO INGLÉS CATOLICO DE LA SERENA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**DEPORTES NAUTICOS Y TURISMO PAPUDO S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**EMPRESA CABO DE HORNOS S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**ESTADIO ESPAÑOL DE CURICO S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**ESTADIO ISRAELITA MACCABI VIÑA DEL MAR S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**GRANADILLAS COUNTRY CLUB S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA ARABE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA ESPAÑA DE VALDIVIA S.A.**	**CENSURA**	GERENTE GENERAL

22.02.2002	**INMOBILIARIA ESTADIO SIRIO S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA ITALIA HUMANITARIA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA PEDRO DE VALDIVIA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INMOBILIARIA ESTADIO ITALIANO S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**S.A. ESTADIO ESPAÑOL**	**CENSURA**	GERENTE GENERAL
22.02.2002	**S.A. FRANCESA DE DEPORTES**	**CENSURA**	GERENTE GENERAL
22.02.2002	**S.A. INMOBILIARIA CLUB DE CAMPO LA POSADA**	**CENSURA**	GERENTE GENERAL
22.02.2002	**S.A. INMOBILIARIA SPORT FRANCAISE**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD DE ARTESANOS SANTA LUCIA S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD FORESTAL COBQUECURA LTDA. Y CIA. C.P.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD INMOBILIARIA VIÑA DEL MAR S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD RURAL DE MAGALLANES S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SOCIEDAD DE INVERSIONES GENERADORAS DE EMPRESAS S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**SPORMENT CLUB S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**TEXTIL PROGRESO S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**CLUB ATLETICO SANTIAGO S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**INVERSIONES ENERCOBRE S.A.**	**CENSURA**	GERENTE GENERAL
22.02.2002	**AGUAS PEHUENCHE S.A.**	**CENSURA**	GERENTE GENERAL
22.04.2002	**AGUAS MANQUEHUE S.A.**	**CENSURA**	GERENTE GENERAL
24.05.2002	**BCI CORREDOR DE BOLSA S.A.**	**CENSURA**	GERENTE GENERAL
05.06.2002	**ENTIDAD DENOMINADA EQUS S.A.**	**CENSURA**	GERENTE GENERAL
07.11.2002	**LARAIN VIAL S.A. ADMINISTRADORA DE FONDOS MUTUOS**	**CENSURA**	GERENTE GENERAL
07.11.2002	**SANTANDER S.A. ADMINISTRADORA DE FONDOS MUTUOS**	**CENSURA**	GERENTE GENERAL
18.12.2002	**FONDO SOLIDARIO DE CREDITO UNIVERSITARIO DE LA UNIVERSIDAD**	**CENSURA**	EX ADMINISTRADOR GENERAL
	DE ATACAMA		
06.02.2003	**SCOTIA SUDAMERICANO ADMINISTRADORA DE FONDOS MUTUOS S.A.**	**CENSURA**	SOCIEDAD
25.04.2003	**CALAF S.A.I.C.**	**CENSURA**	GERENTE GENERAL
25.04.2003	**CENTRO DE EXPORTACION PUERTA DE AMERICA S.A.**	**CENSURA**	GERENTE GENERAL
25.04.2003	**EMPRESAS JUAN YARUR S.A.**	**CENSURA**	GERENTE GENERAL
17.06.2003	**ESTADIO ISRAELITA S.A.**	**CENSURA**	GERENTES
			DIRECTORES
05.11.2003	**GRANT THORNTON INTERNATIONAL S.A.**	**CENSURA**	
14.11.2003	**ABN AMRO SECURITIZADORA S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**ALMAGRO S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**AXXION S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**CLINICA SANTA MARIA S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**COMERCIAL SIGLO XXI S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**CONEXIÓN CHILE S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**CORPESCA S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**ELECTROANDINA S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**AGUA POTABLE S.M.P S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**EMPRESA DE TRANSPORTE DE SEÑALES S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**EQUANT CHILE S.A**	**CENSURA**	GERENTE GENERAL
14.11.2003	**FORUS S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**INMOBILIARIA ARABE S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**ISAPRE BANMEDICA S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**JUGOS CONCENTRADOS S.A.**	**CENSURA**	GERENTE GENERAL

14.11.2003	**MCI INTERNACIONAL (CHILE) S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**NIBSA S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**PROFACTORING S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**READY MIX S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**S.A. INMOBILIARIA TERRENOS Y ESTABLECIMIENTOS COMERCIALES**	**CENSURA**	GERENTE GENERAL
14.11.2003	**SOCIEDAD DE ARTESANOS SANTA LUCIA S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**TELECAL S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**TELEPHONE2 S.A**	**CENSURA**	GERENTE GENERAL
14.11.2003	**TERMINAL PACIFICO SUR VALPARAISO S.A.**	**CENSURA**	GERENTE GENERAL
14.11.2003	**VIDA TRES S.A.**	**CENSURA**	GERENTE GENERAL
22.12.2003	**SOCIEDAD DE ARTESANOS SANTA LUCIA S.A.**	**CENSURA**	REPRESENTANTE LEGAL

SUSPENSIONS 2000-2003

FECHA	NOMBRE O RAZON SOCIAL	TIPO SANCION	MONTO UF	INFRACTOR	ESTADO
02.04.2003	**COMPAÑÍA MINERA TAMAYA S.A.**	**SUSPENSION** 5 DIAS		**SOCIEDAD**	
25.04.2003	**COMPAÑÍA MINERA TAMAYA S.A.**	**SUSPENSION** 7 DIAS		**SOCIEDAD**	
07.04.2003	**COMPAÑÍA MINERA TAMAYA S.A.**	**SUSPENSION** 21 DIAS		**SOCIEDAD**	
07.03.2003	**INVERLINK S.A. CORREDORES DE BOLSA**	**SUSPENSION 6 MESES**			
01.04.2003	**SANTA ISABEL S.A.**	**SUSPENSION**		**SOCIEDAD**	
02.04.2003	**SANTA ISABEL S.A.**	**SUSPENSION** DOS DIAS		**SOCIEDAD**	

Fines by Amount (2000-2003)

265,4 US$ – 2640 US$

FECHA	NOMBRE O RAZON SOCIAL	TIPO SANCION	MONTO UF	MONTO US$	INFRACTOR
14.11.2003	**ADMINISTRADORA DE FONDOS DE PENSIONES MAGISTER S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**AGUA POTABLE BARNECHEA S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**AGUAS DE QUETENA S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**AGUAS NUEVO SUR MAULE S-A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**AT&T CHILE LONG DISTANCE S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**AT&T CHILE NETWORKS S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**BAYESA-BIWATER AGUAS Y ECOLOGIA S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**BOSTON SECURITIZADORA S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**CALAF S.A.I.C.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**CERAMICAS INDUSTRIALES S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**CHILE CIENTO OCHENTA Y NUEVE S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**CLINICA DAVILA Y SERVICIOS MEDICOS**	**MULTA**	10	265,4	GERENTE GENERAL

