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

Erica Gorga

[erica-gorga@lawschool.cornell.edu](mailto:erica-gorga@lawschool.cornell.edu)

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**CHANGING THE PARADIGM OF STOCK OWNERSHIP FROM CONCENTRATED  
TOWARDS DISPERSED OWNERSHIP?  
EVIDENCE FROM BRAZIL AND CONSEQUENCES FOR EMERGING  
COUNTRIES**

*Érica Gorga*<sup>\*</sup>

*Cornell Law School and*

*Fundacao Getulio Vargas Law School at Sao Paulo*

(Work in Progress)

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\* Ph.D., University of São Paulo, Brazil. Visiting Assistant Professor of Law, Cornell Law School. Professor of Business Law, Fundação Getulio Vargas Law School at São Paulo. Former Lecturer, University of Texas at Austin School of Law, and Post Doc Research Fellow, University of Texas School of Law Center for Law, Business and Economics. Former Visiting Scholar at Stanford Law School. E-mail addresses: [erica-gorga@lawschool.cornell.edu](mailto:erica-gorga@lawschool.cornell.edu) and [erica.gorga@fgv.br](mailto:erica.gorga@fgv.br).

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**CHANGING THE PARADIGM OF STOCK OWNERSHIP FROM CONCENTRATED TOWARDS  
DISPERSED OWNERSHIP?**

**EVIDENCE FROM BRAZIL AND CONSEQUENCES FOR EMERGING COUNTRIES**

*Érica Gorga*

**Abstract**

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

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

There is, however, an important caveat: dispersed ownership is mainly found in Novo Mercado, the listing segment that requires the one-share-one-vote rule. This paper, then, investigates firms' migration patterns, and finds that 85% of Novo Mercado's are "new entrant" firms. Traditional firms have mostly migrated to Level 1, the least stringent corporate governance segment. Thus, there are two corporate worlds in Brazilian capital markets: new corporations that adopt proactive corporate governance patterns, and established corporations that retain their main patterns of corporate governance or ownership structure.

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

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

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## I. INTRODUCTION

Corporate governance scholars have recently begun to analyze publicly held corporations that have controlling shareholders.<sup>1</sup> Controlling shareholders are the most common distribution of corporate ownership outside of the United States and the United Kingdom.<sup>2</sup> They are prevalent in continental Europe,<sup>3</sup> and especially in developing countries in Asia<sup>4</sup> and Latin America<sup>5</sup>.

Scholars have attempted to explain the prevalence of large shareholders in these countries.<sup>6</sup> An important body of literature has shown that the extraction of private

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<sup>1</sup> See, e.g., Ronald J. Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Taxonomy*, 119 HARV. L. REV. 1641, 1652 (2006) (surveying this literature); Ronald J. Gilson & Jeffrey N. Gordon, *Controlling Controlling Shareholders*, 152 U. PA. L. REV. 785, 786 (2003); and Ronald J. Gilson, *Controlling Family Shareholders in Developing Countries: Anchoring Relational Exchange* \_\_ (ECGI Law Working Paper Group, Paper No. 79, 2007).

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

<sup>3</sup> See, e.g., Peter Högfeldt, *The History and Politics of Corporate Ownership in Sweden*, in A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD \_\_ (Randall Morck, ed. 2005); Alexander Aganin & Paolo Volpin, *The History of Corporate Ownership in Italy*, in A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD \_\_ (Randall Morck, ed. 2005); and Marco Becht & Ekkehart Boehmer, *Voting Control in German Corporations*, 23 INT’L REV. L. & ECON. \_\_ (2003). See also Mara Faccio & Larry H.P. Lang, *The Ultimate Ownership of Western European Corporations*, 65 J. FIN. ECON. 365 (2002). (showing that family ownership is more common than widely held ownership in continental Europe); and MARCO BECHT, ARIANE CHAPPELLE & LUE RENNEBOOK, SHAREHOLDERING CASCADES: THE SEPARATION OF OWNERSHIP AND CONTROL IN BELGIUM IN OWNERSHIP AND CONTROL: A EUROPEAN PERSPECTIVE (F. Barca, M. Becht, ed. 2000).

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

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

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

benefits of control is a key reason why these shareholders maintain corporate control.<sup>7</sup> Related works have proposed several hypotheses to explain why private benefits of control are large in certain countries and small in others.<sup>8</sup>

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

This gap exists partially because ownership patterns do not change very quickly or often. As Nobel Prize laureate Douglass North argued, institutional change is slow and path dependent in nature.<sup>9</sup> However, there are examples we can look to.

There are two countries where concentrated ownership has transformed into dispersed ownership: the United States and the United Kingdom. Scholars have already debated the causes that led to such change.<sup>10</sup> But this debate is advantaged and disadvantaged because these countries already consolidated their ownership change process before they became subject to scholarly inquiry.<sup>11</sup>

One advantage is that it is certain that the US and the UK are species of the dispersed ownership genre. They are success stories of corporate ownership change.<sup>12</sup>

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<sup>7</sup> See, e.g., Lucian A. Bebchuk, *A rent-protection theory of corporate ownership and control* \_\_ (Nat'l Bureau of Econ. Research Working Paper Group, Paper No. 7203, 1999), available at <http://www.nber.org/papers/w7203>.

<sup>8</sup> See, e.g., Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer & Robert Vishny, *Investor Protection and Corporate Governance*, 58 J. FIN. ECON. 3 (2000); John C. Coffee, Jr., *Do Norms Matter? A Cross-Country Evaluation*, 149 U. PA. L. REV. 2151 (2001); and Mark J. Roe, *Political Preconditions to Separating Ownership from Corporate Control*, 53 STAN. L. REV. 539 (2000).

<sup>9</sup> Douglass North, *INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE* (1990). See Lucian A. Bebchuk & Mark Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, 52. L. REV. 127 (1999) (elaborating the argument of path dependence in relation to corporate ownership structures).

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

<sup>11</sup> Cheffins, *supra* note 10, at \_\_ (noting that Berle and Means argued that dispersed ownership was the predominant type of ownership in the US in early 1930s).

<sup>12</sup> See Marco Becht & J. Bradford DeLong, *Why Has There Been So Little Block Holding in America?*, in *A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD* 613 (Randall Morck, ed. 2005) (commenting

So the study of these cases bears a certainty that does not exist when one analyzes initial stages of ownership change which may be instable. For example, researchers report that some countries, such as Canada, Germany and Japan, experienced temporary ownership dispersion that soon reverted to traditional concentrated ownership.<sup>13</sup> In contrast, the United States and the United Kingdom have successfully surpassed the instability inherent to economic change and now present well-defined dispersed ownership patterns. Moreover, enough time has passed from the time both countries experienced initial changes in ownership structures to allow a more comprehensive investigation about the variables that may have brought about ownership change.

On the other hand, there are disadvantages from using the United States and United Kingdom as ownership change benchmarks. Because ownership change has already been consolidated, scholars cannot accurately assess which variables mattered most at the beginning of the process. So, there are competing theories that attempt to explain what happened first: dispersion of ownership or investor protection. La Porta et al. argue that formal laws protecting investors and proper enforcement are a precondition for pulverizing share ownership and developing capital markets.<sup>14</sup> In contrast, Coffee and Cheffins contend that the development of capital markets occurred without such formal laws.<sup>15</sup> Accordingly, we do not have a clear picture of the turning point that caused the change or development of each phase of the process. Experiencing the change at the present moment offers the opportunity to accurately map out these phases and major events.

This paper aims at analyzing the micro-level dynamics of changes in ownership structures. It investigates a unique, contemporaneous event. This event refers to a

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that America's response to the Great Depression was to destroy family capitalism).

<sup>13</sup> See, e.g., Randall K. Morck, Michael Percy, Gloria Y. Tian & Bernard Yeung, *The Rise and Fall of the Widely Held Firm*, in *A History of Corporate Ownership in Canada*, in *A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD* 613 (Randall Morck, ed. 2005) (discussing the upheaval and decline of freestanding widely held firms in Canada); Caroline Fohlin, *The History of Ownership and Control in Germany*, in *A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD* 613 (Randall Morck, ed. 2005); and Randall K. Morck & Masao Nakamura, *A Frog in a Well Knows Nothing of the Ocean. A History of Corporate Ownership in Japan*, in *A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD* 613 (Randall Morck, ed. 2005).

<sup>14</sup> La Porta et. al., *supra* note 8, at 7.

<sup>15</sup> Coffee, Jr., *supra* note 10, at 76; and Cheffins, *supra* note 10, at 469. See also Julian Franks, Colin Mayer & Stefano Rossi, *Spending Less Time With the Family. The Decline of Family Ownership in the United Kingdom*, in *A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD* 613 (Randall Morck, ed. 2005)

process of change in patterns of ownership in Brazil, where corporations have historically been characterized by severely concentrated ownership.<sup>16</sup> These concentrated ownership patterns have recently diluted, indicating an early stage of diffused ownership.<sup>17</sup> Based on this evidence of ownership change, this paper contributes to the corporate governance literature by inquiring how and why ownership structures change.

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

Brazil is usually classified as a system with inefficient controlling shareholders receiving both pecuniary and nonpecuniary benefits.<sup>20</sup> Investigating recent conditions leading Brazilian concentrated ownership to become dispersed therefore illuminates the incentives that may alter the preferences of controlling shareholders. Additionally, this discussion allows us to understand why controlling shareholders may opt for a greater diversity of ownership structures. It then enable us to draw comparisons and make deductions that can enrich the comparative corporate governance debate and advance our knowledge of corporate structures in other emerging countries.

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<sup>16</sup> See notes accompanying text *infra* Section IV.

<sup>17</sup> See evidence *infra* Section V.

<sup>18</sup> Gilson, *Controlling Shareholders*, *supra* note 1, at 1643.

<sup>19</sup> *Id.* at 1652, 1661.

<sup>20</sup> See Alexander Dyck & Luigi Zingales, *Private Benefits of Control: An International Comparison*, 59 J. FIN. 537, 539 (2004) (finding that private benefits of control are worth 65% of the equity value of a firm in Brazil); and Tatiana Nenova, *The Value of Corporate Votes and Control Benefits: A Cross-Country Analysis*, 68 J. FIN. ECON. 325 (2001) (noting that private benefits of control in Brazil are 16% to 23% of a company's market value). See generally Érica Gorga, *Culture and Corporate Law Reform: A Case Study of Brazil*, 27 U. PA. J. INT'L ECON. L., 803 (2006) (discussing controlling shareholders in Brazil).



### I.1. A CASE STUDY OF CHANGE IN OWNERSHIP PATTERNS

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

Yet new developments in Brazilian capital markets seem to challenge the traditional model. Firms have been looking for equity financing in the market.<sup>27</sup> The number of listed companies in the Sao Paulo Stock Exchange (Bovespa) has risen.<sup>28</sup> Firms are adhering to higher standards of corporate governance<sup>29</sup> through migration to Bovespa's special listing segments.<sup>30</sup> The number of IPOs has increased tremendously.<sup>31</sup>

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<sup>21</sup> See Maria Helena Santana, *Case study on the Novo Mercado (NM) of Sao Paulo Stock Exchange (Bovespa)* (2007), forthcoming in *Focus* series of Global Corporate Governance Forum, World Bank, at 8-9 (arguing that discount in shares prices was considered the most important factor for a company's lack of interest in the stock market); and Tatiana Nenova, *Control Values and Changes in Corporate Law in Brazil* (EFMA London Meetings, 2002), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=294064](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=294064) (measuring price difference between controlling and non-controlling shares and finding that the market applies a discount to non-controlling shares). See also David M. Trubek, *Law, Planning, and the Development of the Brazilian Capital Market: A Study of Law in Economic Change* 48-49 (Yale Law School Studies in Law and Modernization No. 3, April 1971), available at \_\_\_ (discussing the failure of strategies that the government sought to adopt to deal with depressed stock prices in the early beginnings of private capital markets).

<sup>22</sup> See *infra* Section IV and notes.

<sup>23</sup> See generally Gorga, *supra* note 20 (discussing corporate governance failures in Brazil).

<sup>24</sup> *Id.* (discussing family ownership in Brazil).

<sup>25</sup> See generally Dyck & Zingales, *supra* note 20, and Nenova, *supra* note 20. See also Rafael La Porta, Simeon Djankov, Florencio Lopez de Silanes & Andrei Shleifer, *The Law and Economics of Self-Dealing* 25 (NBER Working Paper Group, Paper No. W11883, Dec. 2005) available at <http://ssrn.com/abstract=875734> (stating that block premium is very high in Brazil, amounting to 49%).

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

<sup>27</sup> See, e.g., *Dinheiro mais barato para as empresas. Com anos de atraso, as companhias brasileiras começam a ter opção de financiamento fora dos bancos* [Cheaper Finance for Firms. With a Delay of One Hundred Years, Brazilian Companies Start to Have Financing Alternatives Outside Banks], REVISTA EXAME, Apr. 25, 2005.

<sup>28</sup> See *infra* Table 2.

<sup>29</sup> See Table 2 *infra* Section II and Table 1.

<sup>30</sup> See *infra* Table 7.

<sup>31</sup> See *infra* Table 5.

The stock market has seen the first attempt of a hostile takeover in thirty years.<sup>32</sup> Companies have been selling control in the market,<sup>33</sup> and anti takeover defenses are being incorporated into companies' bylaws.<sup>34</sup> In addition to these company-related developments, Bovespa recently merged with the Brazilian Exchange for Future Contracts and Commodities ("BM&F") and became the world's third largest stock exchange.<sup>35</sup>

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

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

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<sup>32</sup> Discussed *infra* Section V.1.

<sup>33</sup> See, e.g., *Dasa vai pulverizar o controle acionário em bolsa* [*Dasa Will Diffuse Stock Control in the Stock Exchange*], VALOR ECONÔMICO, Jan. 25, 2006; *Perdigão pulveriza capital e entra na onda das companhias públicas* [*Perdigão Diffuses Capital and Get into the Wave of Public Companies*], VALOR ECONÔMICO, Jan. 17, 2006; and *Empresas sem dono* [*Firms Without Owners*]. REVISTA EXAME, Jan. 26, 2006.

<sup>34</sup> *Vitamina ou veneno? Enquanto a Europa discute os prós e contras das poison pills, o Brasil desenvolve versões próprias da pílula e reforça a dose quando o controle é pulverizado* [*Vitamin or poison? While Europe Discusses the Pros and Cons of Poison Pills, Brazil Develops Its Own Pill Versions and Reinforces the Dose When Control Is Diffused*], REVISTA CAPITAL ABERTO, Mar. 2006.

<sup>35</sup> Heloiza Canassa & Edgar Ortega, *Bovespa-BM&F Merger to Create Third-Biggest Exchange*, Bloomberg, 03/26/3008 available at <http://www.bloomberg.com/apps/news?pid=20601086&sid=abTHmx9GUGwA&refer=news>.

<sup>36</sup> See *supra* note 11; *A vida depois da pulverização. Empresas que já optaram pela diluição de controle têm aumento de liquidez em seus papéis e passam a fazer parte dos principais índices* [*Life After Diffusion of Shares. Companies that Have Chosen Diffusion of Control Have Liquidity Increase for Their Securities and Become Part of the Main Index*], VALOR ECONÔMICO, June 29, 2006; and *Para Previ, pulverização de controle valoriza governança* [*For Previ, Control Pulverization Enhances Governance*], VALOR ECONÔMICO, Jan. 18, 2006.

<sup>37</sup> See *Empresas sem dono* [*Firms Without Owners*]. REVISTA EXAME, Jan. 26, 2006; and *Controle pulverizado cria grupo de executivos superpoderosos. Modelo exige mais participação dos acionistas e atenção aos conflitos de interesse* [*Diffused Control Creates A Group of Super Powerful Executives. The Model Requires More Shareholder Participation and Attention to Conflict of Interests*], VALOR ECONÔMICO, Mar. 13, 2006.

To investigate changes in Brazilian ownership structures, this paper analyzes data on ownership structure of Brazilian listed corporations using Annual Information Reports for the year 2006 and updated in 2007. To determine whether concentrated ownership has been decreasing recently, I compare data obtained from this research with results of previous studies on ownership structures from 1996 to 2002<sup>38</sup>. I analyze emerging types of control structures in association with less concentration of ownership, inquiring whether firms present minority control or eventually managerial control.

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

This paper finds that managerial control is far from being a Brazilian reality. But this paper presents evidence that concentration of ownership has indeed diminished in Brazilian capital markets. There is, however, one important caveat: ownership has become more “dispersed” in Novo Mercado, the special listing segment of Bovespa that requires that firms adopt the one-share-one-vote rule. I find that the largest shareholder of Novo Mercado companies holds 36.39% of the shares on average. This data greatly contrasts with measures of the largest stake of shares from previous studies.<sup>39</sup> When we move from Novo Mercado to Level 2 and Level 1, segments with less stringent requirements of corporate governance, we find that ownership becomes increasingly more concentrated. The average of the largest shareholder ownership is 64.79% and 63.14% in Level 2 and Level 1, respectively.

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<sup>38</sup> See references *infra* Section IV.

<sup>39</sup> See notes *infra* Section IV.

It may appear as though companies have been changing their governance and ownership patterns in the ways envisioned by Novo Mercado.<sup>40</sup> However, this paper argues that this conclusion is, at best, incomplete. For a complete understanding of these current changes, any account must analyze the players who have been changing corporate governance patterns.

This paper analyzes the historical background of all the firms that have listed on Novo Mercado, Level 2 and Level 1. I identify the companies that have migrated from Bovespa's traditional listing market to a special segment (Novo Mercado, Level 2 or Level 1). One could suppose that firms have been scaling-up from the standard listing segment to Level 1, Level 2 and then to Novo Mercado to take advantage of the heightened value of their securities in most stringent segments.<sup>41</sup> One could even assume that most firms that are listed now in Novo Mercado used to be listed on the traditional segment. However, the reality is that few companies from the traditional listing market have migrated to Novo Mercado. Only 15.2% of the firms listed on Novo Mercado come from the standard market. The majority of companies (thirty-five out of fifty-seven or 61.4%) that originally migrated from the standard market went to Level 1.<sup>42</sup>

In contrast, the majority of companies that have been listing in Novo Mercado are mostly "new entrants." Nearly 85% of Novo Mercado's firms are closely held

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<sup>40</sup> See Affonso Celso Pastore, *Síndrome de Peter Pan: argumentos adicionais* [*Peter Pan Syndrome: Additional Arguments*], VALOR ONLINE, Sept. 10, 2007, available at <http://www.valoreconomico.com.br/valoreconomico/285/primeirocaderno/opiniao/Sindrome+de+Peter+Pan+argumentos+adicionais,,58,4522835.html?highlight=&newsid=4522835&areaid=58&editionid=1855>; and Cristiano Romero, *A decolagem do mercado de capitais* [*Taking off of the Capital Markets*], VALOR ECONÔMICO, Jan. 3, 2007. See also *Temporada de compras* [*Buying Season*], REVISTA EXAME, Nov. 16 2006.

<sup>41</sup> See Antonio Gledson de Carvalho & George G. Pennacchi, *Can a Stock Exchange Improve Corporate Behavior? Evidence from Firm's Migration to Premium Listings in Brazil* \_\_ (Jan. 2007), available at <http://ssrn.com/abstract=678282>. See also Ricardo P.C. Leal & Andre Carvalhal-da-Silva, *Corporate Governance and Value in Brazil (and in Chile)* \_\_ (Oct. 2005), available at <http://ssrn.com/abstract=726261> (finding strong evidence that good corporate governance leads to a higher market valuation and lower cost of capital). See generally Bernard S. Black, Inessa Love, & Andrei Rachinsky, *Corporate Governance and Firms' Market Values: Time Series Evidence from Russia*, 7 EMERGING MARKETS REVIEW 361-79 (2006), available at <http://ssrn.com/abstract=866988> (finding that governance predicts market value in a firm fixed effects framework in Russia); Bernard S. Black & Vikramaditya S. Khanna, *Can Corporate Governance Reforms Increase Firms' Market Values? Evidence from India*, 4 J. EMPIRICAL LEGAL STUD. (2007), available at <http://ssrn.com/abstract=914440> (noting that investors consider Clause 49's corporate governance reforms in India valuable, as large firms' share prices react positively to reform announcements).

<sup>42</sup> See *infra* Section II and Table 1.

corporations that have gone public and issued shares directly in this listing segment. This suggests that we can identify two corporate worlds in Brazilian capital markets. One world consists of new corporations which adopt better corporate governance patterns; the other, traditional corporations which have not changed their main patterns of corporate governance or ownership. So, while new entrants increase corporate governance quality and market competition, a significant group of corporations resist changes and act as path dependence theory would predict.<sup>43</sup>

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

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

A second development refers to changes in companies' bylaws. Many corporations are adopting legal mechanisms to prevent hostile takeovers. Renner and Perdigo were the first companies to include anti-takeover in their bylaws.<sup>44</sup> I investigate

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<sup>43</sup> Bebchuk & Roe, *supra* note 9, at 137-38.

<sup>44</sup> See *Adversários de primeira viagem. Oferta hostil da Sadia pelo controle da Perdigo deixa espaço para os administradores brasileiros agirem com muito mais governança da próxima vez* [First Trip

eighty-four companies without a clear controlling shareholder to assess how diluted ownership has led to the use of anti-takeover clauses in bylaws.

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

This paper proceeds as follows. In Section II, I identify recent changes in the Brazilian market following the creation of Bovespa's listing segments. I show a consistent increase in the number of IPOs and the numbers of the new listing phenomenon. In Section III, I analyze what companies have migrated to Novo Mercado, Level 2, and Level 1. In Section IV, I review empirical evidence of ownership concentration in the Brazilian capital markets. In Section V, I discuss the recent takeover attempt and present new data on the decrease of ownership concentration. I examine patterns of ownership in Bovespa's corporate governance segments and find that dispersed ownership is present in Novo Mercado and not in Level 2 and Level 1. Section VI then explores the main consequences of increased dispersion of ownership on private contracting. Section VII matches empirical evidence with theoretical hypotheses on changes of corporate ownership and highlights lessons we can learn from the Brazilian experience. It identifies the reasons for and consequences of ownership change on other emerging markets. Section VIII discusses challenges that Brazilian regulation will have to face to sustain market development. Section IX concludes.

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*Adversaries; and Sadia's Hostile Offer for Perdigao's Control Leaves Room For Brazilian Managers to Act with More Governance Next Time*], REVISTA CAPITAL ABERTO, Aug. 2006.

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

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

Table 1 details the most important rules of the special listing segments. Level 1 basically requires: 1) a maintenance of free-float of at least 25% of the total capital, 2) improvements in quarterly information reports, including disclosure of consolidated financial statements, cash flow statement, and special audit revision, 3) disclosure of an annual calendar of corporate events, 4) disclosure of trading involving securities of the company by its management or controlling shareholder, and 5) disclosure of contracts between the company and related-parties.

Level 2 mandates compliance with Level 1's rules and the following regulations: 1) disclosure of financial statements in accordance with US GAAP or IFRS standards, 2) a unified term of two years at maximum for the entire board of the directors, which must be comprised by at least five members, from which 20% must be independent, 3) voting rights granted to non-voting (preferred) shares in certain corporate decisions such as merger, spin-off, or incorporation, approval of contracts between the company and other firms of the same holding group when deliberation occurs at the general meeting, 4) tag along rights for non-voting shareholders who ought to receive at least 80% of the price paid for the voting shares of the controlling shareholder in a sale of control, 5) obligation to hold a tender offer by the economic value of the shares in case of delisting or going-private transaction, and 6) adherence to the Market Arbitration Panel for the solution of corporate disputes.

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

All three segments require that public share offerings use mechanisms favoring capital dispersion and broader retail access. While this rule can be interpreted in very different ways,<sup>45</sup> it is clear that the one-share-one-vote rule best enables ownership to become dispersed. This rule is only required by Novo Mercado. Therefore, Novo Mercado is the most stringent listing segment, followed by Level 2 and Level 1, the least stringent segment.

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

Novo Mercado's firms have been responsible for the large growth in the number of IPOs in Bovespa. Table 5 presents the numbers of the IPO phenomenon for primary offerings, secondary offerings and mixed offerings. I focus on the numbers of primary and mixed offerings (these also include a primary initial public offering). In 2004, only three companies engaged in IPOs in Novo Mercado and two companies in Level 2. In

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<sup>45</sup> The specific criteria required by Bovespa to meet this rule are: (i) ensured access to all interested investors and (ii) allocation of at least 10% of the total distribution to individuals or non-institutional investors. (See Rule 7.1 of Level 1, Level 2, and Novo Mercado.)



2005, five companies in Novo Mercado and two companies in Level 2 went public. The number of IPOs dramatically increased in 2006 and 2007. In 2006, seventeen IPOs were conducted in Novo Mercado and four in Level 2. In 2007, the numbers jumped to forty-one IPOs in Novo Mercado, seven in Level 2, and eight in Level 1.

Table 6 shows that Novo Mercado has been receiving the vast majority of the new IPOs. Novo Mercado already represents 18.59% of the market capitalization of Bovespa. Level 2 does much worse than this score. Nonetheless, the largest market capitalization of the new listing segments comes from Level 1, which makes approximately 38%, more than two times the market capitalization of Novo Mercado. Overall, the largest capitalization of Bovespa still comes from the standard market, which accounts for little more market capitalization than Level 1, accounting for approximately 40% of the total market capitalization of the stock exchange.

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

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

By the end of 2007, Bovespa had 156 companies listed on its special segments of corporate governance (ninety-two in Novo Mercado, twenty in Level 2 and forty-four in Level 1).<sup>46</sup> These numbers present a notable development considering the historical evolution of Brazilian capital markets. As a result, many commentators are very optimistic about the recent growth of the market.

These developments can imply several hypotheses about stock market and corporate governance evolution. Recent studies show that Novo Mercado's firms receive

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<sup>46</sup> Based on data gathered by the end of 2007.

higher prices for their securities.<sup>47</sup> These prices should encourage firms to upgrade their listing level, since firms can more easily obtain financing by enacting stricter corporate governance practices. Therefore, one could suppose that firms that used to be listed on the standard market should gradually scale-up from this market to Level 1, Level 2, and then to Novo Mercado. One could hypothesize that the majority of firms that are listed now in Novo Mercado came from the traditional segment. However, a careful analysis of which companies have been listing on Novo Mercado does not support these hypotheses.

In this Section, I identify the companies listed on Novo Mercado and the dates when their shares began to be traded in this segment. Then, I inquire whether these companies had been previously listed on the Bovespa standard market, Level 2 or Level 1. For this purpose, I checked the dates of their registration with CVM, to assess when these companies opened their capital and whether they had done so in Bovespa's standard market. Phone calls have been conducted to clarify doubts when the data was found insufficient to determine whether the company had been listed on the standard market.

To date, Bovespa has ninety-two companies listed on Novo Mercado.<sup>48</sup> Table 7 shows that, of these companies, only fifteen companies, or approximately 16.3% of all Novo Mercado's companies, migrated from the traditional market. These companies include: Banco Brasil SA, Cia Hering, Cia Saneamento Basico Est Sao Paulo, CPFL Energia SA, Drogasil SA, Eternit SA, Gafisa SA, Industrias Romi SA, Light SA, Lojas Renner SA, Perdigao SA, Rossi Residencial SA, Sao Carlos Empreendimentos e Participacoes SA, Tractebel Energia SA and Weg S.A. Therefore, the vast majority of Novo Mercado companies are new entrants that have listed their IPOs in Novo Mercado.

There are twenty companies listed on Level 2. From these companies, eight firms (40%) have already been listed on the traditional market. These include All América Latina Logística SA, Centrais Eletricas de Santa Catarina SA, Eletropaulo Metrop. Elet. Sao Paulo SA, Marcopolo SA, Net Sevcos de Comunicação SA, Saraiva

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<sup>47</sup> See, e.g., Alexandre Di Miceli da Silveira & Lucas Ayres B. de C. Barros, *Corporate Governance Quality and Firm Value in Brazil* \_\_ (June 2007), available at <http://ssrn.com/abstract=923310>; and Antonio Gledson de Carvalho & George G. Pennacchi, *Can Voluntary Market Reforms Promote Efficient Corporate Governance? Evidence from Firms' Migration to Premium Markets in Brazil* \_\_ (Jan. 25, 2005), available at <http://ssrn.com/abstract=678282>.

<sup>48</sup>Based on data collected at the end of 2007.

SA Livreiros Editores, Suzano Petroquímica SA and Tam SA. This information shows that although the majority of firms listed on Level 2 are new entrants in the stock exchange, a significant number of firms have migrated from the standard market.

Bovespa has now forty-four companies listed on Level 1. Thirty-five of these companies, or approximately 80% of all companies listed on Level 1, come from Bovespa's traditional listing market. These include: Aracruz Celulose SA, Bco Bradesco SA, Bco Estado do Rio Grande do Sul, Banco Itau Holding Finaceira SA, Parapanapanema SA, Brasil Telecom Participacoes SA, Brasil Telecom SA, Braskem SA, Centrais Elet Bras SA Eletrobras, Cia Energetica de Sao Paulo (CESP), Cia Brasileira de Distribuicao, Cia Energetica de Minas Gerais (CEMIG), Cia Fiacao Tecidos Cedro Cachoeira, Cia Transmissao Energia Elet Paulista, Cia Vale do Rio Doce, Confab Industrial SA, Duratex SA, Frax-Le SA, Gerdau SA, Iochpe Maxion SA, Itausa Investimentos Itau SA, Klabin SA, Mangels Industrial SA, Metalurgica Gerdau SA, Randon SA Implementos e Participacoes, SA Fabrica de Prods Alimenticios Vigor, Sadia SA, Sao Paulo Alpargatas SA, Suzano Papel e Celulose SA, Ultrapar Participacoes SA, Unibanco Holdings SA, Unibanco Uniao de Bcos Brasileiros SA, Unipar Uniao de Ind Petroq SA, Usinas Sid de Minas Gerais SA (USIMINAS), and Votorantim Celulose e Papel SA. Traditional firms are more likely to gravitate towards segments that require small changes in corporate governance.

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

firms that migrate most likely list on Level 1, which requires the least stringent changes in their initial ownership and governance structure.

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

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

Second, Level 2 represents the compromise between the strongest corporate governance practices of Novo Mercado and the weakest of Level 1. I believe that precisely because of this gray compliance with better corporate governance, Level 2 is the segment that has attracted the smallest number of listings. Level 2 mostly contains new entrants, but it has a significantly greater percentage of firms from the standard market. All companies listed on Level 2 have non-voting preferred shares in their structures, which explains why they have not listed on Novo Mercado. Some of Level 2's companies suffer from regulatory restrictions due to the type of industry in which they operate. This happens, for instance, with companies in the business of air transportation and education. Such regulation constrains the possibility of converting non-voting shares into voting shares, therefore impeding companies from complying with Novo Mercado's one share-one vote rule.<sup>49</sup>

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<sup>49</sup> These are the cases of Anhanguera Educacional Participacoes S.A., Estacio Participacoes S.A., Kroton Educacional S.A., and SEB – Sistema Educacional Brasileiro S.A. Air transportation firms, according to Law 7565/86, art 181 II must have four-fifths of the voting capital pertaining to Brazilian citizens. In addition, article 181 §1° requires that firms' bylaws prohibit the conversion of preferred non-voting shares into voting shares. In the case of companies that provide educational services, a law still pending in Congress has constrained the ownership structure ex-ante the IPO period. Article 7 of Project of Law No. XX mandates that 70% of the voting capital of any institution that sponsors universities should belong to Brazilian citizens. Educational firms that recently went public arranged their ownership structure accordingly, issuing units, which are comprised of non-voting shares and voting shares.

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

#### IV. CONCENTRATION OF OWNERSHIP PATTERNS

Several studies have shown concentrated ownership characterizes Brazilian publicly-held companies. For example, Valadares and Leal found that, on average, one shareholder owned 74% of the voting capital in 203 companies, or 62.5% of their sample.<sup>50</sup> They relied on data disclosed in the 1996 IANs. Their sample comprised ownership information on 325 companies, including twenty-six financial institutions.<sup>51</sup> Among 122 companies whose control is not retained by one sole shareholder, the largest shareholder owns, on average, 32% of the voting capital. Therefore, a shareholder will retain a major voting block of shares even in companies without a controlling shareholder. Considering the entire sample, the largest shareholder owns, on average, 58% of the voting capital, the three largest shareholders own 78%, and the five largest own 82%. Only thirty-five companies, or 11% of the sample, have not issued non-voting shares. Valadares and Leal find that the total capital of companies is composed, on average, by 54% voting shares and 46% non-voting shares. So, non-voting shares have been used as a

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<sup>50</sup> Sílvia Mourthé Valadares & Ricardo Pereira Câmara Leal, *Ownership and control structure of Brazilian companies* 8 (2000), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=213409](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=213409).

<sup>51</sup> *Id.* at \_\_\_\_.

mechanism to separate ownership from control.<sup>52</sup>

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

Considering capital origin, Carvalhal-da-Silva and Leal observed that, of the 203 companies which had a sole controlling shareholder, one hundred eight companies (48% of the sample) are controlled by families, sixty companies (27%) are controlled by foreign investors, nineteen (8%) by institutional investors, and sixteen (7%) by the government.<sup>55</sup>

Aldrighi and Oliveira analyzed ownership and control concentration, relying on IANS dated between 1997 to 2002.<sup>56</sup> They show that 77.3 % of listed companies have a

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<sup>52</sup> *Id.* at 10 (“[I]f there is some diffusion in ownership of the firm, this occurs through non-voting shares. Thus small shareholders normally do not have voting rights, and therefore lack the formal power to guarantee their rights from company managers.”)

<sup>53</sup> André Carvalhal-da-Silva & Ricardo Leal, *Corporate governance, market valuation and dividend policy in Brazil 7* (Coppead Working Paper Series, Paper No. 390, Nov. 2003), available at <http://ssrn.com/abstract=477302>. See also Eduardo Schiehl & Igor Oliveira dos Santos, *Ownership structure of boards of directors: Evidence on Brazilian publicly-traded companies*, *Revista de Administração*, São Paulo, vol. 39, n. 4, out.dez./ 2004, p. 381 (analyzing data from 2002 and concluding that “[o]verall, these statistics document that the ownership structure of Brazilian public firms has not changed significantly since 1998 and remains highly concentrated.”).

<sup>54</sup> Carvalhal-da-Silva & Leal, *supra* note 53, at 9.

<sup>55</sup> *Id.* at 8, 10-13. The authors support their hypothesis that a higher concentration of voting rights is associated with a lower firm valuation, that the higher the voting total capital ratio, the lower is the firm valuation, that firms with a high concentration of voting rights have a low payout, and that firms with a high separation between voting and cash flow rights have a low payout.

<sup>56</sup> Dante Mendes Aldrighi & Alessandro Vinícius Marques de Oliveira, *The Influence of Ownership and Control Structures on the Firm Performance: Evidence from Brazil* \_\_ (Mar. 15, 2007), available at <http://ssrn.com/abstract=972615> (also finding evidence on minority expropriation by controlling shareholders, mainly in the case of pyramids and non-voting shares structures which are associated with negative impacts on the performance of the largest firms).

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

In a recent study, Leal and Carvalhal-da-Silva discovered a very high concentration of voting rights leveraged by the use of indirect control structures and non-voting shares.<sup>57</sup> They studied ownership structures using IANs from approximately 250 firms in 1998, 2000 and 2002. They concluded that ownership of voting rights became more concentrated during this period.<sup>58</sup> They noted that controlling shareholders own more than 50% of the voting shares in 75% of the companies.<sup>59</sup>

Thus, with respect to direct ownership, the largest shareholder has a median of 71% of the voting rights and 50% of the cash-flow rights. When indirect ownership is analyzed, the largest shareholder has 68% of the voting rights and 34% of the cash flow rights.<sup>60</sup> These results demonstrate that the use of indirect control structures and non-voting shares contribute to separation of ownership and control.<sup>61</sup>

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

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<sup>57</sup> Leal & Carvalhal-da-Silva, *supra* note 41, at \_\_.

<sup>58</sup> *Id.* at 7.

<sup>59</sup> *Id.* at 19.

<sup>60</sup> *Id.* at \_\_. It is important to note that the authors have already adjusted ownership concentration results to reflect the voting blocks organized by means of shareholders' agreements. *See id.* at 20 (making ownership structures look much more concentrated than they actually are). I analyze ownership structures both with and without taking shareholders' agreements into account to compare the effects these agreements have on ownership concentration and control in the market.

<sup>61</sup> *Id.* at 20.

pension funds, foundations or investment funds), and 8% by the government.<sup>62</sup>

Voting shares typically represented around 46.3% of the total number of shares in the market. Forty-nine percent of all shares available for trading in the market, including voting and non-voting shares, were free-floating shares. Non-voting shares used to be the most liquid, representing about 90% of trading volume at the Bovespa Stock Exchange.<sup>63</sup>

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

## V. TOWARDS DISPERSED OWNERSHIP?

This Section analyzes whether and to what extent ownership structures are becoming more dispersed in Brazil. I begin with anecdotal evidence of Sadia S.A.'s attempted takeover of Perdigao S.A.'s control. This case drew enormous media attention as it was considered the first recent hostile takeover attempt in Brazilian capital markets.<sup>64</sup> It provided the first evidence of three interesting developments in corporate control and governance structures: a) Perdigao's significant dispersion of ownership by Brazilian standards; b) its main shareholders' adoption of a shareholders' agreement to coordinate control; and c) the current discussion on the adoption of tactical anti-takeover defenses.

### *V.I. THE RECENT TAKEOVER ATTEMPT*

Sadia S.A. and Perdigão S.A. are the largest players in the Brazilian food manufacturing business. They produce meat, chicken, pork, turkey and meat derivatives, and process chilled frozen food such as pastas, poultry and vegetables. They are both

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<sup>62</sup> *Id.* at 20, 62.

<sup>63</sup> *Id.* at \_\_\_\_.

<sup>64</sup> See *Por que o negócio do ano não saiu [Why the Deal of the Year Did Not Go Through]*, REVISTA EXAME, July 28, 2006 (stating that the Brazilian market has seen two other successful takeovers: the offer of Companhia de Eletricidade de Juiz de Fora to acquire CEMIG in the 1970s and the takeover of Cimento Aratu by Votorantim in the 1980s).



importers and exporters of meat-based products. Sadia is listed on Bovespa's Level 1. Perdigão is listed on Novo Mercado.

In June 2006, Sadia attempted to expand its international business by taking over Perdigão. Sadia offered to pay \$27.88 per share.<sup>65</sup> Sadia's price was the average market price of Perdigão's shares at Bovespa in the 30 preceding days plus a premium of 35%.<sup>66</sup> Perdigão's executives found Sadia's price too far below Perdigão's value and shareholders' expectations. Perdigão's board additionally believed that the offer did not comply with procedures provided by Perdigão's bylaws.<sup>67</sup>

The largest shareholders of Perdigão are eight pension funds: Previ, Petrus, Fapes, Sistel, Valia, Real Grandeza Fundos de Previdência, Previ Banerj and PSPP. Most of these funds engaged in a shareholders' agreement regulating voting rights in the company.<sup>68</sup> They jointly own about 49% of Perdigão's voting shares.<sup>69</sup> The pension funds designed a strategy to prevent the transaction by convincing Weg SA, a shareholder owning approximately 5.88% of Perdigão's shares, not to tender its shares. Because the pension funds controlled a very high percentage of shares, they simply adopted the strategy of saying "no."<sup>70</sup>

Sadia then offered a new price of \$29 per share<sup>71</sup>. This price was considered below the legal requirement that a second offer be priced at least 5% higher than the first offer<sup>72</sup>. Grouping 55.38% of Perdigão's capital, the funds refused to tender their shares and easily and quickly blocked the hostile takeover attempt.<sup>73</sup>

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<sup>65</sup> *Sadia nega que tenha sido inábil quanto à Perdigão [Sadia Denies That It Was Inept Regarding Perdigão]*, REVISTA EXAME, July 27, 2006.