	S.A.				
14.11.2003	**CLUB HIPICO DE PUNTA ARENAS S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**CONCRECES LEASING S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**EMPRESA DE SERVICIOS SANITARIOS SAN ISIDRO S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**GLOBUS 120 S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**IBEROAMERICAN RADIO CHILE S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**IFX LARGA DISTANCIA CHILE S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**INDALUM S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**INMOBILIARIA LA REPUBLICA S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**LATIN AMERICAN LAUTINUS CHILE S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**MICARRIER TELECOMUNICACIONES S-A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**NEGOCIOS REGIONALES S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**NEW WORLD TELECOM S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**SAC CHILE S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**SCL TERMINAL AEREO SANTIAGO S.A. SOCIEDAD CONCESIONARIA**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**SECURITIZADORA INTERAMERICANA S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**SOCIEDAD CONCESIONARIA AEROVIAS S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**SOCIEDAD CONCESIONARIA AUTOPISTA CENTRAL S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**SOCIEDAD CONCESIONARIA AUTOPISTA DEL BOSQUE S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**SOCIEDAD CONCESIONARIA BAS S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**SOCIEDAD CONCESIONARIA VESPUCIO NORTE EXPRESS S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**SODIMAC CHILE S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**TELECOMUNICACIONES INTERNACIONALES S.A.**	**MULTA**	10	265,4	GERENTE GENERAL
14.11.2003	**117 TELECOMUNICACIONES S.A.**	**MULTA**	20	530,8	GERENTE GENERAL
03.12.2003	**SOCIEDAD INMOBILIARIA INSTITUTO DE PREVISION S.A.**	**MULTA**	30	796,2	**GERENTE GENERAL**
21.11.2002	**CLINICA DAVILA Y SERVICIOS MEDICOS S.A.**	**MULTA**	40	1061,6	GERENTE GENERAL
01.08.2002	**INVERSIONES TRICAHUE S.A.**	**MULTA**	50	1327	GERENTE GENERAL
04.10.2002	**SAC CHILE S.A.**	**MULTA**	50	1327	GERENTE GENERAL
20.11.2003	**ADMINISTRADORA DE FONDOS DE PENSIONES MAGISTER S.A.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**
14.11.2003	**CALAF S.A.I.C.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**
20.11.2003	**CLUB HIPICO DE ANTOFAGASTA S.A.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**
20.11.2003	**FORESTAL CARAMPANGNE S.A.**	**MULTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**

14.11.2003	**INMOBILIARIA ESPAÑA DE VALDIVIA S.A.**	**MULTA CONJUNTA**	100	2654	**DIRECTORES**
20.11.2003	**INMOBILIARIA VIÑA DEL MAR S.A.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL**
20.11.2003	**INMOBILIARIA YUGOSLAVA S.A.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**
20.11.2003	**INVERSIONES NUEVA REGION S.A.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**
20.11.2003	**NETLINE MULTICARRIER S.A.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**
20.11.2003	**NEW WAVE COMMUNICATIONS S.A.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**
20.11.2003	**SIF SOCIEDAD INVERSORA FORESTAL S.A.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**
25.04.2003	**SOCIEDAD DE ARTESANOS SANTA LUCIA S.A.**	**MULTA**	100	2654	DIRECTORIO
20.11.2003	**TERMAS Y AGUAS DE PANIMAVIDA S.A.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**
10.10.2003	**TOESCA S.A. ADMINISTRADORA DE FONDOS DE INVERSION**	**MULTA**	100	2654	SOCIEDAD
20.11.2003	**117 TELECOMUNICACIONES S.A.**	**MULTA CONJUNTA**	100	2654	**GERENTE GENERAL** **DIRECTORES**
		Totales	2030	53876,2	

Fines by Amount (2000-2003)

3891,01US$ – 13270 US$

FECHA	NOMBRE O RAZON SOCIAL	TIPO SANCION	MONTO UF	MONTO US$	INFRACTOR
14.11.2003	**INNOBILIARIA SANTIAGO WANDERERS SOCIEDAD ANONIMA**	**MULTA CONJUNTA**	150	3891,01	**GERENTE GENERAL**

					DIRECTORES
13.04.2000	**MUNITA Y CRUZAT S.A. CORREDORES DE BOLSA**	**MULTA**	150	3891,01	Sociedad
25.04.2003	**COMPAÑÍA MINERA TAMAYA S.A.**	**MULTA**	150	3891,01	GERENTE GENERAL
21.11.2002	**AGN-LAZO Y ASOCIADOS AUDITORES CONSULTORES**	**MULTA**	200	5308	**SOCIO PRINCIPAL**
08.05.2001	**SOCIEDAD CLUB HIPICO DE SANTIAGO S.A.**	**MULTA**	200	5308	GERENTE GENERAL
14.11.2003	**INMOBILIARIA YUGOSLAVA S.A.**	**MULTA CONJUNTA**	200	5308	**GERENTE GENERAL** **DIRECTORES**
08.05.2001	**NTERVALORES CORREDORES DE BOLSA LTDA.**	**MULTA**	200	5308	
14.11.2003	**INVERSIONES NUEVA REGION S.A.**	**MULTA CONJUNTA**	200	5308	**GERENTE GENERAL** **DIRECTORES**
08.05.2001	**MADECO S.A.**	**MULTA**	200	5308	GERENTE GENERAL
24.05.2000	**BANOSORNO CORREDORES DE BOLSA S.A.**	**MULTA**	250	6.635	Sociedad
14.11.2003	**CLUB HIPICO DE ANTOFAGASTA S.A.**	**MULTA CONJUNTA**	250	6.635	**GERENTE GENERAL** **DIRECTORES**
13.04.2000	**FINANZAS Y NEGOCIOS S.A. CORREDORES DE BOLSA**	**MULTA**	250	6.635	Sociedad
08.05.2001	**FINANZAS Y NEGOCIOS S.A. CORREDORES DE BOLSA**	**MULTA**	300	7.962	Sociedad
14.11.2003	**FORESTAL CARAMPANGUE S.A.**	**MULTA**	300	7.962	**GERENTE GENERAL** **DIRECTORES**
14.11.2003	**SAC CHILE S.A.**	**MULTA CONJUNTA**	300	7.962	**GERENTE GENERAL** **DIRECTORES**
30.07.2003	**SUPERMERCADOS UNIMARC S.A.** **A LA EPOCA DE LOS HECHOS**	**MULTA**	300	7.962	**DIRECTORES**
30.04.2003	**CB ADMINISTRADORA DE FONDOS MUTUOS S.A.**	**MULTA**	400	10616	SOCIEDAD
30.04.2003	**CB ADMINISTRADORA DE FONDOS MUTUOS S.A.**	**MULTA**	400	10616	SOCIEDAD
08.05.2001	**CB ADMINISTRADORA DE FONDOS MUTUOS S.A.**	**MULTA**	400	10616	
23.11.2000	**NN**	**MULTA**	400	10616	P/Natural
27.06.2000	**BHIF ADMINISTRADORA DE FONDOS MUTUOS S.A.**	**MULTA**	500	13.270	Sociedad
31.01.2003	**MANQUEHUE NET S.A.**	**MULTA**	500	13270	GERENTE GENERAL
		Totales	6.200	164.278,03	