<sup>66</sup> *Perdigão reclama da forma e do valor da investida feita pela Sadia [Perdigão Complains About the Form and Value of Sadia's Investiture]* VALOR ECONÔMICO, July 18 2006.

<sup>67</sup> *Perdigão considera oferta da Sadia "abaixo do valor" de mercado [Perdigão Considers the Offer from Sadia Below the Market Value]*, REVISTA EXAME, July 17, 2006.

<sup>68</sup> *Frustrada Sadia revê seus planos de expansão [Disappointed, Sadia Reviews Its Expansion Plans]*, VALOR ECONÔMICO, July 24, 2006.

<sup>69</sup> *Em unanimidade, fundos dizem "não" [Unanimously, Funds Say No]*, VALOR ECONÔMICO, July 19, 2006.

<sup>70</sup> *Id.*

<sup>71</sup> *Sadia aumenta oferta para comprar Perdigão [Sadia Raises the Offer to Acquire Perdigão]*, REVISTA EXAME, July 20, 2006.

<sup>72</sup> *Por que o negócio do ano não saiu [Why the Deal of the Year Did Not Go Though]*, REVISTA EXAME, July 28, 2006.

<sup>73</sup> *Caso Sadia-Perdigão é sinal de evolução do mercado [Sadia-Perdigão Case Is a Sign of Market Evolution]*, VALOR ECONÔMICO, July 24, 2006.

Many Brazilian companies are currently facing situations like Sadia's hostile takeover attempt. In 2006, Perdigão's ownership structure was the following: Previ (15.6%), Petrus (11.9%), Sistel (5.1%), Weg Participacoes e Servicos SA (5.1%), Valia (4.1%), Fapes (3.6%), Real Grandeza Fundo de Previdencia (2.85), Fund. Inv. Tit e Valores Mobiliarios Librium (2.2%), and Previ Banerj (1.2%).<sup>74</sup> Considering share ownership alone, no shareholder held a majority of the voting shares to control corporate decisions in the general meeting or to elect the majority of the board. Though Previ and Petrus are the largest two shareholders, other shareholders could still challenge their power by acting as a homogeneous group.

Many minority shareholders have been coping with this situation through shareholders' agreements. This was indeed the case of Perdigão, whose shareholders (Previ, Petrus, Sistel, Fapes, Real Grandeza, Previ Banerj and Valia) are bound by a shareholders' agreement that regulates the exercise of voting rights.

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

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

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<sup>74</sup> This information comes from Perdigao's IAN delivered in 2007 to CVM, which detailed its ownership structure in 2006.

## V.2. DATA ON SHARE OWNERSHIP

The initial sample consists of the 530 firms listed on Bovespa at the end of 2007.<sup>75</sup> The following corporations were excluded: 1) corporations listed on the over the counter market (ninety-one firms); 2) corporations which have not issued equity (twenty-four firms); 3) corporations that did not pass a “liquidity test,” and did not have any trading activity between January 1<sup>st</sup> and May 31<sup>st</sup>, 2007 (thirty-eight firms); and, 4) corporations with incomplete or unavailable data (thirty-eight firms).

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

IANs must be delivered annually, five months after the end of the company’s social exercise. They must disclose information regarding the preceding year.<sup>76</sup> Any changes in material facts which occur after the IAN’s delivery must be updated and resubmitted to CVM, including changes in shareholding ownership.<sup>77</sup> Ninety-six companies reported changes in ownership structures during 2007 and resubmitted ownership disclosure information to CVM. Accordingly, our data tracks these changes and includes up-to-date information delivered to CVM by the end of 2007. IANs are publicly available from CVM’s and Bovespa’s websites.

Additionally, CVM requires that shareholders disclose direct or indirect shareholding ownership corresponding to 5% or more of shares of a corporation.<sup>78</sup> These data enabled me to identify shareholders composition, directly and indirectly. Moreover, I have found that the average ownership of the first, third, and fifth largest shareholders for each segment of Bovespa.<sup>79</sup>

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<sup>75</sup> Data from Dec. 19th, 2007.

<sup>76</sup> Instruction CVM No. 202 art. 16 IV “a” and “b”.

<sup>77</sup> Instruction CVM No. 202 art. 16 § 7.

<sup>78</sup> CVM Instruction 358/2002, art. 12.

<sup>79</sup> Some companies have less than five shareholders who own more than 5% of the shares.

I split the sample in two groups: firms with a controlling shareholder and firms without a controlling shareholder. Control can be exercised through different mechanisms. The most obvious, of course, is ownership of a relevant amount of shares.<sup>80</sup> For the purposes of this paper, a company is considered to have a controlling shareholder when a single shareholder (or a block of shareholders bound by shareholders' agreements) owns more than 50% of the voting shares of the company. A company will be classified as without a controlling shareholder if the largest shareholder has less than 50% of the voting stock. Therefore I distinguish between companies with a clear controlling shareholder and companies without a controlling shareholder.<sup>81</sup> A controlling shareholder by this definition has uncontested decision-making power in corporate affairs. He or she may elect the majority of the board of directors (and managers) and control the agenda of the general shareholders' meeting. When ownership decreases below the 50% threshold, the power of one shareholder will depend on the ownership structure of the other shareholders. This holds true even as ownership of voting shares declines.

On the other hand, if ownership is considerably diffused (imagine a couple of shareholders owning around 5% of the voting capital), shareholders could coordinate control by using a non-ownership mechanism, such as contractual devices. For example, shareholders' agreements can guarantee control. This would occur if shareholders owning less than 50% of the voting rights engage in a shareholders' agreement to regulate their voting rights and/or exercise of control.<sup>82</sup> Therefore, shareholders'

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<sup>80</sup> Control can also be exercised by non-ownership mechanisms such as contracts and actual control of the proxy machinery.

<sup>81</sup> I am aware that this cutoff is very stringent. The literature has applied more lax definitions of controlling shareholder. *See generally*, La Porta, Lopez-de-Silanes & Shleifer, *supra* note 2; and Claessens, et al., *supra* note 4 (considering a controlling shareholder has 10 to 20 % of either direct or indirect voting rights). Accordingly, interpretations of the results depend on the threshold of control used to define a controlling shareholder. If we suppose that 20% of voting stocks is sufficient to characterize control, then the vast majority of Brazilian firms would be classified as companies with concentration of ownership. Very few companies with dispersed control. This paper, however, does not take an issue with such interpretation. My objective is to show that ownership patterns are changing in Brazil, and for this purpose I compare the results of this analysis with results obtained by previous studies of Brazilian corporate ownership. Therefore, I find a decrease in ownership concentration, even if one argues that the actual ownership structures may not be fully classified as dispersed structures.

<sup>82</sup> This is not to say, of course, that shareholders holding more than 50% of voting rights cannot engage in such agreements.

agreements are powerful mechanisms to assure control without requiring the burdensome financial commitment of having a lot of non-diversified capital invested in a corporation.

In order to evaluate the role of shareholders' agreements in bringing about control structures, I present the data before considering the terms of shareholders' agreements.

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

One could still argue that these numbers denote that concentrated ownership is still prevalent, especially if we accept a 20% threshold to assess control.<sup>83</sup> However, these numbers are greatly contrast with the usual Brazilian pattern of ownership concentration reported in the previous section. Considering the entire sample of firms listed on Novo Mercado (ninety-two), the largest shareholder owns 36.39% of the shares. These data confirm that Novo Mercado achieves considerably dispersed ownership in comparison to ownership concentration found in earlier studies.<sup>84</sup>

Level 2 continues to be characterized by the traditional degree of ownership concentration. In the sample of twenty companies listed on Level 2, the largest

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<sup>83</sup> See La Porta, Lopez-de-Silanes & Shleifer, *supra* note 2, at 471, 491 (using a smaller percentage of share ownership to characterize control).

<sup>84</sup> See *supra* notes \_\_. Previous studies found much larger means. See, e.g., Valadares and Leal, *supra* note 50 (finding that the largest shareholder controlled on average 58% of the voting rights); Carvalhal-da-Silva and Leal (calculating the average as 72%); and Aldrighi and Oliveira (noting an average of 70.7%). Carvalhal-da-Silva and Leal found a median of 71%. Therefore, the reported drop on ownership structure concentration shows a significant change in Brazilian ownership patterns.

shareholders holds, on average, 64.79% of the voting capital.<sup>85</sup> Nonetheless, six companies have significantly more dispersed ownership. The average voting shares of the largest shareholder for these firms is approximately 38.84%.

Level 1 also has strong ownership concentration of voting shares. On average, the forty-four firms of Level 1 have, on average, approximately 63.14% of voting shares owned by the largest shareholder (see Table 10). Almost 71% of the Level 1 firms have controlling shareholders who, on average, control 76.07% of the voting rights. Only thirteen firms, or 29.5% of Level 1 companies, achieve more dispersion of ownership, with the largest shareholder owning approximately 32.31% of voting rights, on average.

As expected, the same pattern of ownership concentration also applies to the standard market of Bovespa. Table 11 shows that approximately 72.67% of the companies listed on this market have controlling shareholders. Of the entire sample of 183 companies, the largest shareholder holds, on average, 65.50% of the voting shares, the three largest and the five largest shareholders approximately retain, respectively, 81.64% and 85.19% of the voting shares.

These results confirm our hypotheses. Concentration of ownership increases moving from Novo Mercado to all the other segments which do not have the one-share-one-vote rule and have less stringent corporate governance requirements.

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

### *V.3. DIVERGENCE FROM VOTING CAPITAL AND TOTAL CAPITAL*

Brazilian law permits corporations to issue non-voting shares. Companies publicly held before Law 10.303/2001 may issue up to two-thirds non-voting shares of

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<sup>85</sup> See *infra* Table 9.

the total number of shares. Companies publicly held after that law passed may issue up to 50% non-voting shares of the total shares.<sup>86</sup> Therefore, I also analyze the composition of voting and non-voting shares to evaluate the divergence between cash flow and voting rights. Voting shares can assure cash flow rights and control rights, but non-voting shares can only assure cash flow rights.

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

The divergence between voting capital and total capital determines the level of private benefits of control that can be extracted from the corporation. The more concentrated cash-flow rights rest in the hands of the largest shareholder, the stronger the incentives that she will have to run the firm properly, as doing so will also raise her wealth. On the contrary, the less cash-flow rights a controlling shareholder has, the better able she is to extract value to the detriment of minority shareholders and the more firm valuation will decrease. The larger the divergence between control and cash-flow rights, the less restrained the controlling shareholder will be to extract value as she will not bear the costs of her actions accordingly.

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

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

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<sup>86</sup> See articles \_\_\_ of Law 6404/76 and \_\_\_ of Law 10.303/01.

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

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

The segment which achieves the largest separation of ownership and control is Level 1. Level 1 majority shareholders have on average 33.4% of the total capital. But they still hold two times the number of shares necessary for the exercise control (16.6%).<sup>87</sup> The ability of firms to separate ownership from control is considered to be a mechanism that explains why ownership is not dispersed in certain environments.<sup>88</sup> In section VII, I develop this theoretical argument to explain why Level 1 firms still concentrate control through the ownership of voting rights.

#### *V.4. DATA ON SHARE OWNERSHIP ACCOUNTING FOR SHAREHOLDERS' AGREEMENTS*

Section VI provides a detailed account on the types of shareholders' agreements mostly used and their effects. In this section, I consider the impact of shareholders' agreements on voting rights and control.

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<sup>87</sup> The old rule still applies for the companies that already adopted the one-third structure during the reform.

<sup>88</sup> Högfeldt, *supra note 3*, at \_\_\_.



Tables 12, 13 and 14 reveal that shareholders' agreements have a profound effect in the concentration of voting rights and control in Brazil. Table 12 shows that the sixty-five Novo Mercado companies without a controlling shareholder drop to forty-five firms when considering the effects of shareholders' agreements over control. Twenty companies (30.76%) with diffuse ownership become companies with a clear controlling group (owning more than 50% of the voting rights) when shareholders' agreements are taken into account. Before accounting for the agreements, the largest shareholder from these twenty companies held an average of 28.06% of the voting rights. When shareholders' agreements are considered, the share ownership average of the group of shareholders exercising control through such agreements increases to 65.27% for these twenty companies. Overall, the shareholders' agreements make the average largest stake of ownership in the total sample increase from 36.39% to 45.25%. Nevertheless, the main conclusion regarding the larger dispersion of ownership structures in Novo Mercado persists. In contrast to previous studies, the 45.25% average ownership of the agreement-bound group of shareholders indicates a meaningful decrease of ownership concentration in Brazilian firms.

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

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

This analysis shows that shareholders' agreements are important mechanisms to coordinate control in Brazilian corporations. These agreements tend to be adopted in companies where ownership is largely dispersed. Approximately 40% of these companies (thirty-three of the eighty-four companies) have a determined group of shareholders that jointly exercise control by means of shareholders' agreements. Considering shareholders' agreements, the number of companies without controlling shareholders drops considerably in all three special segments: from sixty-five to forty-five in Novo Mercado, from six to two in Level 2, and from thirteen to three in Level 1. Novo Mercado is the only listing segment that maintains degree of ownership dispersion, with an adjusted average ownership under 50%, even though the number of companies with controlling shareholders (forty-seven) surpasses the number of companies without controlling shareholders (forty-five) when these agreements are considered.

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

This analysis also points out that current corporate governance literature does not consider the impact of these agreements on international patterns of corporate ownership. Nonetheless, as the Brazilian experience shows, shareholders' agreements may be key instruments to organize the interests of important blockholders, making control much more concentrated in practice than share ownership could reveal.

#### *V.5. DATA ON INDIRECT ULTIMATE LARGEST SHAREHOLDERS*

Different types of ultimate shareholders shape different market characteristics and, therefore, different types of capitalism. Well-developed equity markets, such as those in the US and Britain, present distinctive features. Most listed companies in these systems have diffused ownership. Large shareholdings, and especially majority ownership, are rare. In addition, very few large companies are family-controlled. In both

the United States and Britain, institutional investors, like pension and mutual funds and insurance companies, retain significant ownership of listed companies, even if they own minority stakes in large public companies.<sup>89</sup> These particular types of ownership afford different types of governance practices.<sup>90</sup>

This section analyses the use and effect of pyramiding on corporate control structures. Pyramiding implies a discrepancy between the ultimate owner's total capital and control rights. The total capital is given by the product of ownership stakes along the chain. If a shareholder owns 40% of Firm A and Firm A owns 20% of Firm B, then this shareholder owns 8% of Firm B's cash flow rights. Control rights are measured by the weakest link in the control chain. In the former example, the shareholder would control Firm B with 20% of the voting rights.

I now analyze shareholder composition backwards to identify the ultimate main shareholders of Brazilian corporations.<sup>91</sup> I classify the ultimate largest shareholder in one of the following categories: 1) individuals or families, 2) foreign investors (individuals or institutions), 3) government, 4) institutional investors (banks, insurance firms, pension funds, foundations or investment funds). For companies that do not have a controlling shareholder, I identify the largest ultimate shareholder – the shareholder who owns the largest number of voting shares of the corporation.

In practice, one has to make several assumptions in order to calculate indirect ownership structures. Some of these assumptions include: a) how one defines each defining category (for example, how one defines 'institutional investors'), and b) how one groups different families that are the main shareholders of one company.

Regarding the first assumption, banks are typically considered to be institutional investors.<sup>92</sup> However, in many countries, banks can be controlled by families. Therefore

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<sup>89</sup> See Brian Cheffins, *Current Trends in Corporate Governance: Going from London to Milan via Toronto*, 10 DUKE J. COMP. & INT'L L. 5, 12 (1999-2000) (quoting studies finding that institutional investors retain ownership of approximately 50% of the equity market in the United States and between 16% and 70% of the equity market in England).

<sup>90</sup> Scholars either propose active or passive participation for institutional investors in corporate governance. See [quote studies]. See also Cheffins, *id.* at 25 (discussing proposals from the Cadbury Committee and the Hampel Committee to improve institutional investor participation in corporate governance).

<sup>91</sup> This analysis does not consider the existence of shareholders' agreements in order to identify the largest ultimate shareholder from the exclusive perspective of ownership patterns.

<sup>92</sup> See e.g., Leal, *supra note* \_\_\_\_.

classifying banks as institutional investors may distort the measures of corporate ownership if one does not assess the bank's main shareholders. The same applies to investment funds. Only when participation in an investment fund is not disclosed in CVM dataset, I treat those funds as institutional investors. Therefore, the data for individual or family ownership may be underestimated.

Regarding the second assumption, Diagram 1 shows the ownership structure of Klabin S.A. We can distinguish three families as the main shareholders of Klabin S.A.: the Lafers, the Pivas and the Klabins. The results of indirect ownership structure will vary according to whether we group these families among themselves as one big family, two joint families or three separated families. There is some evidence that these families might constitute one single family. For example, the name of one holding company is Jacob Klabin Lafer Adm e Part. SA, which might lead us to conclude that Klabin and Lafer have a family relationship. The main shareholders of this company nonetheless are Miguel Lafer and Vera Lafer. Another example would be Sylvia Lafer Piva, Horacio Lafer Piva and Eduardo Lafer Piva, who carry two names of the main families. Therefore, results will change depending on how we aggregate these families. One can consider the Klabins comprising one family separate from the Lafers and the Pivas. In this situation the Klabins controls 57.22%, while the Lafers owns 45.36% of the voting capital structure, and the Pivas own 20.32% of the voting rights. In a second situation, if one considers Lafer and Piva as one family group, separated from the Klabins, the result will be that the Lafers and Pivas will be the controlling shareholders with 57.88% of the voting rights. For table 19, I treated the three families as being part of the same family. The Klabins, the Lafers and Pivas jointly control 59.5% of the voting capital of Klabin SA and 20.55% of the total capital.

Other cases, such as Medial Saude SA, are simpler. Medial Saude SA has three main families (Kalil, Rocha Mello, and Schapira) who control 75% of the company's voting capital. There is no apparent evidence that those families are related. Therefore, for the purposes of this study, I considered these families as three separated main shareholders. However, if they happen to be part of the same family in practice, I have underestimated the concentration of family control. Therefore, my analysis assumes that different last names designate different shareholders. In contrast, shareholders with the

same last names are considered to belong to the same family group. As Faccio and Lang pointed out, this convention may understate family affiliation and, therefore, concentration of control.<sup>93</sup>

I find that individual and family ownership are clearly dominant in Brazilian corporations. Of the twenty-seven firms listed on Novo Mercado with controlling shareholders, twenty of them (74.07%) are controlled by individuals or families (Table 15). The large majority (17 out of 20) of companies controlled by either individuals or families are controlled by means of a pyramidal structure. In Novo Mercado's firms without a controlling shareholder, individual or family ownership also accounts for the largest stake of shares in corporations. Of sixty-five companies without a controlling shareholder, thirty-seven companies have individuals or families as the ultimate largest shareholders. Overall, as Table 15 shows, individual or family ownership is found in fifty-seven firms, which amounts to 39.75% of Novo Mercado's total market capitalization (Table 16). Foreign companies are the second largest shareholders. They are the largest ultimate shareholder in twenty-four companies, 21.86% of the entire sample of Novo Mercado's firms. Institutional shareholders are the largest ultimate shareholders of six companies and account for 15.08% of Novo Mercado's market capitalization, (Table 16). Only five companies are government-owned, but government ownership amounts to 23.31 % of the market capitalization of the segment (Table 16).

Table 17 displays ownership data for companies listed on Level 2. Considering companies with a controlling shareholder, individual or family ownership (8) still predominates in relation to foreign ownership (4). Considering companies without a controlling shareholder, individuals or family ownership is found in five out of six companies. Individual or family ownership is responsible for 63.62% of the market capitalization, followed by foreign companies and the government with 21.12% and 15.26% respectively (Table 18).

Information on the ultimate shareholder in Level 1 is found in Table 19. Individual and family ownership is also pervasive. Twenty-one out of thirty-one companies that have controlling shareholders are individual or family-held. Individuals

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<sup>93</sup> Faccio & Lang, *supra* note 3, at 388 (2002).

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

Table 21 reports ownership data for companies listed on the standard market. Individual/family ownership is also dominant, followed by foreign ownership. Of the 133 companies with controlling shareholders, seventy-eight are controlled by individuals/families, seventy-one of them by means of indirect mechanisms (pyramids). They are also the largest ultimate shareholders of thirty-seven corporations (out of fifty companies without a controlling shareholder). But in terms of market capitalization, individual/family ownership accounts for only 9.87% (Table 22). This shows that most companies tend to be small, and hardly match the concept of a true publicly-held company. The government is the first largest ultimate shareholder in terms of the standard level's market capitalization, with 48.63% (eighteen companies). Foreign ownership represents the second largest market capitalization. Foreign shareholders are the largest ultimate shareholders in thirty-seven companies and achieve 39.18% of the standard market capitalization.

Table 23 provides an overview on the general use of non-voting shares and pyramidal structures by the different types of last ultimate owners. Considering the whole sample of companies with available information (339), 163 companies make use of both pyramidal structures and non-voting shares. Sixty-seven companies adopt pyramidal structures and sixty-two companies adopt non-voting shares. Therefore approximately 86% of the firms in the sample separate ownership and control through these mechanisms. Considering all the companies of the sample, approximately 69% of them present non-voting shares, and 66% present pyramidal structures. Individuals and families are by far the groups that adopt these mechanisms for separation of ownership

and control. Considering the whole sample, 51.03% of the firms have individuals and families as last ultimate shareholders that make use of pyramidal structures and 43.66% that also adopt non-voting shares.

Several studies have found that large shareholdings are usually associated with families.<sup>94</sup> I find that family ownership increases in the segments that are characterized by more concentrated ownership. Family firms' heavy reliance on pyramidal structures shows that they are used to organizing interests of the several family members. .

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

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

### VI.1. TYPES OF SHAREHOLDERS' AGREEMENTS

As ownership has become more dispersed in the market, shareholders' agreements have increasingly been used to coordinate control. The Brazilian Corporate Law provides that shareholders' agreements can regulate the purchase and sale of shares, preference to acquire shares, the exercise of voting rights, or the exercise of control.<sup>95</sup> Shareholders' agreements may be mixed to address more than one of these subjects. The Corporate Law also contains specific rules regarding disclosure of these agreements.

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<sup>94</sup> La Porta et. al, *supra* note 2, at \_\_\_. Claessens, et al., *supra* note 6, at 2764 (finding that 70% of the blockholders of their sample is comprised by families).

<sup>95</sup> Article 118 of Law 6404/7. ("Article 118. Shareholder agreements regulating the purchase and sale of shares, preference to acquire shares, the exercise of voting rights, or the exercise of control must be observed by the corporation when filed in its head office.").

While shareholders' agreements are generally kept private in many jurisdictions,<sup>96</sup> in Brazil these agreements must be duly entered in the corporation's registration books to be enforceable against third parties.<sup>97</sup> They bind the corporation itself provided that they are filed with the corporation's head office.<sup>98</sup> Therefore, shareholders have strong incentives to disclose these agreements.<sup>99</sup> If shareholders do not register the agreements with the company, agreements will be enforceable only between the signing parties.<sup>100</sup>

The 2001 Corporate Law reform expanded shareholders' agreements' ability to control corporate actions. Directors elected by shareholders who have signed such an agreement are required to vote in accordance with the terms of the agreement.<sup>101</sup> Votes cast in breach of the agreement will not be considered by the president of the meeting.<sup>102</sup> Therefore, shareholders' agreements now play an even more critical role in corporate governance. They cannot only regulate the control exercise and voting rights of shareholders, but also bind directors' votes to the terms of the agreement and therefore diminish directors' independence.

The disclosure of shareholders' agreements to the public presents an interesting research opportunity. Black, Carvalho and Gorga survey corporate governance practices in Brazil, based on an extensive 2005 survey. They find that thirty-six (42%) of the Brazilian private companies in their sample have a shareholders' agreements among the

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<sup>96</sup> REINIER KRAAKMAN ET AL., *THE ANATOMY OF CORPORATE LAW 75*(Oxford University Press \_\_\_).

<sup>97</sup> Article 118, paragraph 1, of Law 6404/76 ("Paragraph 1. The commitments or encumbrances resulting from such an agreement may only be enforced against a third party after the agreement has been duly entered in the register books and on the share certificates, if any.").

<sup>98</sup> See Article 118 of Law 6404/76, *supra* note 95.

<sup>99</sup> See Black, Carvalho & Gorga *supra* note 26, (finding that 92% of all shareholders' agreements are registered with the company in Brazil and showing that the parties want to enjoy stronger enforcement against third parties and the corporation itself).

<sup>100</sup> See Article 118, paragraph 1, of Law 6404/76, *supra* note 96

<sup>101</sup> Article 118, paragraph 9, of Law 6404/76. ("Paragraph 9. Failure to attend a general meeting or meetings of the corporation's management bodies, as well as failure to vote on matters specified in the shareholders' agreement by any party or by members of the board of directors elected under the terms of the shareholders' agreement assures the damaged party the right to vote with the shares belonging to the shareholder who is absent or remiss and, in case of a member of the board of directors, by the board member elected by the votes of the damaged party.")

<sup>102</sup> Article 118, paragraph 8, of Law 6404/76. ("Paragraph 8. The president of the meeting or of the decision making body of the corporation shall not compute a vote that infringes a duly filed shareholders' agreement.")



members of the controlling family or group.<sup>103</sup> In twenty-four (67%) of these firms, the shareholder agreement ensures joint control.<sup>104</sup> The authors also report that in twenty-two firms, one or more non-independent directors were elected in accordance with a shareholders' agreement. In twelve firms, four or more directors are elected under a shareholders' agreement, forming a majority of the board.<sup>105</sup> Thus, shareholders' agreements perform an important role in Brazilian corporate governance.

I collected and analyzed all shareholders' agreements provided by companies without a controlling shareholder to Comissao de Valores Mobiliarios. These agreements are available along with other material information on publicly-held companies disclosed at CVM's website.

Shareholders' agreements are deemed to be material information.<sup>106</sup> Therefore, engaging, amending or breaching these agreements immediately trigger disclosure obligations to the market. I collected shareholders' agreements dating from September to December 2007. I focus on agreements of companies without a controlling shareholder because their shareholders' agreements are likely to produce more relevant effects on corporate control. My objective is to understand whether shareholders' agreements are being used as substitute mechanisms in order to assure control when ownership has become more dispersed. Companies with controlling shareholders might have shareholders' agreements which I do not investigate in this paper. Intuitively, these agreements are less likely to regulate control itself, and may regulate the (preference for) purchase or sale of shares, or the relation between controlling shareholders and strategic minority shareholders.

The sample consists of eighty-four Novo Mercado, Level 2 and Level 1 companies without a controlling shareholder. Initially, I find that fifty-four of these companies have shareholders' agreements available for download on the CVM website. I

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<sup>103</sup>Black, Carvalho & Gorga, *supra* note 26, at 39 (reporting that thirty-six of eighty-six companies surveyed have shareholders' agreements).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> See Instruction CVM No. 358/2002, art. 2, Unique Paragraph, I, II and III (considering shareholders' agreements material information ("*fato relevante*") when they cause changes in the control of the company, when they are entered in the register books of the corporation, or when the corporation is an intervening party in the agreement).

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

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

I then inquire about the scope of these shareholders' agreements. Table 24 shows the types of agreements that shareholders engage in. Sixteen of the forty-two shareholders' agreements (38.1%) are mixed to regulate preferences to acquire shares and voting rights. Twelve shareholders' agreements (28.57%) regulate the sale and purchase

of shares, the preference to acquire shares, voting rights and control exercise. Three shareholders' agreements (7.14%) include clauses on preferences to acquire shares and voting rights.

I classify shareholders' agreements as control agreements when they regulate control exercised by shareholders that jointly own more than 50% of the corporation's voting rights. I stringently define control according to the definition of controlling shareholder adopted in this paper. The most predominant clause found in thirty-nine out of forty-two shareholders' agreements (92.86%) refers to the exercise of shareholders' voting power. Of these, seven shareholders' agreements bind shareholders that have less than 50% of the voting rights.<sup>107</sup> One could argue that voting rights agreements could also regulate control when a group of minority shareholders coordinate their votes, even if they do not jointly own 50% of the voting shares. One example is the Inpar S.A. agreement, which binds 41.42% of the voting shares of the corporation. While this agreement could be considered as a control agreement, I prefer to classify it as a voting agreement to maintain a consistent definition of control in this paper. Any agreement that relies on a ownership based on less than 50% of the voting rights require a case-by-case analysis to verify whether shareholders exercised control. This could lead to arbitrary decisions. My analysis, therefore, may underestimate the number of minority control agreements that can exist in practice.

Another caveat regarding agreements' classification is important. I have formally (literally) and qualitatively analyzed the contents of these agreements. At first, I consider control agreements the agreements expressly regulating control issues. Only nine (28.13%) agreements are literal control agreements. The other twenty-three agreements (71.87%) are classified as control agreements because they bind more than 50% of the voting shares of a corporation. These numbers show that most control agreements are not literal agreements. Therefore my classification may not match the literal classification contained in the agreements themselves, but I believe that content analysis provides a clearer idea of the effects of shareholders' agreements.

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<sup>107</sup> As Table 24 displays *infra*, these shareholders' agreements also regulate issues other than voting rights.

One example is Abyara SA.'s shareholders' agreement which binds 52.9% of the voting shares. The text of the agreement regulates the behavior of stockholders and the exercise of voting rights and the transfer of the shares bound in the agreement. Nonetheless, the agreement does not make explicit that one of its objectives is to regulate control. Instead, one of its expressed objectives is "to provide general orientation for the business management of the company."<sup>108</sup> The agreement states that shareholders hold a preliminary meeting to decide voting orientation prior to any general meeting of the company. Thus, upon analysis of its content, it is clear that the agreement regulates not only voting rights, but also the joint exercise of control. Therefore, even if shareholders do not consider this a control agreement, I classify it as a control agreement.

The same rationale applies to the case of Brasil Ecodiesel Ind. Com. Bio. Ol. Veg. S.A., which has a shareholders' agreement binding 65.3% of the voting shares. The agreement does not mention explicitly that it regulates corporate control. Yet it states that parties to the agreement aim "to regulate their reciprocal relations, notably with respect to stocks transfers, exercise of voting rights and management of the company."<sup>109</sup> Thus, the agreement is clearly a control agreement. Agreements categorized as control agreements are also classified as voting rights agreement because control cannot be exercised without the coordination of voting rights. So every control agreement will inevitably encompass a voting rights agreement.

Table 24 reflects this more comprehensive qualitative classification of control. I find that thirty-two out of forty-two shareholders' agreements include regulation, among other issues, of control. Therefore, control agreements are adopted by 76.19% of the companies that have shareholders' agreements. Focusing on Novo Mercado, which is segment with the largest number of shareholders' agreements, I find that twenty-six out of twenty-eight shareholders' agreements are either control agreements (19) or voting agreements (7). This result confirms my hypothesis: the majority of companies without a controlling shareholder adopt shareholders' agreements to coordinate control or voting rights as a substitute for share ownership.

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<sup>108</sup> Abyara Planejamento Imobiliario S.A. Shareholders' Agreement Consolidation from Apr. 16, 2007, at 3, item 6.

<sup>109</sup> Brasil Ecodiesel Industria e Comercio de Biocombustiveis e Oleos Vegetais S.A. Shareholders' Agreement from Aug. 14, 2006, at 1.

## VI.2. SHAREHOLDERS' AGREEMENTS EFFECT ON DIRECTORS' VOTES

I now analyze to what extent shareholders' agreements bind director's votes. From the forty-two companies that have shareholders' agreements, twenty-six (61.90%) of them have shareholders' agreements that bind directors' votes. Of these twenty-six companies, sixteen (61.53%) of them specify instances in which directors' votes are bound and ten do not.

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

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

Level 2's and Novo Mercado's rules require that the board of directors must have

at least five members, from which at least 20% shall be independent members.<sup>110</sup> Bovespa defines independence in Section II of Novo Mercado's Regulation. According to this section an "Independent Director"

is characterized by (i) not having any ties with the Company, except capital participation; ii) not being a Controlling Shareholder, husband, wife, or second level relative of the Controlling Shareholder, or not being, in the last 3 years, connected to a company or an entity related to the Controlling Shareholder (people connected to public institutions of education and/or research are excluded from this restriction); (iii) not being, in the last 3 years, employee or officer of the company; of the Controlling Shareholder or of a firm controlled by the Company (iv) not being supplier or buyer, direct or indirect, of services and/or products of the Company, in magnitude which implies a loss of independence; (v) not being an employee or manager of a company or entity which is offering or demanding services and/or products to the Company; (vi) not being husband, wife or second level relative of any manager of the company; (vii) not receiving remuneration of the Company other than that of a director (compensation originated from capital participation is excluded from this restriction).<sup>111</sup>

This definition does not clarify whether or not directors bound by shareholders' agreements would be considered independent. It remains unclear how Bovespa assesses the number of independent directors of companies listed on the special segments that require compliance with the 20% of independent directors' threshold. If Bovespa considers those directors bound by shareholders' agreements as independent, it is clearly making a mistake. Directors bound by shareholders' agreements cannot be deemed independent. These agreements directly interfere in decisions that directors make because they determine *ex ante* how directors ought to vote before they have analyzed a situation and reached an independent conclusion.

One may even dispute whether having independent directors is good for corporate governance, as there is evidence that they do not contribute to improving company performance.<sup>112</sup> However, if Bovespa has decided that having independent directors is an important rule for good corporate governance, it should enforce its own rules.

Independent directors are considered important in developing countries which

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<sup>110</sup> See Table 1 *infra*.

<sup>111</sup> Free translation of Section II, Novo Mercado Regulation, Bovespa.

<sup>112</sup> Sanjai Bhagat & Bernard S. Black, *The Non-Correlation Between Board Independence and Long-Term Firm Performance* 231-273, 27 J. CORP. LAW \_\_ (2002), available at <http://ssrn.com/abstract=313026>.

typically have boards dominated by representatives of the controlling shareholders.<sup>113</sup> In those countries, having independent directors may contribute to decreasing levels of expropriation and, as a consequence, augmenting the company's wealth. Evidence supports that having more independent directors is associated with better corporate performance in emerging markets. A study by Black, Jang and Kim found that requiring large firms have a majority of outside directors has caused increased stock price in Korea by 40%. The market valued the companies' existing cash flow higher apparently because a perception that outside directors help eliminate insider self-dealing.<sup>114</sup>

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

### VI.3. CHANGES IN BYLAWS: ANTI-TAKEOVER CLAUSES

Takeovers have been extremely rare in the Brazilian capital markets due to the

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<sup>113</sup> See Black, de Carvalho & Gorga, *supra* note 26, at \_\_\_.

<sup>114</sup> Bernard S. Black, Hasung Jang & Woochan Kim, *Does Corporate Governance Predict Firms' Market Values? Evidence from Korea*, 22 J. L. ECON. & ORG. PAGE# (Fall 2006), available at <http://ssrn.com/abstract=311275> ("Korean firms with 50% outside directors have significantly higher share prices than firms with fewer outside directors. This effect appears to be causal. This is the first strong evidence that greater board independence predicts higher share prices in emerging markets.").

ownership structure of Brazilian corporations discussed in Part III.<sup>115</sup> Control transactions have usually been conducted by means of private agreements, in which a large control premium is paid to the seller of control.<sup>116</sup> In 2001, a reform to Corporations Law 6404/76 reintroduced a mandatory rule for tag along rights in sales of control. This rule, Article 254-A, provides that minority voting shareholders must receive 80% of the price paid for a controlling shareholder's voting shares in a sale of control.

Additionally, Bovespa burdened private sales of corporate control. It introduced a "super" tag along right in the listing requirements of Novo Mercado and Level 2. Under this rule, the acquirer of control in a private sale must indemnify all other shareholders from whom the acquirer purchased shares six months before the control transaction. The acquirer will be required to pay the same price paid to the shares of the controlling shareholder. Indemnification should take place on top of the usual tender offer to acquire all minority shares as required by the corporate law 6404/76. Table 26 shows that, companies from Novo Mercado and Level 2 and a few companies from Level 1 have also voluntarily adopted the super tag along clause.

As ownership structures have been changing, one may think that potential acquirers may be able to acquire control more easily in the market. However, anti-takeover defenses have begun to appear in company's bylaws as ownership has become increasingly dispersed. The media has already pointed out this phenomenon.<sup>117</sup> However, there has been no attempt to analyze the extension of their use in a systematic way.

To fill this gap and examine the evolution of Brazilian capital markets and corporate governance, this article empirically analyzes how many companies have adopted defenses and which defenses are most common. The sample includes bylaws of eighty-four companies listed in Novo Mercado, Level 2 and Level 1, which do not have a

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<sup>115</sup> Commentators report that so far there have been two successful hostile takeovers in Brazil. *See supra* note 64.

<sup>116</sup> *See supra* note 25.

<sup>117</sup> *See supra* notes \_\_\_.



controlling shareholder. I focus on these companies<sup>118</sup> because they are mostly likely to have anti-takeover defenses due to their larger degree of ownership dispersion.<sup>119</sup> The bylaws have been collected from IANs delivered to CVM at the end of April of 2007, referring to year-end 2006. Changes in bylaws during the year of 2007 must be disclosed and updated in CVM's website. I collected the bylaws between September and December of 2007.

Brazil has developed defenses other than the poison pill, which is the most trivial anti-takeover defense in the United States. A poison pill is a typical *shareholder rights plan* in the United States and involves a target issuing rights to its existing shareholders to acquire a large number of new stocks. Holders can buy more stocks under market value when anyone acquires a pre-determined amount of target's stock (typically 10-20%) in a possible control acquisition. This strategy dilutes the percentage of target's common shares that the bidder owns, making it more expensive to acquire control of the company. In Brazil, the predominant takeover defense is a provision in the company's charter that allows current shareholders to sell their shares to an acquirer who attains a critical limit of target's shares. In this sense it resembles the mandatory tender offer required by law but is triggered by a lower threshold of shares' acquisition. Nonetheless, the media calls this defense a poison pill. Yet this type of takeover defense might not completely stop a determined acquirer. Instead, it ensures minority shareholders the right to tender their shares at a fair price if they think this is a good time to sell. This strategy also makes the target acquisition much more expensive to the bidder.

The use of anti-takeover clauses is widespread. Forty-seven out of eighty-four companies, or approximately 56% of the sample companies, have included antitakeover protections in their bylaws.