Fines by Amount (2000-2003)

15294US$ - 26540US$

FECHA	NOMBRE O RAZON SOCIAL	TIPO SANCION	MONTO UF	MONTO US$	INFRACTOR
23.11.2000	**NN**	**MULTA**	600	15.294	P/Natural
21.03.2000	**LABORATORIO CHILE S.A.**	**MULTA**	750	19.905	Gerente General
08.05.2001	**NN**	**MULTA**	1000	26540	
	NN	**MULTA**	1000	26540	
	NN	**MULTA**	1000	26540	
	NN	**MULTA**	1000	26540	
	NN	**MULTA**	1000	26540	
	NN	**MULTA**	1000	26540	
	NN	**MULTA**	1000	26540	
30.07.2003	**CB ADMINISTRADORA DE FONDOS MUTUOS S.A.**	**MULTA**	1000	26540	
		Totales	9350	247519	

Fines by Amount (2000-2003)

79620US$ - 477720US$

FECHA	NOMBRE O RAZON SOCIAL	TIPO SANCION	MONTO UF	MONTO US$	INFRACTOR
07.03.2003	**INVERLINK S.A. CORREDORES DE BOLSA**	**MULTA**	3000	79620	**DIRECTORES**
			3000	79620	
			3000	79620	
07.03.2003	**INVERLINK S.A. CORREDORES DE BOLSA**	**MULTA**	3000	79620	**GERENTE GENERAL**
21.03.2003	**NN**	**MULTA**	180.000	477.720	DIRECTOR DE INVERLINK S.A. CORREDORES DE BOLSA
		Totales	192000	796200	

COLOMBIA

Legal, Regulatory and Institutional Framework for Enforcement – State of Play

What are the main institutions in your country devoted to enforcement of regulation related to corporate governance?

1. Administrative level

a. Responses should address each relevant body. How is it organized? How many people work in it? How much is the budget (in US$). Is there independence in terms of funding, authority, and election of its head? Once appointed, are appointees subject to a fixed term?

Superintendencia de Valores (hereinafter *Supervalores*) is the main Colombian institution devoted to enforcement of regulation related to corporate governance. 168 employees work in Supervalores, being 121 of them professionals.

While part of the Executive Branch of power, Supervalores is a legal entity by itself, with an USD 5,4M independent budget. Supervalores' head is the so-called *Superintendente de Valores (*Superintendent of Securities), who is appointed directly by the President of Colombia and can be removed at any time (i.e. no fixed term).

Entities under the supervision of Supervalores include:

Securities issuers	: 320
Securities exchanges	: 1
Commodities exchanges	: 2
Securities Deposits	: 1
Credit Rating Agencies	: 2
Securities Brokers and Dealers	: 75
Warranty Funds	: 1
Investment Funds	: 6
Mutual Funds	: 95

Another Colombian authority related to corporate governance enforcement is Superintendencia de Sociedades (budget for 2004: USD 16M). As is the case of Supervalores, Supersociedades (expression which stands for "Superintendencia de Sociedades") is a part of the Executive Branch of power, with an independent budget. Supersociedades' head is the so-called *Superintendente de Sociedades (*Superintendent of Corporations), who is appointed directly by the President of Colombia (no fixed term).

Superintendencia de Sociedades legally exerts supervision on every Colombian corporation which is not supervised by a specialized "superintendencia". Specialized "superintendencias" are 12 in total, of which the most significant are Superintendencia de Valores (which supervises securities issuers, stock exchanges, etc.), Superintendencia Bancaria (financial intermediaries and other financial institutions),and Superintendencia de Servicios Públicos (which supervises providers of domiciliary public services (that is providers of water, energy, gas and telephone services among others).

Supersociedades' powers can be divided in three groups, from less stringent to more stringent:

a) The examination power (poder de inspección): This power authorizes Supersociedades to occasionally require corporate (legal, administrative, financial, etc.) information from any Colombian corporation.
b) Surveillance power (poder de vigilancia): a stronger level of supervision, in which corporations are required to provide financial information on regular basis. A specific corporation will fall in this category of

supervision if its annual revenue or total assets exceeds some limits fixed by the applicable law.

c) Control power (poder de control): The strongest level of power, being exerted on corporations with proven financial, legal or administrative irregularities.

As such, the amount of corporations supervised by Supersociedades greatly outnumbers that of any other specialized superintendencia. In practice, however, the most important number is that of corporations under the b) and c) categories described above (approximately 8.500 corporations by July 2003).

The enforcement powers of Supersociedades with regard to corporate governance include the ability to: nullify board or shareholder decisions taken against the law of the corporation by-laws; resolve shareholder conflicts in cases of share valuation and withdrawal from the company; impose fines on directors and remove them; authorize the merger, split up or winding up of corporations under surveillance of control powers: verify the existence of a non-informed situation of corporate control and sanction directors for omitting to inform so.

b. Description of the administrative procedures and sanctions.

i. Principal offences

Principal offences are set out both in laws issued by Congress (such as Ley 32/79 and Ley 27/90) and in administrative rules issued by government and Supervalores itself. Some of the general conducts explicitly prohibited are insider trading, market manipulation, disclosure of false information, non-disclosure or untimely disclosure of ongoing (continued) information; public offer of securities without a previous authorization from Supervalores to offer, when a such authorization is required; performance of non-authorized types of transactions, particularly in the case of intermediaries and portfolios; non-compliance or untimely compliance with an order or request issued by Supervalores.

ii. Is there an enforcement department? How many people are working on it?

There certainly is an enforcement department (known as *Delegatura para Investigaciones,* whose main official is the Superintendent-Delegate for Investigations), composed of nine professionals.

As explained below, the Superintendent of Securities and the main official of the enforcement department are authorized to sanction. However, other departments of *Delegaturas* of the Superintendency are also part of the enforcement process, as they are in fact the departments that supervise compliance with the duties and prohibitions set out by the law, and can issue direct orders to the supervised issuers and intermediaries.

iii. Is there an explicit due process to sanction? Describe it.

Yes, there is an explicit due process to sanction established in decree law, and also a very elaborated jurisprudence on the due process constitutional clause. The main steps of the applicable process can be described as follows:

1. An investigation can be opened whenever any of the departments at the Supervalores has detected, or has been informed of, a possible violation of any standing law or applicable rule.
2. On that basis, the appropriate department (that is, depending on the subject matter) shall collect the evidence needed for a more precise determination of facts. That may include collecting information previously submitted to Supervalores by any party, and also requesting information from the alleged offender or from third parties.
3. Depending on the results of step 2, an accusation could be issued, in whose case the alleged offender shall be notified by writing and given the possibility to review the evidence and

transitory findings available by then. The alleged offender will be able to submit or request the collection of additional evidence.

4. Once step 3 has been evacuated, the aforementioned department shall decide whether there is a firm indication of an unlawful conduct or not. If the former, it will produce a document with the main findings, and will pass the case to the enforcement department.
5. The enforcement department will then conduct a second, independent assessment of the facts, the evidence and the findings, will collect additional evidence if so required, and will take a final decision on the merits.

Last but not least, final decisions taken by Supervalores can be appealed in court.

iv. Who is authorised to sanction?

The Superintendent of Securities.

The main official of the enforcement department (Superintendent-Delegate for Investigations) is also authorized to sanction. Nevertheless, the sanction powers of the Superintendent of Securities are prevalent, and as such he can displace the main official of the enforcement department from any particular investigation.

v. How many fines or sanctions have been imposed through last year, the last three years? (If possible, please be specific regarding categorisation of types of fines or sanctions imposed.)

Last year: 20 fines

Last three years: 82 fines

These number include both corporate governance-related and market regulation-related fines. Other types of minor sanctions are imposed by Supervalores, but the main sanctions certainly come in the form of fines.

vi. $ amount of fines, highest, lowest permitted, and average in practice?

Lowest permitted:

Not determined. Most of the rules set out the maximum amount of the sanction, without setting out a limit at the bottom.

Highest permitted:

Will depend on the type of violation. For some type of violations there is a limit of USD 15.000, as is the case of non-compliance with an order or request issued by Supervalores. In such a case, for instance, several successive fines (of up to USD 15.000 each) can be imposed until satisfactory compliance of the order or request issued by Supervalores is gotten.

The sanction can also be a percentage of the conducted operation.

The highest single sanction imposed in the last three years amounts USD 51.000.

Average in practice: USD 9.000

vii. How many fines were collected, and how many have been appealed, in the last year? In the last three years?

In the last year: 1 appealed, 19 collected
In the last three years: 9 appealed, 73 collected

viii. Over the last three years, how many of the appealed sanctions have been dismissed or rejected by the courts? How many have been won by the administrative body?

None of the appealed sanctions has been dismissed or rejected by the courts over the last three years. In other words, Supervalores has been successful in all of the cases of sanction appeal that have been decided by courts in the last three years.

c. Judicial power (civil courts and penal courts)

i. Are some or most judges trained on Financial and Capital Markets issues?

There is not a specific sector within the civil judiciary composed exclusively or primarily of judges trained on financial or capital market issues. However, there is an unit specialized on financial crime within the penal prosecution body (i.e. Fiscalía General de la Nación).

ii. Are there specialized courts dealing with capital market matters?

No.

iii. How long do appeals processes last in the courts?

The appeal process can be composed of one or two instances, depending on the case features:

First instance: Lasting approximately from 2 to 3 years.
Second instance: Lasting approximately from 4 to 6 years.

d. Private enforcement (arbitration and self regulatory institutions).

i. Does Private Arbitration exist to solve corporate-related disputes between companies? Between companies and shareholders?

Colombian law does not prohibit the use of private arbitration to solve corporate-related disputes between companies, or between companies and shareholders.

ii. Are they oriented just to solve private conflict or do they include public disputes?

Both private conflict and public disputes are included.

iii. Are shareholders conflicts solved by means of Private Arbitration?

In some cases they are solved by means of private arbitration, but unfortunately there are not any statistics available as to the number of shareholder conflicts taken to private arbitration rather than to courts.

e. Self regulatory Institutions, like stock exchanges

i. How many sanctions have been applied the last year, the last three years?

There are currently three self-regulatory entities in Colombia (one stock exchange, two commodity exchanges). Supervision of the latter was assigned to Supervalores from 22nd September 2002 onwards.

Sanctions imposed by the stock exchange to its members:

In the last year: 4

In the last three years: 32

This sanctions have been imposed on securities intermediaries, as in Colombia the stock exchange is not entitled to impose sanctions on issuers; only Supervalores is entitled to do so. One of the sanctions was related to the use of privileged information.

On the other hand, it should be pointed out that the Colombian stock exchange has recently introduced some important changes to its enforcement group.

The exchange's enforcement group, which is composed of the so called "área de supervisión" and "cámara disciplinaria", is now completely independent from the board and the CEO.

The so-called "area de supervision" is composed of: (1) the "comisión de supervision", the (2) "Rector" and (3) a group of professionals which report to the latter.

The "comisión de supervisión" coordinates the "área de supervisión", and is composed by the president of the "cámara disciplinaria" and two independent members elected by the "cámara disciplinaria" for a 1-year fixed term. The main functions of this "comisión de supervision" are –among others-: (1) to supervise that the "area de supervision" operates in an independent and objective manner; to evaluate the standards of supervision and investigation applied by the "área de supervision", and assess the work of the "rector".

The "rector" is elected by the board, from a three-candidate list sent to the board by the "cámara disciplinaria". And for a two-year fixed term. The rector, who can be removed only by the "cámara disciplinaria" and not by the exchange's board, is considered to be at the level of any of the exchange's vice-presidents, but is not dependent from the board, or from the CEO, in any sense.

The "cámara disciplinaria" is composed of nine members elected by the exchange's shareholders for a 2-year fixed period. Six of the members are external, in the sense they are expected to represent the issuers, institutional investors and other groups and associations related to the securities industry; the remaining three members are internal and represent the securities intermediaries which are the members of the exchange.

The rector is in charge of conducting the due process, while sanctions themselves are imposed by the "cámara disciplinaria".

<u>Sanctions imposed by the commodity exchanges to its members:</u>

In the last year: 15

In the last two years: 46 (information for the last three years not available as Supervalores was assigned supervision on these entities by 22nd September 2003).

Sanctions imposed by Supervalores in the last year to self-regulatory institutions: 1 (imposed on one of the commodity exchanges).

No sanctions have been imposed in the last year or in the last three years to the stock exchange.

ii. How many investigation procedures have been opened in the last year, the last three years?

Investigations opened in the last year: 2 (one to the stock exchange, one to the commodity exchanges).

In the last three years: 3 (one to the stock exchange, two to commodity exchanges).

f.Case Studies

Can you suggest one or two case study experiences that may be helpful in illustrating the effectiveness (and difficulties) related to corporate governance enforcement in your country that potentially could be presented and discussed at the next Roundtable meeting? Please describe the offense and if resolved, how it was resolved (six lines maximum for each case).

a) The "Organización Ardilla Lulle v. Supersociedades" case.

In Colombia, any controlling party (e.g. a parent corporation or a controlling person or group of persons) must disclose the control it exercises on any other corporation, by registering a statement at the corporation public registry. That control situation is legally relevant for many purposes, such as for financial statements and debt responsibility. "Organización Ardilla Lulle", a group of persons controlling one of the most important conglomerates in Colombia, omitted to fulfil the aforementioned disclosure duty. After an exhaustive investigation in which the existence of control was proven, Supersociedades ordered the controlling party to disclose that control as required by the law. The case was taken to court, which upheld Supersociedades' decision. The whole procedure took approximately 4 years.

b) There are two other cases currently under investigation (and so generic names are used) which are also relevant:

b.1. In 1994, corporation "x" issued preferential shares. The annual preferential dividend per share was set up as 4.5% of the purchase price of the share by the time of issuance. It was also part of the contract that, if in any fiscal year (namely fiscal year 1), corporation "x" was impeded to pay dividends due to financial losses, then the dividends not paid in fiscal year 1 would have to paid in fiscal year 2, or in fiscal year 3, or in fiscal year 4, if financial profits were achieved in any of these years.