There appear to be two prevalent types of defenses. A "Type A" anti-takeover defense provides that once a determined threshold of ownership is met, the acquiring shareholder must make a tender offer to acquire all outstanding shares. This threshold of

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<sup>118</sup> For this Section, the same definition applies: a controlling shareholder is considered to have more than 50% of the voting stocks.

<sup>119</sup> The underlining idea is that the controlling shareholder of a company does not need to be concerned with including poison pill clauses in the bylaws because control cannot be sold without his or her consent.

acquisition generally ranges from 10% to 35% of the shares. Brazilian Corporate Law does not require an acquirer to offer minority shareholders to tender their stock for sale if the acquirer has purchased the control in the market. The mandatory tag along right requires a tender offer only for a sale of a controlling block by the controlling shareholder.<sup>120</sup> This clause, on the other hand, requires a tender offer of shares even if control was acquired in the market, making hostile takeovers as burdensome as a private sales of control.

A “Type B” anti-takeover defense, in contrast, is triggered when a shareholder who has acquired a pre-determined threshold of ownership wishes to purchase more shares. In that situation, that shareholder has to communicate his or her intention to the Investor Relations Manager of the company and the Manager of Trading Activity of the stock exchange. This threshold of acquisition generally ranges from 5% to 30% of the shares. The Manager of Trading Activity can then arrange a tender offer conducted by an open auction in the exchange market. This provision aims to promote competition between bidders interested in acquiring the company’s control.

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

The widespread adoption of anti-takeover defenses implies that lawyers acted faster than Brazilian regulators. Brazilian law does not regulate the use of these clauses. The preceding analysis has covered only bylaws of firms without a controlling shareholder. However, available information shows that companies controlled by a controlling shareholder who holds more than 51% of the voting capital have also adopted

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<sup>120</sup> See Article 254-A, Law 6404/76.

defenses.<sup>121</sup> This demonstrates that lawyers have been eager to avoid future changes in control, even if a hostile takeover were factually impossible at that time. It is worth noting that it is unclear why a company with a controlling shareholder would include anti-takeover defenses clauses in its bylaws. In that situation, the clause would constrain the sale of the controlling shareholder who may later want to sell its control block, which would be contrary to a wealth maximizing behavior from a rational economic agent. This situation appears to show that controlling shareholders do not understand the effect of the clauses and that lawyers did not clarifying the full implications of anti-takeover clauses to their clients. Arguably, the controlling shareholder can call a meeting and amend the bylaws to exclude the clause. In this case, the defense would generate additional transaction costs before the sale of control.

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

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

Takeovers are widely believed to be wealth maximizing because they replace inefficient management with a more efficient one, promoting allocation of resources to a higher use value. The threat of a hostile takeover is considered to discipline incumbent

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<sup>121</sup> This is indeed the case of the companies Banco Daycoval, which adopted a defense Type A, Spring Participacoes, which adopted poison pill Types A and B, and SulAmerica S.A., which adopted defense Type B.

management.<sup>122</sup> If managers do not run the company properly, the company will lose its value and become a potential target for a hostile takeover.

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

Penalty clause “Type 1” provides that if the acquirer does not comply with the tender offer clause, the board of directors will call an extraordinary shareholder meeting. The board will deliberate about the suspension of shareholder rights of the acquirer’s of control. The suspension of rights will apply to the shares that were acquired in disregard of the tender offer clause. The shareholder that has acquired the control will not be able to cast votes in this meeting. He or she may also be subjected to liability for damages suffered by the other shareholders in connection with the breach of the tender offer. This penalty clause is therefore applied against the acquirer of blockholdings.

Penalty clause “Type 2” provides that any future change in the bylaws that restrict shareholders’ rights to tender their shares according to the tender offer clause will obligate shareholders who approved the change to make a tender offer to acquire the shares of the other shareholders. Basically, they prevent anti-takeover clauses from being excluded from bylaws, even if the majority of shareholders want to deliberate their exclusion in a shareholder meeting. This happens because the huge costs imposed on shareholders that approve this exclusion. Interestingly, as some commentators have said, under Type 2 penalty clauses, Brazilian anti-takeover clauses seems to acquire status of fundamental rights that cannot be contracted around. These penalty clauses are applied against to shareholders who want to ban the tender offer clause, regardless of whether they want to take this action to protect the welfare of the corporation.

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<sup>122</sup> Robert Daines & Michael Klausner, *Do IPO Charters Maximize Firm Value? Antitakeover Protection in IPOS*, 17 J. L. ECON.& ORG. 83, 88-91 (2001) (surveying the literature that supports the “management entrenchment hypothesis,” which suggests that antitakeover protections entrench management at shareholders’ expense).

The data displayed in Table 26 show that of the forty-seven companies that adopt penalty clauses, twenty-five (53.19%) companies exclusively use penalty clause Type 1. Twenty-two (46.81%) companies adopt both clauses types 1 and 2. Clause Type 2 is not solely adopted. Only eight companies (10.81%) have bylaws that explicitly state that the tender offer clause can be removed.<sup>123</sup> Of these eight, only three companies establish a qualified quorum for the approval of changes concerning the clause.<sup>124</sup> Six of the eight companies confer authority power to the shareholder meeting to remove the tender offer clause. The remaining two companies confer this authority to the board of directors.

This analysis shows that changes in ownership patterns towards more dispersed ownership have produced important effects in companies' bylaws. It has prompted shareholders to adopt takeover defenses. These defenses may not correspond to a factual threat of takeover attacks, as there still is a significant degree of concentrated ownership in most companies that could preclude takeovers threats. As illustrated by the Sadia versus Pedigao case and confirmed by our data, most Brazilian companies are still controlled by a small group of blockholders who could easily coordinate defenses against outside attacks.<sup>125</sup> Nonetheless, the Brazilian anti-takeover clauses show an interesting effect of ownership structures on corporate governance practices.

## VII. THE DETERMINANTS OF CHANGES IN OWNERSHIP STRUCTURES

This Section builds on empirical evidence from Brazil to advance theoretical hypotheses explaining changes in corporate ownership. Ownership structures are key distinguishing features underlying different forms of capitalism.<sup>126</sup> Yet we still know remarkably little about the motives that drive changes in ownership structures.

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<sup>123</sup> Of course this clause does not need to be written because shareholders can always amend bylaws and poison pills are not fundamental rights of the company.

<sup>124</sup> These companies are Bematech Ind. Com. Equip. Eletronicos S.A. (Bylaws of the Company, Art. 10 § 10 establishes a quorum of 50% plus one of the common shares); Companhia Hering (Bylaws of the Company § 11 establishes a quorum of shareholders that represent two-thirds of the shares of the company); and Even Construtora e Incorporadora S.A. (Bylaws of the Company, Art. 43 § 9 establishes approval with a quorum of 70% of the total shares of the company).

<sup>125</sup> Table 8 *infra* shows that even companies without a controlling shareholder on Novo Mercado are controlled by their five largest shareholders.

<sup>126</sup> Randall K. Morck & Lloyd Steier, *The Global History of Corporate Governance: An Introduction*, in *A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD 4* (Randall K. Morck, ed. 2005).

Scholars argue that initial patterns of stock ownership tend to create structures and set rules that contribute to the maintenance of this very pattern of ownership structure.<sup>127</sup> According to this thesis, path dependence would prevent changes from occurring. There could be a critical moment where the costs of adhering to the same structure would surpass the benefits of adopting a new structure. At this point, the path could be broken, and dispersed ownership would then develop.<sup>128</sup> Ownership structure is then dependent on prevailing institutions existing in an environment. As we have seen, the persistence of traditional Brazilian firms in segments of poor corporate governance supports the path-dependence hypotheses. On the other hand, the significant change towards more significant levels of ownership dispersion begs the question what the reasons are that prompted this evolution.

Scholars have recently discussed the preconditions necessary for developing strong capital markets.<sup>129</sup> They have analyzed how institutions affect corporate ownership and focused their research on legal, social and political institutions. La Porta et al. have analyzed the factors that may bring about critical change towards dispersed ownership.<sup>130</sup> They argued that protective legal rules would be a key factor in diffusing ownership. They pointed out that common law countries tend to protect more investors and stockholders, and therefore have achieved more significant levels of ownership dispersion.<sup>131</sup> Other scholars contend that private regulation by stock exchanges is more important,<sup>132</sup> along with a country's social norms regarding business behavior.<sup>133</sup> And still others have argued that politics must foster dispersed ownership.<sup>134</sup>

#### Understanding the determinants of changes in corporate ownership in Brazil

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<sup>127</sup> Bebchuk & Roe, *supra* note 9, at\_\_.

<sup>128</sup> *Id.* at\_\_.

<sup>129</sup> See Bernard S. Black, *The Legal and Institutional Preconditions for Strong Securities Markets*, 48 *UCLA L. REV.* 781 (2001).

<sup>130</sup> See generally La Porta, Lopez-de-Silanes, Shleifer & Vishny, *supra* note 8.

<sup>131</sup> See generally *id.* (claiming that corporate governance is better understood through its legal determinants). *But see* Fohlin, *supra* note 13 (arguing that no temporal correlations exist between changes in shareholder protection and ownership diffusion in Germany because the German stock market has ebbed and risen at various points while German's legal system has changed very little).

<sup>132</sup> See, e.g., Coffee, Jr., *supra* note 10.

<sup>133</sup> See e.g., Coffee, Jr., *supra* note 8.

<sup>134</sup> MARK J. ROE, *POLITICAL DETERMINANTS OF CORPORATE GOVERNANCE* \_\_ (Oxford University Press 2003).

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

#### a) Merger Activity

Intense merger activity may be related to profound changes in corporate structure. For instance, scholars attribute the increase of widely held companies to the corporate reorganization that was necessary to achieve after merger waves in the United States. For example, the paradigmatic merger of seven steel companies brought about the creation of a large steel conglomerate with a high level of dispersed shares. No single investor could own large stakes of ownership in such a large company.<sup>135</sup> In the late 1930s, few corporations had families with controlling stakes, though many still had families dominating the board of directors.<sup>136</sup> In the United Kingdom, Frank, Mayers and Rossi point out that mergers played a more important role in ownership dilution.<sup>137</sup> In Britain, family ownership shrunk when their holdings were diluted in the process of issuing shares to acquire other companies.<sup>138</sup> Therefore dispersed ownership in Britain was mainly a product of takeover activity during the twentieth century. Families retained control through disproportional representation on boards of directors in relation to their equity in the first half of the century. In the second half of the century, institutional

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<sup>135</sup> Coffee, *supra* note 10, *at* \_.

<sup>136</sup> Marco Becht & J. Bradford DeLong, *supra* note 12, at 617.

<sup>137</sup> Julian Franks, Colin Mayer & Stefano Rossi, *Ownership: Evolution and Regulation*, (London Business School, Working Paper).

<sup>138</sup> Franks, Mayer & Rossi, *supra* note 15, at 583.

ownership replaced families and rapidly extinguished their control.<sup>139</sup>

Although merger waves can quickly change ownership structures, no clear connection between present changes in Brazilian ownership structures and an extraordinary upheaval in merger activity exists. Interestingly, a new merger wave is currently occurring. Companies raised financing in the capital markets over the past two years. In 2008, fewer companies have gone public on Bovespa due to the decrease of stock prices in the New York Stock Exchange and Bovespa,<sup>140</sup> and many firms have announced merger plans.<sup>141</sup>

#### b) Cross-Listing

Another potential explanation for the upsurge of firms listing on Novo Mercado could be that corporations are cross-listing. New firms listing in foreign exchanges and offering equity in other markets must comply with better corporate governance because of legal and listing requirements of other markets. In this case, the costs of listing on Novo Mercado would be much smaller to these firms. So, companies listing on Novo Mercado could be signaling that they would also comply with good corporate governance in the national market.

However, the data do not support this hypothesis. The majority of IPOs conducted in the market was not accompanied by ADRs' issuance. From the \_\_\_ IPOs made on Novo Mercado, only \_\_\_ were accompanied by listings in international stock exchanges. Although many offerings were also destined to foreign investors according to Rule 144-A and Regulation S, these offerings did not require any special effort of corporate governance compliance to international standards.

#### c) Life Cycle

The life-cycle theory holds that young corporations are more likely to present concentrated ownership, while older companies are more likely to be widely held.<sup>142</sup> It

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<sup>139</sup> *Id.* at 593.

<sup>140</sup> [quotation]

<sup>141</sup> [Quote articles discussing the present increase in merger activity].

<sup>142</sup> See Bernard. S. Black & Ronald Gilson, *Does Venture Capital Require an Active Stock Market*, 47 J. FIN. ECON. 243, XX (1998). *But see* Claessens, Djankov & Lang, *supra* note 4, at 105 (finding that the



assumes that large corporations started as family businesses and evolved into widely held businesses in a few countries with a reasonably long industrial history.<sup>143</sup> Implicitly in this assumption is the fact that during the life cycle of the firm, it will grow and need increasing levels of capital to perform its activities. Thus, more shareholders will be needed and the ownership of the firm will increasingly disperse. Analyzing data on changes of corporate ownership in Australia, Asjeet Lamba and Geof Stapledon show that the longer a company has been listed on the stock exchange, the more likely the company is to have a widely held ownership structure.<sup>144</sup>

Nonetheless, the analysis of Brazilian ownership data does not seem to be consistent with the life-cycle theory. As we have seen, most companies with dispersed ownership are new entrants on Novo Mercado. The oldest and the most traditional Brazilian firms are concentrated on Bovespa's Level 1 and the standard market. These firms present very concentrated patterns of corporate control. Brazilian data also corroborate the findings of Claessens, Djankov and Lang, who pointed out that in East Asia, especially in Indonesia, Malaysia and Taiwan, older firms tend to have more concentrated corporate control.<sup>145</sup> This result begs the question on why old firms have only migrated to Level 1 and not to the most stringent segments. In a sense, this shows institutional adaptation and stability towards concentration of control. One explanation could be that these firms have other sources of finance like government credit through the Brazilian Bank for Social and Economics Development ("BNDES"). They may also have a history of retained earnings so that they can finance themselves, and therefore do not need to comply with stricter Novo Mercado rules to get cheaper capital, as new firms have been doing. Besides, the underlying story also shows the preceding role of the government in providing capital to captains of industry.

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older the corporations in a sample of East Asian companies were less likely to be widely held).

<sup>143</sup> See Morck & Steier, *supra* note 126, at 8. According to this view, Brazilian industrial history, which developed mainly after the second half of the twentieth century, may still be considered a short one, providing insufficient time to the development of forces that could drastically change corporate ownership.

<sup>144</sup> Asjeet Lamba & Geof Stapledon, *The Determinants of Corporate Ownership Structure: Australian Evidence* \_\_ (The University of Melbourne Faculty of Law Public Law and Legal Theory Working Paper Group, Paper No. 20, 2001), *available at* \_\_.

<sup>145</sup> Claessens, Djankov & Lang, *supra* note 4, at 105.

#### d) Size

The size theory provides that smaller corporations tend to remain family businesses while larger corporations are more likely to be widely held.<sup>146</sup> Several studies have identified a negative effect of the firm's size on the level of concentration of shareholding control. The larger the firm is, a greater dispersion of shareholding control it will have.<sup>147</sup> Demsetz and Lehn, examining a sample of American firms, found greater diffusion of ownership in larger firms. They noted that the size of the firm, as measured by the market value of equity is negatively related to ownership concentration.<sup>148</sup> Claessens, Djankov and Lang have found that family ownership increases the smaller the firm is in East Asian countries, especially in Japan.<sup>149</sup> Faccio and Land, on the other hand, demonstrated that family ownership is less likely for larger firms in Western European corporations, particularly in United Kingdom and Sweden. Large firms are more likely to be widely held than smaller firms in their sample.<sup>150</sup> Also, Asjeet Lamba and Geof Stapledon show that larger firms are less likely to have a controlling shareholder in Australia, as they are expected to have issued more shares than smaller companies.<sup>151</sup>

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

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<sup>146</sup> See Morck & Steier, *supra* note 126, at 8.

<sup>147</sup> See Harold Demsetz & Kenneth Lehn, *The Structure of Corporate Ownership: Causes and Consequences*, 93 J. POL. ECON. 1155 (1985); Harold Demsetz & B. Villalonga, *Ownership Structure and Corporate Performance*, 7 J. CORP. FIN. 209 (2001); and Torben Pedersen & Steen Thomsen, *European Patterns of Corporate Ownership: a Twelve-country Study*, 28 J. INT'L BUS. STUD. 759 (1997).

<sup>148</sup> *Id.* at 1158.

<sup>149</sup> Claessens, Djankov & Lang, *supra* note 4, at 105.

<sup>150</sup> See generally Faccio & Lang, *supra* note 3. The authors point out Austria, Norway and Portugal as exceptions.

<sup>151</sup> Lamba & Stapledon, *supra* note 145.

e) Public or Private Initiative?

At least three conditions are necessary to separate ownership from control. First, the controlling shareholders must decide to exit. This can be done either by a one-time liquidation of their stake in a merger transaction, a public offering, or by selling their stakes in stages onto market.<sup>152</sup>

Second, there must be demand for the shares. Investors must expect to receive sufficient financial return in exchange of the risk they are assuming.<sup>153</sup>

Third, the buyers of the shares must not be inclined to gain control, or otherwise, concentrated ownership would persist.<sup>154</sup> This can happen in two ways: either the purchaser of the control block is a widely held company itself, or the shares are acquired by dispersed shareholders in the market.

This process can suffer from State intervention or be privately driven. Having a brief historical overview on the development of Brazilian markets allows us to assess which incentives mattered more to promote ownership dispersion. Brazil has passed two very different phases characterized by strong concern of market players about promoting its development. The first phase was characterized by government initiative beginning in the 1960s. The Brazilian government engaged in many efforts to encourage the growth of the stock markets. The main strategy was based on tax incentives. Scholars have already pointed out that tax policy can impact corporate ownership and governance.<sup>155</sup> In the Brazilian situation, tax breaks help explain why companies went public and why there was demand for shares among investors. The Brazilian government provided a variety of tax incentives to market players in order to stimulate the offering and demand of publicly traded securities. Two major sets of tax incentives were enacted, One was the “open capital companies program,” which provided corporations and their shareholders

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<sup>152</sup> See Brian R. Cheffins & Steven A. Bank, *Corporate Ownership and Control in the UK: The Tax Dimension*, 70 MOD. L. R. 783 (2007).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* (“The three questions one needs to address to explain why the widely held company might move to the forefront in a particularly country are: Firstly, why would those owning large blocks want to exit? Second, were investors willing to buy the shares potentially available for sale? Third, why did the new investors fail to exercise control themselves?”).

<sup>155</sup> *Id.* at 783 (arguing that taxes imposed on corporate profits, taxation of managerial and investment income, and inheritance taxes help to explain why ownership separated from control in the UK.) See also Randall Morck, *How to Eliminate Pyramidal Business Groups—the Double Taxation of Inter-corporate Dividends and Other Incisive Uses of Tax Policy*, Nat’l Bureau of Econ. Research, 2004.

substantial tax benefits if the corporation distributed shares to the public. The second was the “Decree Law 157 Fiscal Investment Funds program,” according to which taxpayers could purchase shares of government-approved mutual funds instead of paying taxes that were due. The mutual funds would then use the tax receipts to acquire shares.<sup>156</sup>

Through these programs, taxpayers could deduct a percentage of resources spent for the acquisition of securities from their gross incomes. Trubek explained that Decree Law 157 provided “forced saving incentives.” The taxpayer would make a deposit in special mutual investment funds that relieved the taxpayer of her tax liabilities. The tax deposit would then be employed to acquire securities, and the deposit holder would be entitled to a tax credit. After holding shares of the mutual investment funds for a specified time, the taxpayer could redeem the fund shares for cash.<sup>157</sup>

The government expected that the primary market would develop as a fund-raising alternative to private entrepreneurs.<sup>158</sup> However, even with the tax incentives, the market did not experience a sustainable development, apart from occasional activity brought by Decree Law 157 funds.<sup>159</sup>

The government then engaged in efforts to pass law reforms that would provide the regulatory framework for market development. These reforms included the capital markets law (Law 6385/76) and the corporations law (Law 6404/76). Musacchio analyzes the resulting outcome of these regulatory systems and concludes that shareholder protections did not correlate with stock market development.<sup>160</sup>

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<sup>156</sup> Trubek, *supra* note 21, at 8.