In 1999 corporation "x" went into a merger with corporation "y", the former being absorbed by the latter, so that preferential shareholders of "x" were given preferential shares of corporation "y". Notwithstanding the merger agreement stated that preferential shareholders of "x" would keep their entire rights in "y", in later years "y" has unilaterally changed the formula to calculate the amount of preferential dividends to be paid, and has also omitted to comply with the duty to pay a cumulative dividend along the years in case of financial losses.

All the investigation has already been conducted and a decision will be taken in the upcoming days.

b.2. In 1999, corporation "M" took control of corporation "N". Both of them were listed companies, and the taking process was performed according to the applicable takeover law. In 2001 corporations M and N went into a merger, the latter being absorbed by the former. Some of corporation N shareholders disagreed with the valuation of corporation N conducted for the purposes of the merger, and set in motion their right of withdrawal by 5 September 2001.

According to Colombian law, a shareholder is entitled to withdraw from the company in case of merger, if the shareholder bears an economic loss of damage (*perjuicio patrimonial*) due to the conditions of the merger.

Corporation M argued no economic loss has occurred, and so, the parties went into an arbitral process which lasted from April 2002 to August 2003. The arbitral panel ruled in favour of the mentioned shareholders by confirming they suffered an economic loss and were entitled to withdraw from the company.

As the parties were enabled to agree on the value of the shares, in October 2003 the winner shareholders filed a petition before the Superintendence of Securities in order to get an expert appointed for the valuation of the shares. By October 2004 the procedure has not been concluded yet, not only because there was a 2-month standby requested by the parties, but also because several procedural technicalities do not allow the process to be as streamlined as desired.

Encouraging the Emergence of Active and Informed Owners

Institutional Investors are generally minority shareholders; nevertheless they are the larger and the most sophisticated among them. To the extent they are active investors, they act in a proper way to create value for the fund, on behalf of the beneficial owners, and generate positive externalities for the market.

In some countries PFs are participants in the market, as equity holders and bondholders; PFs therefore should have incentives to perform as active investors. In other countries Pension Funds are not allowed to buy shares or even private bonds; then the incentive to act is lower.

Questions:

2. **Describe the main Institutional Investors, like Pension Funds (PFs) and other large investors. Please provide market indicators like percentage of stocks and bonds held by PFs or other institutional investors in relation to the market or specific corporations.**

The main Colombian institutional investors are pension funds (these funds includes voluntary and obligatory pension schemes), with a portfolio =USD 12.000 M equivalent to approximately 12% of the Colombian GDP (as of July 2004).

Other institutional investors are: *fondos de valores* (funds managed by securities intermediaries) with a portfolio =USD 2.500 M equivalent to approximately 2% of the Colombian GDP; trust funds (funds managed by *fiduciarias,* known as *fondos comunes)* with a portfolio =USD 1.500 M equivalent to approximately 1,62% of the Colombian GDP; and insurance companies with a portfolio =USD 1.000 M equivalent to approximately 1% of the Colombian GDP.

i. **What have institutional investors done to support better corporate governance? What constraints do they have, what are they allowed to do, and why do they behave the way that they do? More specifically: Are PF or other institutional investors allowed to invest in equity?**

PFs can invest up to a 30% of their portfolio in equity. However, approximately 48% of their portfolio is invested in Colombian sovereign debt, while only 4.92% of their portfolio is invested in stocks. Their main constraints to invest in equity derives from certain rules which impose on them a minimum yield requirement (the so-called "rentabilidad minima"), and also from the relatively small size of the Colombian stock market.

In general, it can be said that PFs have not played a very active role in demanding better corporate governance practices from the issuers.

ii. **Are PFs or other institutional investors allowed or required to vote in Shareholders' meetings?**

Neither PFs nor other institutional investors are required to vote in AGMs, but their voting is indeed allowed under the same conditions as other shareholders.

iii. **Do PFs have an Investment Corporate Governance Code?**

While PFs are not required to have an ICGC, the applicable law sets out some detailed requirements for their investments, particularly with regard to rating, liquidity and risk-concentration.

For instance, no more than 10% of the assets of the portfolio can be invested in securities issued by a single issuer; a PF cannot purchase more than 30% of an issuance; and a PF cannot own more than 10% of the shares of a single issuer.

On the other hand, some PFs have adopted corporate governance codes.

iv. Do they elect Independent Directors in Shareholder's meetings?

In some few cases they have elected independent directors.

v. Are Independent Directors elected by PF integrated into Director or Audit Committees?

Director or audit committees are not mandatory in Colombia for most issuers (except for those being financial institutions), and few issuers have adopted them. Therefore, it can be said that independent directors elected by PFs have not generally integrated into director or audit committees. However, it should be pointed out that the proposal for a new securities bill (currently being discussed at Congress) provides for mandatory audit committees composed primarily of independent directors.

vi. Are they active in takeover or selling assets processes?

In most of the cases they are not.

vii. Does PF regulation require Corporate Governance standards?

Definitely, in many aspects. For instance, PFs regulation sets out some requirements on director independence and straightforward prohibitions on self-dealing. Moreover, some stakeholders, particularly workers and employers, are legally expected to have a presence in PFs boards.

According to "Resolución 275/2001" issued by Supervalores, PFs will be able to buy securities only from issuers that have adopted a corporate governance code, and only if at least 20% of the issuer equity belongs to minority shareholders (i.e. non-controlling shareholders). The corporate governance code must contain rules on governance of the issuers, and disclosure of financial and other relevant information. The code shall contain rules on:

- Mechanisms to establish objective criteria for the election and the evaluation of the performance of directors and the independent auditor;
- Mechanisms to avoid and manage conflicts of interests;
- Mechanisms that guarantee fair treatment to all shareholders;
- Rules on transactions with related parties.

viii. What legal or regulatory constraints do they face that may hamper active ownership? On the other hand, is the regulatory framework adequate to foster Corporate Governance and active Institutional Investors?

There are not any legal or regulatory constraints that may hamper active ownership.

According to "Resolución 275/2001" issued by Supervalores, PFs will be able to buy securities only from issuers that have adopted a corporate governance code, and only if at least 20% of the issuer equity belongs to minority shareholders (i.e. non-controlling shareholders).

Apart from these rules, the regulatory framework contains no other requirements or incentives in favour of a more active role by PFs and other institutional investors. In addition, there is not a "comply or explain" corporate governance system in Colombia by now, for which it is sometimes difficult for PFs to have access to fresh, reliable information on an issuer's corporate governance practices.

Case Studies

Can you suggest one or two case study experiences involving institutional investor influence on corporate governance enforcement in your country that may be helpful in illustrating constraints and/or incentives for strengthening corporate governance that potentially could be presented and discussed at the next Roundtable meeting? Please describe in six lines maximum for each case.

PFs have collectively arranged and managed to elect one independent board member in ISA, ETB and EDATEL, three state-owned companies in the business of telecommunications and energy transportation.

PERU

What are the main institutions in your country devoted to enforcement of regulation related to corporate governance?

1. Administrative level

a. Responses should address each relevant body. How is it organized? How many people work in it? How much is the budget (in US$). Is there independence in terms of funding, authority, and election of its head? Once appointed, are appointees subject to a fixed term?

The Comisión Nacional Supervisora de Empresas y Valores (CONASEV) is the regulatory body for the Securities and Commodities Markets. The Board is composed of 9 members appointed by the Peruvian President. The Peruvian President appoints the Chairman of the Board among the 9 members. Members of the Board are appointed for 3 years and can only be removed if they commit a major offence. The Members of the Board can serve more than one period.

CONASEV has 144 workers, 128 are professionals: lawyers, economists and auditors.

CONASEV's 2004 BUDGET is US$ 7,860,000 (Nuevos Soles 27,125,000). CONASEV is financed by mandatory contributions made by supervised entities. However, CONASEV is subject to the same expenditure constraints that apply to the whole public sector. This situation limits the expenditure in human capital and surveillance infrastructure in spite of having the financial resources.

TABLE 1
ENTITIES SUPERVISED BY CONASEV

Entity	Number	COMMENTS
Securities Registry	283	
Securities Intermediaries	19	18 Broker-Dealers 1 Intermediary
Mutual Fund Managers	6	5 of these can also administer investment funds
Mutual Funds	23	
Investment Fund Managers	5	Only investment funds
Investment Funds	6	
Securitization Firms	7	
Collective Fund Managers	6	
Collective Funds	4	
Risk Rating Agencies	4	
External Auditors		Conasev can supervise any auditor of a company whose securities are listed. Conasev's public registry of external auditors was declared unconstitutional and was eliminated.
Stock Exchanges	1	Bolsa de Valores de Lima
Commodities Exchanges	1	Bolsa de Productos de Lima
Depository and Clearing	1	Caja de Valores y Liquidaciones

b. Description of the administrative procedures and sanctions.

i. Principal offences

Market manipulation; to give non-accurate, false or misleading information to CONASEV, the exchanges, investors or to reveal such information to the market; to persuade or induce investors to buy securities by means of a fraudulent or misleading mechanism; breach of duty of confidentiality; to reveal privileged information to non-authorized parties; tipping; front running; insider trading; to use the position in the corporation to obtain unlawful benefits for himself or related parties and against the best interest of the corporation; doing tender offers or public offerings that do not comply with regulation; non-equitable treatment of investors in tender or public offering; to use a trust's assets for a different purpose than those specified in the trust's by-laws; unlawful disposition of securities or assets by intermediaries, mutual fund managers, investment fund managers or depository companies; audits that don't follow International Accounting Standards.

ii. Is there an enforcement department? How many people are working on it?

There is no enforcement department. There are two Divisions in Conasev that gather information and perform investigations: The Markets and Securities Division and the Intermediaries and Funds Division. The type of offence will determine which Division is in charge of the investigation.

iii. Is there an explicit due process to sanction? Describe it.

There is an explicit due process to sanction, which is clearly specified in the Statute of Sanctions. The process has to comply with the General Administrative Procedure Law.

The process is as follows:

CONASEV starts an investigation as consequence of its surveillance activities, a complaint filed by the affected party, or a tip.

In order to determine if an offence has been made, the Division in charge of the investigation will gather all the available information. During this process the Division may interview the people involved in the case, do in site inspections and request information from different sources. A case file has to be made.
If the Division considers that an offence has been made, it has to give notice to the accused party of the charges being made, clearly specifying the type of offence and the possible sanctions. The case file is made available to the accused party for review. The accused party will then make a rebuttal of the Division's arguments. The accused may request that further interviews be made and can present new information.

After analyzing this rebuttal and the new information, the Division may decide to close the case or to continue with it. If it decides to continue with the case, the Division in charge of the investigation prepares a report on the case. In this report the Division presents the case and proposes sanctions. This report is taken to CONASEV's Administrative Court (CAC). CAC makes the report available to the accused party, which has at least 20 days notice to review the report and reject the charges. This can be done in written format, at a hearing before CAC or both. CAC will then make a decision or may request further investigation by the Division. (Which has to follow the same steps described above to protect the rights of the accused party). CAC will decide whether to sanction or not.

If the accused party is sanctioned it may appeal to CONASEV's Board. The Board makes the final administrative decision.

The Board's decision can be appealed in the Judiciary.

Perú's Constitutional Court can also declare Conasev's decisions invalid. Perú's Constitutional Court is independent of the Judiciary.

iv. Who is authorized to sanction?

The Administrative Court of CONASEV.

The Controversies Court of the Lima Stock Exchange (LSE), is an administrative court, which settles disputes between LSE broker-dealers and between LSE broker-dealers their clients. Decisions can be appealed to Conasev's Administrative Court, which in this case will make the final administrative decision.

v. How many fines or sanctions have been imposed through last year, the last three years? (If possible, please be specific regarding categorisation of types of fines or sanctions imposed.)

Conasev's Administrative Court : 63 in 2003, 128 between 2001 and 2003

Table 2: Type of Sanctions 2003

	Suspension	Reprimand	Fine	TOTAL
Material Facts		6	8	14
Financial Information		7	31	38
Refused to Give Data to Conasev			2	2
Refused to Obey Order from Conasev			1	1
Audit	1			1
Tender Offer			1	1
Public Offering		1		1
False Information			1	1
Financial Requirements			2	2
Duties of Funds			1	1
Total	1	14	48	63

vi. $ amount of fines, highest, lowest permitted, and average in practice?

Faults are classified as very serious, serious, minor. Fines depend on the type of fault. The amount can be up to U.IT. 300 (US$ 280,000 approximately). The lowest fine is 1 U.I.T (US$ 914 approximately). However, fines can't be higher than 10% of the offender's income. Average fine in 2003 U.S. $10,621.

vii. How many fines were collected, and how many have been appealed, in the last year? In the last three years?

2001: 09 appealed.
2002: 11 appealed.
2003: 02 appealed.
In 2003, 33 fines have been collected. 13 fines can't be collected because these have been levied agricultural cooperatives, which have a special protection from creditors. Most fines are paid because you get a 25% discount if you pay within 5 days of notice and don't challenge the sanction. Also, Conasev has legal rights to seize the assets of its debtors.

viii. Over the last three years, how many of the appealed sanctions have been dismissed or rejected by the courts? How many have been won by the administrative body?