<sup>157</sup> *Id.* at 34-35 and 56-57.

<sup>158</sup> *Id.* at 47.

<sup>159</sup> *Id.* One issue was that the government wanted to assist companies having financial difficulty and to develop equity markets at the same time, without realizing that these objectives conflicted. *See also id.* at 49 (“Firms in need of emergency assistance would hardly seem to be the best available investments. If tax incentives were used to channel investors’ funds to such firms, there was a great risk that the investors, who would eventually receive securities of such companies, would become disillusioned about the attractiveness of share ownership. The working group failed to see this because it believed that the shaky firms were in fact very sound ventures which were experiencing short run problems due “artificial” situations created by inflation and the stabilization program.”).

<sup>160</sup> Aldo Musacchio, *Laws vs. Contracts: Legal Origins, Shareholder Protections, and Ownership Concentration in Brazil, 1890-1950* 11-12 (January 22, 2008) (“Even with few shareholder protections on paper, Brazil enjoyed its first peak in stock market activity between the late 1880s and 1915. In fact, there seems to be a tenuous relation between shareholder protections in national laws and stock market development in that, by the time additional protections for minority shareholders were written into law in 1940, stock markets were already in decline. Moreover, if the literature that relates equity market size to

At the end of the 1990s, Brazilian capital markets experienced a severe crisis.<sup>161</sup> Trading activity of Bovespa dropped by 47%,<sup>162</sup> and a strong privatization process took place. At the same time, the few placements of shares that occurred have been conducted mostly by companies that were listing in the American market. The trading volume of ADRs increased from 0.3% in 1996 to 33% of the trading volume of Bovespa in 2000.<sup>163</sup> Therefore, by the end of the 1990s, one-third of Bovespa's trading activity had moved to the American markets. With the failure of the market to provide finance for firms, the BNDES has become the main source for long-term business finance in Brazil.

This situation threatened Bovespa's existence and caused it to look for alternatives that could promote the market. Private efforts had to overcome the failures of the market. At first, the listing requirements of Bovespa changed. The rationale behind this change recognized that investors' risk perception had to be reduced. Enhancing the confidence of investors in the market would cause share values and liquidity to increase and encourage companies to issue new shares and go public.<sup>164</sup>

Bovespa's special listing segments were originally inspired by the German Neuer Market.<sup>165</sup> Bovespa's listing levels provide rights to shareholders in addition to those given by law. These incentives are largely based on voluntary adherence to stronger corporate governance that would produce changes in the internal structure of corporations. In turn, the value of these companies were expected to rise. This rationale therefore contrasts with the previous approach because now companies were expected to improve corporate governance in a voluntary way.

In its first years, Bovespa's new listing levels did not experience significant adhesions. Some macroeconomic factors, such as the Argentina's crisis, the domestic

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shareholder rights on paper holds, Brazil's equity markets should have prospered between 1940 and the 1990s, when investor protections were strong . . . , and jumped significantly in size after 2001 (after laws provided even more protections). But this is clearly not the evolution observed . . . . Some correlation between the level of stock market development and investor protections on paper is observed, but between 1940 and 1976 there is no correlation at all. Moreover, the period of relatively strong shareholder rights after 1976 . . . is precisely the period during which Brazil has been portrayed as one of the worst countries in which to be a small investor.”)

<sup>161</sup> See generally Gorga, *supra* note 20 (describing the context the Brazilian capital markets crisis that led legislators to propose a new reform in the Corporations and Capital Markets Laws in 2001).

<sup>162</sup> Santana, *supra* note 21, at 3.

<sup>163</sup> Santana, *supra* note 21, at 4.

<sup>164</sup> *Id.* at 8.

<sup>165</sup> This market later failed after experiencing a technological bubble.

energy crisis that required months of electricity rationing, the terrorist attacks of September 11<sup>th</sup>, 2001, and the uncertainty brought about by the 2002 domestic Presidential election, are considered the main factors that generated instability. They produced an increase in the risk measured by investors, inhibiting companies' decisions to go public.<sup>166</sup>

Nonetheless, Bovespa's strategy was not limited to the new listing segments, as one may think. Bovespa also engaged in a series of efforts and alliances with both private and public agents in order to promote market development. This networking was critical to the success of the new listing segments, which depended on the support of other important market players.<sup>167</sup>

In 2002 Bovespa passed Resolution 282/02-CA, which established that any new listings of public offerings must be conducted at least on Level 1. Bovespa then heavily publicized Novo Mercado's advantages to businessmen, underwriters, domestic and foreign institutional investors, investors in private equity and venture capital.<sup>168</sup>

Bovespa sought support from important private players, public institutions and international organizations to promote its new listing segments. For example, Bovespa sought support from the Brazilian Institute of Corporate Governance (*Instituto Brasileiro de Governança Corporativa* or "IBGC"). This institute offered many courses and lectures on Bovespa's Novo Mercado.<sup>169</sup> Bovespa also sought the support of public institutions like the Brazilian Securities Commission (CVM) and the agency responsible for overseeing Brazilian pension funds (*Secretaria de Previdência Complementar*). These two institutions changed regulations on investment of pension funds. The changes authorized a higher ceiling on stock investments provided that the issuing company was listed in Novo Mercado or Level 2.<sup>170</sup> The National Association of Investment Banks

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<sup>166</sup> *Id. at* \_.

<sup>167</sup> Santana, *supra* note 21, at 13 ("The Novo Mercado project is based on a market mechanism and so . . . its viability depended on the existence of a market. Because it is based on voluntary adherence by companies to its rules, it could become a reality only if that adherence is demanded by investors, by suppliers of capital, and considered by the companies to be advantageous.")

<sup>168</sup> *Id. at* 12.

<sup>169</sup> *Id.*

<sup>170</sup> *Id. at* 12-13 ("The provisions of those regulations on pension fund investments had no practical effect, since those investors had at the time—and still do—an exposure to variable income that is well below the

(*Associação Nacional dos Bancos de Investimento* or “ANBID”), the Brazilian equivalent to the NASD, also provided a key rule: It established that its members could only lead offers whose issuers were registered at least on Bovespa’s Level 1.<sup>171</sup> The practical effect of this rule was that underwriters would be virtually non-existent for offers in the traditional market.<sup>172</sup>

In addition, Bovespa sought support from BNDES. BNDES began granting specific incentives for companies to join Novo Mercado. In some cases, BNDES required companies to adhere to Novo Mercado as a financing condition.<sup>173</sup> Bovespa also relied on the support of the World Bank and OCDE. The Private Sector Advisory Group on Corporate Governance (“PSAG”), coordinated by these institutions, publicized its support to Novo Mercado.<sup>174</sup>

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

#### f) IPO’s Market

Scholars have argued that the absence of an active IPO market may be a reason why ownership does not widely diffuse in certain countries.<sup>175</sup> Strong capital markets are associated with the entry of new firms. According to this view, having developed secondary markets is not enough to promote overall market development. Secondary market development may be associated with the trading of dual-class shares, which generate liquidity but do not allow ownership to separate from control. Therefore, countries with less developed primary markets will be characterized by concentrated ownership.

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established limits. Even so, those rules were extremely important, because they helped institutionalize, and give official recommendation to, the existence of the Novo Mercado and the other special segments.”)

<sup>171</sup> *Id.* at 13.

<sup>172</sup> In practice this rule has been suffered a flexibilization as underwrites ended up coordinating the issuance of BDRs in the standard market.

<sup>173</sup> Santana, *supra* note 21, at 13

<sup>174</sup> *Id.*

<sup>175</sup> Högfeldt, *supra* note 3, at 558.

Helwege, Pirinsky and Stulz investigate how firms evolved in the US from 1970 to 2001 to understand why they became widely held.<sup>176</sup> Firms generally do not become widely held shortly after their IPO.<sup>177</sup> They find that about ten years after the IPO, insiders owning less than 20% of the cash flow rights controlled half of the firms. They find that firms that have greater financing needs are more likely to become widely held.<sup>178</sup> For primary markets to be strong there should be corporations that need to access finance through public security offerings. Established companies may have other finance sources. If finance is supplied by retained earnings, by bank borrowing or by infusion of private capital, firms will not have the need to go through equity offers.<sup>179</sup>

Helwege, Pirinsky and Stulz attribute the changing dynamics of insider ownership to stock market variables. Firms become more widely held when the market of their shares is liquid and they can be sold without significant discount. Demsetz and Lehn also argued that a greater price of a fraction of the firm reduces the degree to which ownership is concentrated in their sample of American firms.<sup>180</sup>

Indeed Novo Mercado's developments seem to support these arguments. Studies showed that Novo Mercado's upsurge listing is indeed associated with the increase in price of securities obtained in this segment.<sup>181</sup> New corporations with demand for capital constrained could find advantageous conditions to access finance, as Novo Mercado became an alternative for raising capital, more attractive than the traditional forms of borrowing at very large interests rates.

The data presented in this paper show that most companies from Novo Mercado used to be closely held companies. Novo Mercado is comprised basically of new publicly held companies aiming at obtaining better prices for their IPOs. Therefore more dispersed ownership structure is indeed associated with an increase in IPO activity.<sup>182</sup> As

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<sup>176</sup> Jean Helwege, Christo Pirinsky & Rene M. Stulz, *Why do Firms Become Widely Held? An analysis of the Dynamics of Corporate Ownership*, 52 J. FIN. 995 (2007).

<sup>177</sup> *Id.* at 1007.

<sup>178</sup> *Id.* at 1000.

<sup>179</sup> Högfeldt, *supra* note 3, at 553.

<sup>180</sup> Demsetz & Lehn, *supra* note 148, at 1167.

<sup>181</sup> *See, e.g.*, Miceli da Silveira & Ayres B. de C. Barros, *supra* note 47, at \_\_\_; and Gledson de Carvalho & Pennacchi, *supra* note 47, at \_\_\_.

<sup>182</sup> Claessens et al., analyzing a sample of 2,980 corporations in nine East Asian countries, have shown that older firms are generally held by families. This evidence dispels the notion that ownership becomes dispersed over time.



we have seen, few companies from the traditional market chose to migrate to Novo Mercado. Older companies maintain high levels of ownership concentration.

#### g) Decreasing Levels of Private Benefits of Control and Firm Value

Private benefits of control are considered an important determinant of ownership structures.<sup>183</sup> Studies have shown that larger levels of private benefits of control are increasingly associated with the presence of controlling shareholders.<sup>184</sup>

The Brazilian experience with different listing segments allows us to test the relation between private benefits of control and ownership structures. If controlling ownership structure is decreasing at Novo Mercado, we might expect that private benefits of control have been diminishing as well. Although we don't attempt to conduct such analysis here, an interesting venue would be to compare the amount of private benefits extraction in all the different listing levels to assess whether they correlate with the level of concentration/dispersion of ownership achieved in these segments.

#### h) One Share – One Vote

The possibility that the one share-one vote rule become a mandatory European Law Rule has reopened a very intense debate. This debate brings to the European context a series of questions and arguments that were made in the United States few decades ago in relation to the desirability and the effects generated by the requirement of the one share-one vote rule by stock exchanges and the security exchange authority.

Several scholars have presented critiques against the adoption of the one share – one vote rule.<sup>185</sup> For instance, it was argued that a mandatory rule could produce backfire effects such as inducing companies to adopt pyramidal structures, or derivative

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<sup>183</sup> Bebchuk, *supra* note 7, at \_\_.

<sup>184</sup> Lamba & Stapledon, *supra* note 145, at 23.

<sup>185</sup> See, e.g., Guido Alessandro Ferrarini, *One-Share-One-Vote: A European Rule?* 22 (ECGI-Law Working Paper Group, Paper No. 58/2006, January 2006), available at <http://ssrn.com/abstract=875620> (discussing the recent evolution of the one share-one vote in Europe); Arman Khachaturyan, *The One-Share-One-Vote Controversy in the EU* \_\_ (August 1, 2006), available at <http://ssrn.com/abstract=908215>; and Renee B. Adams & Daniel Ferreira, *One Share, One Vote: The Empirical Evidence* \_\_ (ECGI-Finance Working Paper Group, Paper No. 177/2007, May 2007), available at <http://ssrn.com/abstract=987488>.

instruments that could decompose the effect of such rule.<sup>186</sup>

On the other hand, many scholars have pointed out that deviations from one share-one vote may be inefficient. Grossman and Hart have showed that because the one share-one vote protects shareholders' property rights, value reducing bids are impossible under this rule.<sup>187</sup> They have also argued that changes that restrict the voting power may harm security-holders.<sup>188</sup> Nonetheless, this literature still admits that in specific situations, such deviations can be wealth enhancing.<sup>189</sup> One example is the initial public offering by a company of dual class shares, in which the purchasers would reduce the price of the shares so that the company's initial owners would bear the cost of the issuance.

Defendants of the one share-one vote argue that capital market development requires such arrangement so as to avoid discounts practiced on the value of shares in environments characterized by this divergence in voting rights. The difference between control rights and cash-flow rights of the controlling shareholder is usually associated with a discount on the value of the shares. Claessens et al. have shown that this discount increases when the wedge between control rights and cash-flow rights is larger.<sup>190</sup> They show that pyramid schemes, cross-holdings among firms and the issuance of dual-class shares are all associated with lower corporate value, although none of these associations is statistically significant.<sup>191</sup> Nenova focuses her analysis on the effect of dual shares on private benefits of control, and she finds that non-voting shares are associated with large value discounts.<sup>192</sup>

An increasing number of firms in continental Europe have unified dual-class shares into a single class. Anete Pajuste presents evidence, based on data of seven European countries that widely rely on dual-class share structures, that firm value increases after the unification if compared to the firm itself before the unification,

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<sup>186</sup> Khachaturyan, *supra* note 189, at \_\_\_.

<sup>187</sup> Sanford J. Grossman & Oliver D. Hart, One Share-One Vote and the Market for Corporate Control, 20 J. FIN. ECON. 175, 179-180 (1988).

<sup>188</sup> *Id.* at 201.

<sup>189</sup> *Id.* at 180.

<sup>190</sup> Claessens, Djankov, Fan & Lang, *supra* note 6, at 2743.

<sup>191</sup> *Id.* at 2743-2744

<sup>192</sup> Nenova, *supra* note 21.

compared to other dual-class firms.<sup>193</sup> Pedersen and Thomsen have found that the use of dual class shares is positively associated with family ownership. A stronger ownership concentration is correlated with the existence of dual class shares in a positive way.<sup>194</sup>

Others have shown that the impact of the one share-one vote depends on the underlying existing ownership structure. In widely-held companies its adoption may ensure efficient outcomes in bidding contests meanwhile its deviations may mitigate the free rider problem and promote takeovers. In companies with concentrated ownership, its adoption may promote value-increasing control transfers while deviations may exacerbate conflicts of interests between the controlling shareholders and the minority shareholders.<sup>195</sup>

Scholars have then argued that the one share-one vote could both discourage and promote ownership concentration. Because it ties votes to cash flow rights, it increases the financial burden of the shareholder seeking to keep control. This can bring about two opposite effects: the shareholder may relinquish control because it is too expensive or he or she can be reluctant of losing control, which may impede the floating of shares and perhaps induce a going private transaction.<sup>196</sup>

Bovespa's special listing requirements seems to support the argument that the one share-one vote rule helps to promote the dispersion of ownership.<sup>197</sup> This study provides evidence that the adoption of the one share – one vote rule is indeed associated with a larger diffusion of ownership. This rule has promoted ownership dispersion, as it requires that controlling shareholders reduce their voting power if they want to raise significant amount of capital at Novo Mercado. In the other listing segments that don't require compliance with the one share-one vote rule, alternatively, block holders tend to

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<sup>193</sup> Anete Pajuste, *Determinants and Consequences of the Unification of Dual-Classes Shares*, European Central Park, March 2005. (The author nonetheless considers that dual-class shares should not be forbidden justifying this opinion on the need to raise new equities in firms, which are dependent on new equity capital).

<sup>194</sup> Pedersen & Thomsen, *supra* note 148, at 764, 772.

<sup>195</sup> Mike C. Burkart & Samuel Lee, *The One Share-One Vote Debate: A Theoretical Perspective* (ECGI-Finance Working Paper Group, Paper No. 176/2007, May 2007), available at <http://ssrn.com/abstract=987486>.

<sup>196</sup> *Id.* at 31.

<sup>197</sup> See also Jeffrey Gordon, *An International Relations Perspective on the Convergence of Corporate Governance: German Shareholder Capitalism and the European Union, 1990-2000* (arguing that the one-share-one-vote rule fosters the development of dispersed ownership).

retain their controlling position and be reluctant to float shares.<sup>198</sup>

#### i) Controlling Shareholders Preferences and Incentives

Controlling shareholders bear significant costs from maintaining concentration of ownership and voting rights. They incur in costs of holding a nondiversified portfolio, costs of the lack of liquidity of their investment and costs from the necessity of monitoring the operation of the company, so as to assure that they will derive profits from their investment. Therefore, controlling shareholders benefit by extracting private benefits from the corporation in exchange for incurring these costs.<sup>199</sup>

Some level of benefits extraction may be efficient to the corporation and to non-controlling shareholders as well. The controlling shareholders may do a better job in policing the management of public corporations than what market-oriented techniques would achieve in firms with dispersed ownership. The controlling shareholders have lower information costs and have incentives to watch closely what is happening in the corporation and, therefore, they may catch earlier problems that would interfere in the corporate results. In this view, controlling shareholders would be an efficient alternative to the problem of separating of ownership and control that arise from widely-held shareholdings. They would increase productivity generating gains to non-controlling shareholders as well.<sup>200</sup> Non-controlling shareholders would actually prefer having controlling shareholders controlling the corporation as long as their benefits would exceed the costs that they generate to non-controlling shareholders. Therefore, non-controlling shareholders would prefer having controlling shareholders manage the corporation provided that the gains from the reduction in managerial agency costs are

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<sup>198</sup> This is also consistent with Musacchio's analysis that the concentration of control in Brazilian companies was increased after the introduction of non-voting shares in 1932. See Musacchio, *supra* note 162, at 5 and 20. Musacchio concludes: ". . . Brazil's traded corporations had lower concentration of control rights, on average, in the past than today. Before 1910, the three largest shareholders controlled, on average, between 50% of shares and around 50% of total votes." *Id.* at 48. By 2004, the three largest shareholders of the largest 20 companies in Brazil held 51.2% of the shares and 76.6% of the votes. Most of this increase in the concentration of control rights should be attributed to the introduction of nonvoting preferred shares in 1932, which reduced the cost of controlling a corporation and enabled controlling investors to obtain equity finance without sacrificing their control rights." *Id.* at 30

<sup>199</sup> See Gilson & Gordon, *supra* note 1; and Gilson, *Controlling Shareholders*, *supra* note 1, at 1651-1652 (2006).