2001: of 09 appealed, 09 still in the courts.
2002: 11 appealed, 10 still in the courts, 1 won by Conasev.
2003: 02 appealed, 02 still in the courts.

c. Judicial power (civil courts and penal courts)

i. Are some or most judges trained on Financial and Capital Markets issues?

Most judges have no special training on Financial and Capital Markets issues. Around 1998, private Banks were trying to get a project going to train judges in financial issues it didn't come through.

ii. Are there specialized courts dealing with capital market matters?

No.

iii. How long do appeals processes last in the courts?

The appeals processes can last one to two years in the first instance. Eight months to a year and a half before the appeals court. One to two years in the Supreme Court.

d. Private enforcement (arbitration and self regulatory institutions).

i. Does Private Arbitration exist to solve corporate-related disputes between companies? Between companies and shareholders?

Article 62 of the Constitution guarantees that the parties in a contract can make any valid arrangement within the prevailing law at the time when the contract is made. Law or any kind rule can't modify contracts. Disputes arising from contractual obligations can only be solved by arbitration or in the courts.

Arbitration rules are specified in The General Arbitration Law. Among other things, It specifies that except when the parties have expressly agreed that the arbitration will be legal, it will be understood to be equitable.

Corporate Law specifies that compulsory arbitration can be included in the by-laws of the corporation. In this case, the company, the shareholders and management must comply with it even if the dispute arises when they are no longer related to the company.

The regulation for the government procurement processes establishes that any controversy that arises with regard to the contracts must be submitted to an arbitral court.

Arbitration is also included in Perú's Securities Law's and Regulation as a way to solve disputes. Accordingly, any claim or dispute between participants in Peru's Capital Markets can be solved by an arbitral court if the parties decide to do so. All the Mutual Funds and the Investment Funds have arbitration clauses in their by-laws to solve disputes between fund administrators and owners of fund shares.

Arbitral Court of Lima Stock Exchange (LSE): Any type of disputes between the broker-dealers of the LSE or between LSE broker-dealers and their clients can be submitted to this arbitral court. Only if the client of a broker-dealer decides to go to an arbitral court to settle a claim, does arbitration become compulsory.

ii. Are they oriented just to solve private conflict or they include public disputes?

A procedure that could become a public dispute can be taken to an arbitral court. When arbitration is used for solving conflicts the arbitral court's decision is final. Such is the case when arbitration is used by Mutual Funds, Investment Funds or to solve the disputes in the Arbitral Court of Lima Stock Exchange.

iii. Are shareholders conflicts solved by means of Private Arbitration?

As answered in d.i., Corporate Law specifies that compulsory arbitration can be included in the by-laws of the company. In this case, the company, the shareholders and management must comply with it even if the dispute arises when they are no longer related to the company.

In the past the regular practice was go to the courts to solve shareholders disputes. However, in more recent times corporations are including arbitral clauses in their by-laws, not only because it is a faster way to solve disputes, but also because it is more predictable than going to the courts. An additional advantage for the corporations and shareholders is the confidentiality of the procedure.

(Although arbitration is relatively new, its use to solve disputes has increased. As an example, statistics from the Arbitral Court of the Lima Chamber of Commerce, show that the number of arbitration cases brought to this court has gone from 2 cases in 1993 to 29 in 2003, for a total of 889 for the whole period. With 132 cases in process by march 31, 2004. However, there are no specific statistics for shareholder conflicts.)

e. Self regulatory Institutions, like stock exchanges

i. How many sanctions have been applied the last year, the last three years?

Lima Stock Exchange (LSE): 1 in 2003, 16 between 2001 and 2003.

ii. How many investigation procedures have been opened in the last year, the last three years?

LSE : 53 in 2001, 20 in 2002, 23 in 2003 (These are claims or accusations made by clients of broker-dealers, many of these are settled before going through an administrative procedure). Besides these, Investigations by the Surveillance Area of the LSE were the following: 2001: 3, 2002: 4, 2003: 8.

f.Case Studies

Can you suggest one or two case study experiences that may be helpful in illustrating the effectiveness (and difficulties) related to corporate governance enforcement in your country that potentially could be presented and discussed at the next Roundtable meeting? Please describe the offense and if resolved, how it was resolved (six lines maximum for each case).

"Company A" Case: As a consequence the merger of Company A with a subsidiary of its parent company, the investment shares of Company A had rights to a smaller proportion of the company's equity. Conasev determined that Company A's actions constituted a high risk for the adequate protection of investors and as consequence Company A's shares should be excluded from the public registry. Company A was ordered to make a tender offer to all owners of investment shares prior to the exclusion.

Encouraging the Emergence of Active and Informed Owners

Institutional Investors are generally minority shareholders; nevertheless they are the larger and the most sophisticated among them. To the extent they are active investors, they act in a proper way to create value for the fund, on behalf of the beneficial owners, and generate positive externalities for the market.

In some countries PFs are participants in the market, as equity holders and bondholders; PFs therefore should have incentives to perform as active investors. In other countries Pension Funds are not allowed to buy shares or even private bonds; then the incentive to act is lower.

Questions:

2. **Describe the main Institutional Investors, like Pension Funds (PFs) and other large investors. Please provide market indicators like percentage of stocks and bonds held by PFs or other institutional investors in relation to the market or specific corporations.**

The Private Pension Funds Administrators are the largest institutional investors. It is based in individually capitalized contributions. Although a public system still exists. PPF have managed to attract most of the workers. Total assets at the end of 2003 were S/. 22,055 mill (US$ 6,374 mill) or about 10.7 percent of GDP. (Compared with 3.2% in 1998 and 0.07% in 1993 when the funds started to invest).

It is very interesting to note that the percentage of the fund invested in local shares has always been substantial. At the end of 2003, 35.5% of administered funds were invested in stocks (Average investment in stocks: 1995/96=16.1, 1997/98=37.3, 2000/02=31.6). This has led to a substantial participation of PPF in some of the biggest listed companies in the LSE. Percent of ownership by the funds goes as high as 49%. See table 3.

TABLE 3

Percent Ownership in Major Listed Companies

	Common Stock %	Number of Directors	Investment Shares%(**)
MINING			
Buenaventura	12	(*)	
Minsur			50
Southern Peru	7	1	
Volcan	17		
Milpo	22	2	
UTILITIES			
Edegel	33	3	
Luz del Sur	18	2	
Edelnor	34	3	
CEMENT			
Cementos Lima	30	3	
Cementos Lima I			49
Cem. Pacasmayo	24	3	
Cem. Pacasmayo			42

CONSTRUCTION			
Ferreyros	32	(*)	
BREWERIES			
Backus			52
FOOD			
Alicorp	22	2	
FINANCE			
Credicorp (***)	49	(*)	
REFINING			
Relapasa	27	3	

Data: Conasev, Superintendencia Banca y Seguros, Bolsa de Valores de Lima, Interviews, Own Estimates
Percent ownership based on data as of April 30, 2004
(*) General Shareholders Meeting next year
(**) Investment shares: no voting rights
(***) Credicorp's 49% ownership by PFAS is after excluding shares held by Credicorp, otherwise it would be 42%

The Mutual Funds had assets valued at S/. 6,928 mill (US$ 2,002 mill) or about 3.4 percent of GDP at the end of 2003.

The Insurance Companies had investments valued at S/. 5,589 mill (US$ 1,615 mill) or about 2.7 percent of GDP at the end of 2003.

As an example of their participation in local bond markets from January to June 2004 PFA have taken 29.51% of New public offerings, Mutual Funds 31% and Insurance Companies 4%.(See table 4)

TABLE 4

Buyers of New Public Offerings

Buyers	**%**
Mutual Funds	31.16
PFA'S	29.51
State Institutions	11.92
Banks	5.24
Social Security Funds	5.06
Individuals	4.40
Insurance Companies	3.91
Mivivienda (State Housing Fund)	3.38
Armed Forces Fund	3.06
Other	2.16
Broker - Dealers	0.21

Data: Conasev

iii. What have institutional investors done to support better corporate governance? What constraints do they have, what are they allowed to do, and why do they behave the way that they do? More specifically: Are PF or other institutional investors allowed to invest in equity?

They have been increasingly active in electing independent directors (see iv below) and in protecting their investment through surveillance committees and active negotiation in cases of mergers and tender offers. (See case studies below).

Private Pension Funds have always been allowed to invest in equity. They have a limit of no more than 35% of total funds. Though new regulation allows them to invest in three type of funds with limits of 80%, 40% and 10% of investment in equity. These alternatives are not being offered yet. These funds are designed to provide for different types of risk-reward alternatives.

Mutual Funds can invest in equities and in fixed income. However, Mutual Funds have specialized in fixed income. More than 99% of the funds are invested in fixed income.

And in the case of insurance companies 17% of their funds are invested in equity, most of it in local shares.

iv. Are PF or other institutional investors allowed or required to vote in Shareholders' meetings?

PF are allowed to vote in shareholders meetings. They have to make sure that the way they vote is registered in the minutes of the shareholder meetings.

Since a couple of years ago they have started to elect independent directors in the shareholders meetings. They can't vote for candidates that are shareholders, directors, managers or workers of the PF administrator. (See table 2 above.)

v. Do PFs have an Investment Corporate Governance Code?

No they don't have an Investment Corporate Governance Code. But the regulation specifies that each PFA should apply the principles of good corporate governance and the best practices available in the conduct of its business and in the investment process for each portfolio that it administers, using as reference the best standards available on this subject. Also, the PFA are developing a guide that will be used by the independent directors appointed by them. They are also developing a statute with rules that will apply in the selection of independent directors.

The PFA have internal codes that intend to minimize conflicts of interest in the way investment are selected.

vi. Do they elect Independent Directors in Shareholder's meetings?

Although in the past the PFAs have chosen directors in an informal way, currently the PFAs are moving towards a more formal way for choosing them.

The PFAs are working on a statute that will be built on the following rules, which more or less have been used lately. (In the cases where a PFA can elect a board member without the need of other PFAs votes, the incentive to follow these rules decreases.)

1.- Candidates are proposed by investment managers and general managers to the chairman of the board of their PFA.

2.- In a meeting of the chairmen of the PFAs they decide on the final candidates.

3.- All communication to invite a candidate is done through the president of PFA Association

4.- All communication after being elected to the board is with PFA association's General Manager.

5.- Independent directors should have no communication with the PFAs., because as independent directors they have access to privileged information. Also, once the director is elected, it becomes a director for all the shareholders with the duty to maximize shareholder value.

How have the corporations reacted to the election of independent directors by the PFA?

Reaction has been diverse. In the case of privatized enterprises, acceptance of the independent directors has been easier, not only because these privatized corporations are subsidiaries of multinational corporations, but also because these changes implied the substitution of government appointed board members. In some the closely held family enterprises, there has been an adverse reaction. As a consequence, some board meetings have been delayed or once the new board members have not received adequate information.

In part because of these, but also because they perceive it as a useful tool, the PFA are in the process of developing a guide for independent directors. Considering that the individuals that have been selected are highly specialized professionals, but not necessarily experienced members of a board, this guide and some sort of director training courses are probably a must.

vii. Are Independent Directors elected by PF integrated into Director or Audit Committees?

There are only two cases in which the Directors elected by PF are integrated into Director or Audit Committees:

Southern Peru Copper Corporation (PCU): Audit committee and a Committee created to analyze the proposed merger with a corporation owned by Grupo Mexico. See below in viii. b (case studies).

Yuncán: Which is not listed. Audit committee.

viii. Are they active in takeover or selling assets processes?

Yes, since, as explained above, the PPF are large shareholders in the biggest listed companies.

ix. Does PF regulation require Corporate Governance standards?

Currently, the law requires that they vote for independent directors. All PFAs are listed in the Lima Stock Exchange and starting with the 2004 annual report the rule for all listed companies in the LSE will be to reveal the degree of compliance with the "Principles of Good Governance for Peruvian Companies".

x. What legal or regulatory constraints do they face that may hamper active ownership? On the other hand, is the regulatory framework adequate to foster Corporate Governance and active Institutional Investors?

The Law does not require Pension Funds to invest in corporations that have Code of Corporate Governance nor does it require that Pension Funds have a Code of Corporate Governance.

Limits on investment per issuer may be a constraint for gathering enough votes to obtain a seat in the board.

b. Case Studies

Can you suggest one or two case study experiences involving institutional investor influence on corporate governance enforcement in your country that may be helpful in illustrating constraints and/or incentives for strengthening corporate governance that potentially could be presented and discussed at the next Roundtable meeting? Please describe in six lines maximum for each case.

Southern Peru Copper Corporation (PCU): The PFAs where concerned about the proposed merger of PCU with a subsidiary of its parent company Grupo Mexico. As a consequence a committee of

directors, advised by U.S. investment bankers and lawyers, is assessing the proposed Minera Mexico merger. The PFAs independent director takes part in this committee.

Yuncán: (Electric Power Utility Project) The government recently privatized it. It is not listed. Tractebel reached an agreement with the PFA's by which the PF took a 20% stake Yuncán's controlling shareholder. There is a private contract that gives the PFA's special rights to protect their investment. As an example: Members of the audit committee and veto power in some transactions such as transfer of assets.

Investment Funds: PFAs saw the need to have a more active role in investment funds when they saw that a couple of these funds were having problems. (In some cases these problems had developed as a consequence of conflicts of interest between the investment fund manager and the fund. Conasev removed at least one investment manager as a consequence of complaints made the PFAs. Example: dispute over real estate valuation done by the manager.

The PFAs have become members of the surveillance committees of the investment funds. The function of the Surveillance Committee of the Investment Fund is to make sure that the fund managers comply with the by-laws of the fund and the terms of the offering. Priority should be given to control conflicts of interest and to supervise the execution of the fund's business plan.

[i] Includes market intermediaries, asset management funds, external auditors, brokerage firms, distributors, etc., under CVM supervision.