<sup>200</sup> Gilson, *Controlling Shareholders*, *supra* note 1, at 1651-1652.

superior to the private benefits that controlling shareholders extract.<sup>201</sup> This equation is what Professors Gilson and Gordon have called “the controlling shareholder trade off.”<sup>202</sup>

Using this framework, a corporate governance system should achieve a positive trade off from controlling shareholders structures. To put it differently, the problem is transforming a structure of *inefficient* controlling shareholders, who were used to extract large amounts of private benefits of control, into a structure of *efficient* controlling shareholders, who generated benefits from more focused monitoring that exceeds the costs of private benefits extraction. This would cause minority shareholders to be better off from the controlling shareholders’ management, raising the overall level of confidence in the capital markets.<sup>203</sup>

Gilson’s hypothesizes that there should be more diversity of shareholding distribution among companies in an efficient controlling shareholder system. He gives as example the case of Sweden and Italy, showing that Sweden (a good law nation) has considerable more widely held ownership than Italy (a bad law nation), despite the fact that both countries are considered controlling shareholders oriented systems. According to Gilson’s hypothesis, inefficient controlling shareholders systems show less diversity of shareholding distribution.<sup>204</sup>

Likewise, the fact that we find more diversity in the ownership structure of Brazilian corporations today than in a few years ago appears to support the hypothesis that controlling shareholders structures have moved to more efficient patterns because of relevant changes in the level of shareholder protection and consequent reduction of pecuniary private benefits of control. Investors pay more for Novo Mercado’s shares because they consider that the level of pecuniary expropriation they will be subjected to is not the same as it used to be.

Gilson also distinguishes between pecuniary and non-pecuniary private benefits of control to explain differences between the incidences of controlling shareholders in

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<sup>201</sup> *Id.*

<sup>202</sup> Gilson & Gordon, *supra* note 1, at \_\_\_. Gilson, *Controlling Shareholders*, *supra* note 1, at 1641, 1650.

<sup>203</sup> Gilson, *Controlling Shareholders*, *supra* note 1, at 1652.

<sup>204</sup> *Id.* at 1659.

certain countries.<sup>205</sup> Non pecuniary benefits such as social status play an important role in Brazil. High levels of non-pecuniary private benefits of control should decrease the rate at which controlling shareholders and their heirs dissipate control.<sup>206</sup> This may be an important factor to explain why Level 1 companies still persist with very concentrated structures of ownership. Level 1's companies consist of very traditional Brazilian companies, whose controlling shareholders have social status and exert political influences.

Even if there are evidences that listing on Novo Mercado diminishes the cost of capital to companies, pecuniary incentives may not be enough for changing the mind of traditional controlling shareholders that still enjoy non-pecuniary advantages from their positions. But it is important to note, that even if social status and political relations are considered non-pecuniary private benefits, they may result in gains that can be easily translated into pecuniary benefits. The concentration of corporate control and assets in the hands of few families creates the opportunity for them to lobby government agencies for special treatment. They can demand preferential public contracts and non-market-based financing from state banks, which will lead them to weakly rely on equity finance.<sup>207</sup> Ultimately, families may have a significant influence upon governmental economic policy. This motivation for crony capitalism can also explain why many companies still continue to have families as their major controlling shareholders, as it happens in Level 1.<sup>208</sup> In this framework, changes in ownership structure may be more difficult to achieve and require more time to succeed. Controlling shareholders tastes therefore may be more difficult to change if they are not constrained by the need of getting more capital at lower costs.

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<sup>205</sup> *Id.* at 1665.

<sup>206</sup> Gilson, *Controlling Shareholders*, *supra* note 203, at 1666.

<sup>207</sup> Claessens, Djankov & Lang, *supra* note 4, at 109.

<sup>208</sup> *See id.* at 108-109 (discussing data on concentration of corporate assets that are indicative of crony capitalism in East Asia).

## VIII. THE CHALLENGES THAT THE MARKET WILL FACE

Novo Mercado has achieved 20% of Bovespa's market capitalization in 8 years. This is a very significant change that happened in a considerable fast period of time. For this outcome to be improved, many challenges will have to be faced by regulators and market participants.

It is still unclear that Bovespa's legal rules will achieve their desirable enforcement.<sup>209</sup> Bovespa has established an arbitration panel to circumvent the delay and uncertainty of Brazilian courts. However, up to now, this arbitration panel has never been installed and it is unsure whether it is going to work properly in practice.

The Brazilian Corporate Law was envisaged based on the figure of the classical controlling shareholder. Brazilian law imposes more responsibilities to controlling shareholders, and less so to managers. However, as ownership structures changes, this legal model is challenged. Many problems that may emerge in companies without clear controlling shareholders will present significant difficulties for the current law's framework in place. For instance, the Brazilian Law affords tag along rights to minority shareholders in case of sale of control. Control transactions usually involved more than 50% of the voting shares of the corporation. With the increasing level of ownership dispersion, it will be more difficult to assess when a sale of control is taking place. Is a sale of 30% of the voting shares still a control sale? And what about a sale of 10% of the voting shares? And about 10% of voting shares by a shareholder participating in a control shareholder agreement?<sup>210</sup> There is still no clear criteria according to which one could solve these questions. There is a lot of room to opposing arguments. The definition of independent directors, the adoption of shareholders' agreements that bind directors and the use and enforcement of anti-takeover clauses<sup>211</sup> raise important questions for regulators and market players.

Also, many issues are poorly regulated. One example that brought recent attention by the media has to do with practices of underwriters in the issuance of

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<sup>209</sup> Cosan case.

<sup>210</sup> VCP recent case.

<sup>211</sup> Totvs case.

securities like lending capital to the issuers, receiving warrants as compensation, etc.

## IX. CONCLUSION

Departing from a unique vantage point, this paper aims at drawing general conclusions from the Brazilian experience of changing patterns of corporate ownership.

Designing special listing segments with higher standards of corporate governance appears to be an important solution for fostering markets stuck in low-level equilibrium due to poor protection of minority shareholders and poor corporate governance. The Bovespa experiment has shown that many new companies have chosen to adhere to special segments characterized by more stringent corporate governance practices than the ones adopted by companies in the standard market. They are looking for finance in the capital markets instead of making use of their usual alternatives (e.g., debt). So, private regulation may work where public regulation has failed to foster market development.

Nonetheless, this paper cautions that the majority of traditional companies have not yet migrated to Bovespa's new listing segments the way players of the market were expecting them to do. This shows that path dependence still applies: firms tend to persist with their patterns of initial ownership and changes in corporate governance practices that depend on changes in ownership structures may remain hard to achieve.

Brazilian capital markets are going through an important change. The "new entrants" have caused the level of ownership concentration to significantly diminish in Novo Mercado. However this change is accompanied by persistence of the traditional concentration of ownership in Level 2, Level 1 and the standard market. Therefore, we find that new practices of corporate governance coexisting with old practices. We find institutional adaptation towards better governance patters, however family ownership is still dominant and stable.

This paper also identifies an important challenge for the corporate governance literature in general. Corporate governance scholars have restricted their research to companies' charters and bylaws. The analysis of shareholders' agreements in Brazil



points out that the contractual relations that affect corporate governance may be more complex than typically expected. An analysis of Brazilian corporate governance that does not take shareholders' agreements into consideration is certainly incomplete. Shareholders' agreements are central in assessing the concentration of corporate control in Brazil. Whether this also applies to assessing corporate governance in other countries is still an open question that deserves more attention from researchers.

Shareholders' agreements are used by companies with a larger degree of ownership dispersion as mechanisms that coordinate joint control and voting rights. In this sense shareholders' agreements substitute share ownership. Furthermore, this analysis makes it clear that control comes in forms other than direct or indirect equity ownership (pyramids). It may rely on a contractual basis through a shareholders agreement. In addition, shareholders' agreements greatly affect how directors can vote, making them representatives of shareholders' interests and largely undermining their independence.

Anti-takeover defenses have been cropping up in companies bylaws, which is a remarkable development of increasing dispersion of ownership. We still have to wait to see how they will affect potential attempts of takeover or sales of control. It is unclear whether public regulation will evolve to tackle this phenomenon. Private actors seem to have not yet realized how anti-takeover defenses may adversely affect the development of the market, by increasing the entrenchment of managers.

**TABLE 1 : Main Aspects of Bovespa's Listing Rules**

<i>Main Aspects of the Listing Rules</i>	<b>Standard</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Novo Mercado</b>
<b>Disclosure</b>				
<i>Disclosure of conditions of related party transactions.</i>	not required	required	required	required
<i>Monthly disclosure of transactions with shares of the company by employees, administrators and Fiscal Counselors.</i>	not required	required	required	required
<i>Disclosure of quantity and characteristics of securities issued by the company held by controlling shareholders members of the Board, officers and members of the Fiscal Counsel..</i>	not required	required	required	required
<i>Improvements in quarterly financial statements, including consolidated financial statements and report of the Independent Auditor</i>	not required	required	required	required
<i>The Company's quarterly and year-end financial statements will include a Cash Flow Statement</i>	not required	required	required	required
<i>Quarterly Statements should be presented in English or prepared in accordance with the US GAAP or IFRS</i>	not required	not required	required	required
<i>Disclosure of annual balance sheet according to standards of US GAAP or IFRS.</i>	not required	not required	required	required
<b>Free-float</b>				
<i>Maintenance of a free-float of at least 25% of the capital.</i>	not required	required	required	required
<b>Capital Dispersion</b>				
<i>Public offerings have to use mechanisms the favor capital dispersion.</i>	not required	required	required	required
<b>Board of Directors</b>				
<i>Establishment of a two-year unified mandate for the entire Board of Directors, which must have five members at least, from which at least 20% (twenty percent) shall be Independent Members.</i>	not required	not required	required	required
<b>Corporate Rules</b>				
<i>Voting rights granted to preferred shares in circumstances such as incorporation, spin-off and merger and approval of contracts between the company and other firms of the same holding group.</i>	not required	not required	required	not applicable
<i>Obligation to hold a tender offer for acquisition of the shares held by the other shareholders at the economic value of the shares</i>	not required	not required	required	required
<i>In a sale of control, same conditions provided to majority shareholders will have to be extended to all shareholders (Tag Along).</i>	not required	not required	not required	required
<i>In case majority shareholders sell their stake, same conditions granted of price must be extended to common shareholders, while preferred shareholders must get, at least, 80% of the price (tag along).</i>	not required	not required	required	not applicable
<i>The company should have a publicly shareholder meeting with analysts and investors, at least once a year.</i>	not required	required	required	required
<b>Arbitration</b>				
<i>Admission to the Market Arbitration Panel for resolution of corporate disputes.</i>	not required	not required	required	required
<b>Annual Calendar</b>				
<i>Disclosure of an annual calendar of corporate events.</i>	not required	required	required	required
<b>One Share – One Vote</b>				
<i>The capital stock must be solely represented by common shares (voting shares).</i>	not required	not required	not required	required

Source: author's elaboration based on Bovespa's rules

**TABLE 2****Number of Public Companies Listed on Bovespa**

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

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

Source: Bovespa (considerado até final de dezembro)

**TABLE 3**  
**Primary Stock Offerings**

<b>STOCKS</b>			
<b>YEAR</b>	<b>Number of Issuances</b>	<i>Volume</i>	
		<b>R\$ millions</b>	<b>US\$ millions</b>
1995	31	1.935,25	2.111,10
1996	22	9.142,96	9.168,27
1997	23	3.599,21	3.655,44
1998	20	4.112,10	3.494,52
1999	10	2.749,45	1.467,83
2000	6	1.410,17	628,24
2001	6	1.353,30	625,24
2002	4	1.050,44	370,12
2003	2	230,00	73,76
2004	9	4.469,90	1.552,03
2005	13	4.364,63	1.860,86
2006	29	13.745,58	6.565,67
2007	59	33.135,84	17.253,01

Source: CVM

**TABLE 4**  
**Secondary Stock Offerings**

<b>YEAR</b>	<b>Secondary Distributions (Stocks)</b>		
	<i>No. of registered distributions</i>	<i>Volume</i>	
		<b>R\$ millions</b>	<b>US\$ millions</b>
1995	0	0	0
1996	2	37,9	37,2
1997	0	0	0
1998	14	1.856,30	1.618,00
1999	14	1.866,60	1.065,50
2000	14	12.127,30	6.726,00
2001	7	4.308,70	1.768,20
2002	2	5.096,80	2.158,60
2003	6	1.856,30	614,40
2004	12	4.682,30	1.611,60
2005	15	6.634,60	2.792,20
2006	30	12.760,80	5.878,70
2007	44	34.121,3	18.211,4

Source: CVM

**TABLE 5**  
**Recent IPOs**

Statistics of Going Public Transactions in BOVESPA						
Year	Company's Name	Listing Segment	Offer Type	Volume R\$ millions	N° of brokers	No. of investors investidores
2007	Tempo Part	Novo Mercado	Primary	394	57	N/D
	MPX Energia	Novo Mercado	Primary	1.916	58	N/D
	BMF	Novo Mercado	Secondary	5.984	70	255.001
	Panamericano	Level 1	Primary	680	61	N/D
	Laep	BDR	Primary	508	52	563
	Helbor	Novo Mercado	Primary	252	60	723
	Amil	Novo Mercado	Mixed	1.401	69	4.398
	BR Brokers	Novo Mercado	Mixed	699	55	13
	Bovespa Hld	Novo Mercado	Secondary	6.626	69	64.775
	Agrenco	BDR	Primary	666	55	805
	Marisa	Novo Mercado	Primary	506	67	13.177
	SEB	Level 2	Mixed	413	61	3.709
	Tenda	Novo Mercado	Primary	603	60	10.172
	Trisul	Novo Mercado	Primary	330	62	2.444
	BicBanco	Level 1	Mixed	822	62	5.197
	Sul America	Level 2	Primary	775	67	19.261
	Satipel	Novo Mercado	Mixed	398	59	-
	Cosan Ltd	BDR	Primary	275	59	1572
	Estacio Part	Level 2	Mixed	447	64	10.890
	Generalshopp	Novo Mercado	Primary	287	59	4.999
	Multiplan	Level 2	Mixed	925	66	24.419
	Providencia	Novo Mercado	Primary	469	64	11.135
	Springs	Novo Mercado	Mixed	656	69	7.383
	ABC Brasil	Level 2	Mixed	609	49	6.050
	Triunfo Part	Novo Mercado	Mixed	513	59	7.139
	Guarani	Novo Mercado	Primary	666	63	12.388
	Kroton	Level 2	Mixed	479	60	11.297
	MRV	Novo Mercado	Mixed	1.193	60	15.657
	Patagonia	BDR	Mixed	539	56	2.846
	Minerva	Novo Mercado	Mixed	444	62	11.660
	Invest Tur	Novo Mercado	Primary	945	53	17
	Redecard	Novo Mercado	Mixed	4.643	67	29.766
Indusval	Level 1	Mixed	253	59	290	

	Tegma	Novo Mercado	Mixed	604	64	6.776
	Marfrig	Novo Mercado	Primary	1.021	62	4.933
	Daycoval	Level 1	Mixed	1.092	62	7.585
	Cruzeiro Sul	Level 1	Mixed	574	61	4.221
	EZTec	Novo Mercado	Primary	542	62	5.553
	Log-In	Novo Mercado	Mixed	848	67	26.898
	SLC Agricola	Novo Mercado	Mixed	490	64	9.750
	Parana	Level 1	Primary	529	50	8.586
	Inpar S/A	Novo Mercado	Primary	756	60	9.614
	Tarpon	BDR	Primary	444	56	10.714
	Sofisa	Level 1	Mixed	439	61	7.269
	Wilson Sons	BDR	Secondary	706	57	11.915
	Cremer	Novo Mercado	Mixed	508	58	9.419
	Agra Incorp	Novo Mercado	Mixed	786	62	5.375
	CR2	Novo Mercado	Primary	308	58	2.810
	Bematech	Novo Mercado	Mixed	407	60	8.718
	Metalfrio	Novo Mercado	Mixed	453	65	9.672
	JHSF Part	Novo Mercado	Primary	432	66	4.561
	Fer Heringer	Novo Mercado	Mixed	304	64	9.275
	BR Malls Par	Novo Mercado	Mixed	657	66	13.909
	Even	Novo Mercado	Primary	460	65	11.366
	Pine	Level 1	Mixed	517	55	20.251
	JBS	Novo Mercado	Mixed	1.617	61	22.984
	Anhanguera	Level 2	Mixed	512	60	13.742
	GVT Holding	Novo Mercado	Primary	1.076	59	14.597
	Sao Martinho	Novo Mercado	Mixed	424	64	24.686
	Iguatemi	Novo Mercado	Primary	549	64	16.889
	Tecnisa	Novo Mercado	Mixed	791	66	17.436
	CC Des Imob	Novo Mercado	Mixed	522	63	22.294
	Rodobensimob	Novo Mercado	Primary	449	62	14.181
	PDG Realt	Novo Mercado	Mixed	648	62	12.018
2006	Dufrybras	BDR	Secondary	880	60	10.177
	Lopes Brasil	Novo Mercado	Secondary	475	59	9.930
	Positivo Inf	Novo Mercado	Mixed	604	61	18.814
	Odontoprev	Novo Mercado	Mixed	522	55	8.860
	Ecodiesel	Novo Mercado	Primary	379	58	9.446
	Terna Part	Level 2	Mixed	627	52	6.509

	Profarma	Novo Mercado	Mixed	401	53	4.609
	Brascan Res	Novo Mercado	Mixed	1.188	54	4.319
	M.Diasbranco	Novo Mercado	Secondary	411	56	3.460
	Santos Bras	Level 2	Mixed	933	54	4.209
	Klabinsegall	Novo Mercado	Mixed	527	53	4.720
	Medial Saude	Novo Mercado	Mixed	742	53	3.131
	Abyara	Novo Mercado	Primary	164	41	6
	MMX Miner	Novo Mercado	Primary	1.119	35	18
	Datasul	Novo Mercado	Mixed	317	52	5.514
	GP Invest	BDR	Primary	706	49	2.373
	Lupatech	Novo Mercado	Mixed	453	55	11.453
	BrasilAgro	Novo Mercado	Primary	583	35	3
	CSU CardSyst	Novo Mercado	Mixed	341	57	14.637
	ABnote	Novo Mercado	Secondary	480	55	15.453
	Equatorial	Level 2	Mixed	540	56	7.521
	Totvs	Novo Mercado	Mixed	460	57	16.322
	Company	Novo Mercado	Mixed	282	55	13.166
	Gafisa	Novo Mercado	Mixed	927	57	14.028
	Copasa	Novo Mercado	Primary	813	60	15.802
	Vivax	Level 2	Mixed	529	50	7.916
2005	UOL	Level 2	Mixed	625	56	13.234
	Cosan	Novo Mercado	Primary	886	52	9.079
	Nossa Caixa	Novo Mercado	Secondary	954	54	7.666
	OHL Brasil	Novo Mercado	Mixed	496	42	1.084
	Energias BR	Novo Mercado	Mixed	1.185	44	468
	TAM S/A	Level 2	Mixed	548	48	1.212
	Localiza	Novo Mercado	Secondary	265	48	809
	Submarino	Novo Mercado	Mixed	473	52	4.022
	Renar	Novo Mercado	Primary	16	42	1.698
2004	Porto Seguro	Novo Mercado	Mixed	377	51	5.919
	DASA	Novo Mercado	Mixed	437	44	2.892
	Grendene	Novo Mercado	Secondary	617	56	7.905
	CPFL Energia	Novo Mercado	Mixed	821	47	2.750
	ALL Amer Lat	Level 2	Mixed	588	33	3.425
	Gol	Level 2	Mixed	878	40	11.397
	Natura	Novo Mercado	Secondary	768	32	4.445

Source: Bovespa, Dec., 20th 2007, <http://www.bovespa.com.br/Principal.asp>

*\* Dados Preliminares*

*1. Volume financeiro total da operação*

*2. Número de corretoras que participaram do consórcio de distribuição*

*3. Número de investidores participantes do varejo (pessoas físicas + clubes de investimento)*



**TABLE 6**  
**Bovespa's Segments Market Capitalization**

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

<b>Market Capitalization</b>						
LEVEL	Companies with majority shareholder		Companies without a majority shareholder		Total Sample	
	No. of firms	Market Capitalization em R\$	No. of firms	Market Capitalization em R\$	No. of firms	Market Capitalization em R\$
Novo Mercado	27	189.048.042.839,36	65	240.244.243.754,94	92	429.292.286.594,30
Level 2	14	54.079.710.040,99	6	23.798.197.688,22	20	77.877.907.729,21
Level 1	31	631.755.247.320,61	13	246.945.774.507,31	44	878.701.021.827,92
Standard	133	793.629.042.667,36	50	129.693.328.935,93	183	923.322.371.603,29
<b>TOTAL</b>	<b>205</b>	<b>1.668.512.042.868,32</b>	<b>134</b>	<b>640.681.544.886,40</b>	<b>339</b>	<b>2.309.193.587.754,72</b>

Source: Author's calculations are based on Bovespa data on market capitalization dated Dec. 19, 2007.

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

Company's name	Sector Classification	Date of CVM Register (d / m / y)	Initial Date in the Special Segment	Previously Listed Standard Market
<b>NEW MARKET</b>				
ABYARA PLANEJAMENTO IMOBILIARIO S.A.	Construction Real Estate Construction	24/7/2006	27/7/2006	NO
AÇÚCAR GUARANI S.A.	Food Manufacturing Sugar Manufacturing	20/7/2007	23/7/2007	NO
AGRA EMPREENDIMENTOS IMOBILIARIOS S.A.	Construction Real Estate Construction	19/4/2007	26/4/2007	NO
AMERICAN BANKNOTE S.A.	Finance and Insurance Credit Card Issuing	12/4/2006	27/4/2006	NO
AMIL PARTICIPACOES S.A.	Health Medical and Diagnostics Services	24/10/2007	29/10/07	NO
B2W - COMPANHIA GLOBAL DO VAREJO	Retail trade Miscellaneous products	26/7/2007	8/8/2007	NO
BCO BRASIL S.A.	Finance and Insurance Commercial Banking	20/7/1977	28/6/2006	YES_STAND
BCO NOSSA CAIXA S.A.	Finance and Insurance Commercial Banking	14/10/2005	28/10/2005	NO
BEMATECH INDE COM EQUIP. ELETRONIC S.A.	Manufacturing Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	17/4/2007	19/4/2007	NO
BOLSA DE MERCADORIAS E FUTUROS-BMF S.A.	Financial Activities Development and Management of Trading Systems Clearing House Services for Securities and Derivative Products	28/11/2007	30/11/2007	NO
BOVESPA HOLDING S.A.	Financial Activities Holding Company Processing, Reserve and Clearing House Activities	23/10/2007	26/10/2007	NO
BR MALLS PARTICIPACOES S.A.	Real Estate and Rental and Leasing Holding Company	4/1/2006	5/4/2007	NO
BRASCAN RESIDENTIAL PROPERTIES S.A.	Construction Offices of Other Holding Companies	11/9/2006	23/10/2006	NO
BRASIL BROKERS PARTICIPACOES S.A.	Construction Real Estate Construction Real Estate Agents and Brokers Real Estate Holdings	26/10/2007	29/10/2007	NO
BRASIL ECODIESEL IND COM BIO.OL.VEG.S.A.	Grain and Oilseed Milling	9/11/2006	22/11/2006	NO
BRASILAGRO - CIA BRAS DE PROP AGRICOLAS	Real Estate and Rental and Leasing Agriculture business	25/4/2006	2/5/2006	NO
CAMARGO CORREA DESENV. IMOBILIARIO S.A.	Construction Real Estate Construction	29/1/2007	31/1/2007	NO
CIA BRAS DESENV. IMOBILIARIO TURISTICO	Insurance and Finance Real Estate and Rental and Leasing	12/7/2007	16/07/2007	NO
CIA CONCESSÕES RODOVIÁRIAS	Highway, Street, and Bridge Construction Holding Company	19/12/2000	01/02/2002	NO
CIA. HERING	Textile Mills Clothing and apparel manufacturing	20/07/1977 26/1/2005	16/5/2007	YES_STAND
CIA. PROVIDÊNCIA INDÚSTRIA E COMÉRCIO	Plastics Pipe, Pipe Fitting, and	25/7/2007	27/7/2007	NO

	Unlaminated Profile Shape Manufacturing Commercial and manufacturing			
<b>CIA SANEAMENTO BASICO EST SAO PAULO</b>	Administration of Air and Water Resource and Solid Waste Management Programs Water and Sewer Line and Related Structures Construction	27/6/1994	24/4/2002	YES_STAND
<b>CIA SANEAMENTO DE MINAS GERAIS- COPASA MG</b>	Administration of Air and Water Resource and Solid Waste Management Programs Water and Sewer Line and Related Structures Construction	17/9/2003	8/2/2006	NO
<b>COMPANY S.A.</b>	Construction Real Estate Construction	3/9/2001	2/3/2006	NO
<b>CONSTRUTORA TENDA S.A.</b>	Construction Real Estate Construction Incorporation, Management, Real Estate Trading	11/10/2007	15/10/2007	NO
<b>COSAN S.A. INDUSTRIA E COMERCIO</b>	Food Manufacturing Sugar Manufacturing	26/10/2005	18/11/2005	NO
<b>CPFL ENERGIA S.A.</b>	Power and Communication Line and Related Structures Construction Holdings	18/5/2000	29/9/2004	YES_STAND
<b>CR2 EMPREENDIMENTOS IMOBILIARIOS S.A.</b>	Construction Real Estate Construction	16/4/2007	23/4/2007	NO
<b>CREMER S.A.</b>	Medical, and Hospital Supplies Manufacturing	30/6/2006	30/4/2007	NO
<b>CSU CARDSYSTEM S.A.</b>	Finance and Insurance Credit Card Issuing	25/4/2006	2/5/2006	NO
<b>CYRELA COMMERCIAL PROPERT S.A. EMPR PART</b>	Commercial and Industrial Buildings Rental Shopping centers, warehouses	1/8/2007	9/8/2007	NO
<b>CYRELA BRAZIL REALTY S.A.EMPREEND E PART</b>	Construction Real Estate Construction	7/7/1994	21/9/2005	NO
<b>DATASUL S.A.</b>	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	30/5/2006	2/6/2006	NO
<b>DIAGNOSTICOS DA AMERICA S.A.</b>	Medical and Diagnostic Laboratories	5/11/2004	19/11/2004	NO
<b>DROGASIL S.A.</b>	Drugs and Druggists' Sundries Merchant Wholesalers	20/7/1977	3/7/2007	YES_STAND
<b>EDP - ENERGIAS DO BRASIL S.A.</b>	Power and Communication Line and Related Structures Construction Holdings	5/7/2005	13/7/2005	NO
<b>EMBRAER-EMPRESA BRAS DE AERONAUTICA S.A.</b>	Aircraft Manufacturing Aircraft Engine and Engine Parts Manufacturing	23/5/2006	6/6/2006	NO
<b>ETERNIT S.A.</b>	Cement and Concrete Product Manufacturing and Wholesaler	17/11/1970*	17/8/2006	YES_STAND
<b>EVEN CONSTRUTORA E INCORPORADORA S.A.</b>	Construction Real Estate Construction	2/3/2007	2/4/2007	NO
<b>EZ TEC EMPREEND. E PARTICIPACOES S.A.</b>	Construction	15/6/2007	22/6/2007	NO
<b>FERTILIZANTES HERINGER S.A.</b>	Fertilizer Manufacturing and Wholesaler	10/4/2007	12/4/2007	NO
<b>GAFISA S.A.</b>	Real Estate Property Managers Residential Properties	21/2/1997	17/2/2006	NO
<b>GENERAL SHOPPING BRASIL S.A.</b>	Management of Companies and Enterprises Management of Shopping Centers	26/7/2007	30/7/2007	NO
<b>GRENDENE S.A.</b>	Footwear Manufacturing Rubber and Plastics Footwear Manufacturing	26/10/2004	29/10/2004	NO
<b>GVT (HOLDING) S.A.</b>	Telecommunications Wired Telecommunications Carriers	9/6/2006	15/2/2007	NO

	Holdings			
<b>HELBOR EMPREENDIMENTOS S.A.</b>	Real Estate Incorporation, Management, and Trading. Activities Related to Real Estate Real Estate Agents and Brokers.	09/07/2007	29/10/2007	NO
<b>IGUATEMI EMPRESA DE SHOPPING CENTERS S.A</b>	Property Managers Management Shopping Centers	2/2/2007	7/2/2007	NO
<b>INDUSTRIAS ROMI S.A.</b>	Industrial Machinery Manufacturing	19/4/1938*	23/3/2007	YES_STAND
<b>INPAR S.A.</b>	Construction Real Estate Construction	23/5/2007	6/6/2007	NO
<b>JBS S.A.</b>	Meat and Meat Product Merchant Wholesalers Livestock Merchant Wholesalers	27/3/2007	29/3/2007	NO
<b>JHSF PARTICIPACOES S.A.</b>	Construction Real Estate Construction	4/4/2007	12/4/2007	NO
<b>KLABIN SEGALL S.A.</b>	Construction Real Estate Construction	14/8/2006	9/10/2006	NO
<b>LIGHT S.A.</b>	Power and Communication Line and Related Structures Construction Holdings	25/11/1968*	22/02/2006	YES_STAND
<b>LOCALIZA RENT A CAR S.A.</b>	Passenger Car Rental	6/5/2005	23/5/2005	NO
<b>LOG-IN LOGISTICA INTERMODAL S.A.</b>	Water transportation	4/6/2007	21/6/2007	NO
<b>LOJAS RENNER S.A.</b>	Department Stores	20/7/1977	1/7/2005	YES_STAND
<b>LPS BRASIL - CONSULTORIA DE IMOVEIS S.A.</b>	Construction Real Estate Construction	12/12/2006	18/12/2006	NO
<b>LUPATECH S.A.</b>	Industrial Machinery and Equipment	8/5/2006	15/5/2006	NO
<b>M.DIAS BRANCO S.A. IND COM DE ALIMENTOS</b>	Food Manufacturing	11/10/2006	18/10/2006	NO
<b>MARFRIG FRIGORIFICOS E COM DE ALIM S.A.</b>	Meat and Meat Product	18/6/2007	29/6/2007	NO
<b>MARISA S.A.</b>	Textile, Apparel and Footwear Holding Company	13/06/2007	22/10/2007	NO
<b>MRV ENGENHARIA E PARTICIPACOES S.A.</b>	Engineering Services	13/7/2007	23/7/2007	NO
<b>MEDIAL SAUDE S.A.</b>	Medical and Diagnostic Services	19/6/2006	28/9/2006	NO
<b>METALFRIO SOLUTIONS S.A.</b>	Household Refrigerator and Home Freezer Manufacturing	10/4/2007	13/4/2007	NO
<b>MINERVA S.A.</b>	Meat and Meat Product Merchant Wholesalers	18/7/2007	20/7/2007	NO
<b>MMX MINERACAO E METALICOS S.A.</b>	Mining (except Oil and Gas) Holdings	10/11/1998	24/7/2006	NO
<b>MPX ENERGIA S.A.</b>	Electric Power Holding Company	07/12/2007	14/12/2007	NO
<b>NATURA COSMETICOS S.A.</b>	Cosmetics, Beauty Supplies, and Perfume Wholesalers	21/5/2004	26/5/2004	NO
<b>OBRASCON HUARTE LAIN BRASIL S.A.</b>	Construction Management public service	6/7/2005	15/7/2005	NO
<b>ODONTOPREV S.A.</b>	Health Care Plans Dental services	13/6/2006	1/12/2006	NO
<b>PDG REALTY S.A. EMPREEND E PARTICIPACOES</b>	Construction Real Estate Construction	23/1/2007	26/1/2007	NO
<b>PERDIGAO S.A.</b>	Meat and Meat Product	24/6/1997*	12/4/2006	YES_STAND
<b>PORTO SEGURO S.A.</b>	Insurance Health and Welfare Funds Holdings	28/11/1997	22/11/2004	NO
<b>POSITIVO INFORMATICA S.A.</b>	Computer and Electronic Product Manufacturing	6/12/2006	11/12/2006	NO
<b>PROFARMA DISTRIB PROD FARMACEUTICOS S.A.</b>	Drugs and Druggists' Sundries Merchant Wholesalers	24/10/2006	26/10/2006	NO
<b>REDECARD S.A.</b>	Financial Transactions Processing, Reserve, and Clearinghouse Activities	11/7/2007	13/7/2007	NO
<b>RENAR MACAS S.A.</b>	Apple Orchards	28/12/2004	28/2/2005	NO
<b>RODOBENS NEGOCIOS IMOBILIARIOS S.A.</b>	Construction	18/1/2007	31/1/2007	NO

	Real Estate Construction			
<b>ROSSI RESIDENCIAL S.A.</b>	Construction Real Estate Construction	1/7/1997	27/1/2006	YES_STAND
<b>SAO CARLOS EMPREENDE E PARTICIPACOES S.A.</b>	Management, Rental, Selling and Purchase of Commercial Property	25/3/1991	14/12/2006	YES_STAND
<b>SAO MARTINHO S.A.</b>	Sugar and Ethanol (Alcohol) Manufacturing	7/2/2007	12/2/2007	NO
<b>SATPEL INDUSTRIAL S.A.</b>	Paper and Paper Product Merchant Wholesalers	10/09/2007	21/09/2007	NO
<b>SLC AGRICOLA S.A.</b>	Corn, Cotton Manufacturing and Soybeans and Coffee Processing	12/6/2007	15/6/2007	NO
<b>SPRINGS GLOBAL PARTICIPACOES S.A.</b>	Textile and Fabric Finishing Mills	25/7/2007	27/7/2007	NO
<b>TECNISA S.A.</b>	Construction Holding	9/1/2007	1/2/2007	NO
<b>TEGMA GESTAO LOGISTICA S.A.</b>	Highway, Street, and Bridge Construction	28/6/2007	3/7/2007	NO
<b>TEMPO PARTICIPACOES S.A.</b>	Healthcare Hospital, Medical and Diagnostics Services Holding Company	04/01/2006	18/12/2007	NO
<b>TPI - TRIUNFO PARTICIP. E INVEST. S.A.</b>	Other Support Activities for Road Transportation Management	5/12/2002	23/7/2007	NO
<b>TOTVS S.A.</b>	Computer Systems Design and Related Services	7/3/2006	9/3/2006	NO
<b>TRACTEBEL ENERGIA S.A.</b>	Electric Power Generation	28/5/1998	16/11/2005	YES_STAND
<b>TRISUL S.A.</b>	Construction Real Estate Construction Electric Power Generation and Distribution	10/10/2007	15/10/2007	NO
<b>WEG S.A.</b>	Motor Manufacturing Holding	9/2/1982	22/7/2007	YES_STAND

<b>Company's name</b>	<b>Sector Classification</b>	<b>Date of CVM Register (d / m / y)</b>	<b>Initial Date in the Special Segment</b>	<b>Previously Listed Standard market</b>
<b>LEVEL 2</b>				
<b>ALL AMERICA LATINA LOGISTICA S.A.</b>	Construction and Transport Management and Holdings	2/7/1998	25/6/2004	YES_STAND
<b>ANHANGUERA EDUCACIONAL PARTICIPACOES S.A.</b>	Educational Services Holdings	8/6/2001	12/3/2007	NO
<b>BCO ABC BRASIL S.A.</b>	Banking services	23/7/2007	25/7/2007	NO
<b>CENTRAIS ELET DE SANTA CATARINA S.A.</b>	Power and Communication Line and Related Structures Construction Holdings	26/3/1973*	26/6/2002	YES_STAND
<b>ELETROPAULO METROP. ELET. SAO PAULO S.A.</b>	Power and Communication Line and Related Structures Construction Public service facilities	19/8/1993	13/12/2004	YES_STAND
<b>EQUATORIAL ENERGIA S.A.</b>	Power and Communication Line and Related Structures Construction Holdings	30/3/2006	3/4/2006	NO
<b>ESTACIO PARTICIPACOES S.A.</b>	Educational Services Holdings	26/7/2007	30/7/2007	NO
<b>GOL LINHAS AEREAS INTELIGENTES S.A.</b>	Scheduled Passenger Air Transportation Management and Holdings	9/6/2004	24/6/2004	NO
<b>KROTON EDUCACIONAL S.A.</b>	Educational Services Holdings	1/12/1998	23/07/2007	NO

MARCOPOLO S.A.	Bus and Other Motor Vehicle Transit Systems	20/7/1977	03/09/2002	YES_STAND
MULTIPLAN - EMPREEND IMOBILIARIOS S.A.	Real Estate and Management of Shopping Centers	25/7/2007	27/7/2007	NO
NET SERVICOS DE COMUNICACAO S.A.	Television Broadcasting Cable and Other Subscription Programming	22/11/1994	27/06/2002	YES_STAND
SANTOS BRASIL PARTICIPAÇÕES S.A.	Metal Container Logistics Seaport	16/9/1997	13/10/2006	NO
SARAIVA S.A. LIVREIROS EDITORES	Books Printing Books Seller	20/7/1977	7/4/2006	YES_STAND
SEB - SISTEMA EDUCACIONAL BRASILEIRO S.A	Educational Services Holdings	09/11/1998	18/10/2007	NO
SUL AMERICA S.A.	Insurance Offices of Other Holding Companies	03/10/2007	05/10/2007	NO
SUZANO PETROQUIMICA S.A.	Petrochemical Manufacturing	25/3/2002	25/11/2004	YES_STAND
TAM S.A.	Passenger Air Transportation Goods Air Transportation	8/8/1997	14/6/2005	YES_STAND
TERNA PARTICIPACOES S.A.	Power and Communication Line and Related Structures Construction Holdings	6/9/2006	27/10/2006	NO
UNIVERSO ONLINE S.A.	Broadcasting Internet Internet Providers	14/12/2005	16/12/2005	NO

Company's name	Sector Classification	Date of CVM Register (d / m / y)	Initial Date in the Special Segment	Previously Listed Standard market
<b>LEVEL 1</b>				
ARACRUZ CELULOSE S.A.	Pulp, Paper, and Paperboard Mills	5/2/1980	16/4/2002	YES_STAND
BCO BRADESCO S.A.	Commercial banking	20/7/1977	26/6/2001	YES_STAND
BCO CRUZEIRO DO SUL S.A.	Banking services	13/6/2007	26/6/2007	NO
BCO DAYCOVAL S.A.	Finance Activities Banking services	27/6/2007	29/6/2007	NO
BCO ESTADO DO RIO GRANDE DO SUL S.A.	Banking services	20/7/1977	31/7/2007	YES_STAND
BCO INDUSTRIAL E COMERCIAL S.A.	Banking Services Investment Bank	17/09/2007	15/10/2007	NO
BCO INDUSVAL S.A.	Finance Activities	10/7/2007	12/7/2007	NO
BCO ITAU HOLDING FINANCEIRA S.A.	Banking services	No date	26/6/2001	YES_STAND
BCO PANAMERICANO S.A.	Banking Services Investment and Commercial Bank	12/11/2007	19/11/2007	NO
PARANAPANEMA S.A.	Primary Metal Manufacturing Cooper Goods Holding	20/07/1977	03/12/2007	YES_STAND
BCO PINE S.A.	Investment Bank	27/3/2007	2/4/2007	NO
BCO SOFISA S.A.	Commercial Credit	26/4/2007	2/5/2007	NO
BRADSPAR S.A.	Investments Holding	7/8/2000	26/6/2001	NO
BRASIL TELECOM PARTICIPACOES S.A.	Telecommunications Wired Telecommunications Carriers	19/8/1998	9/5/2002	YES_STAND
BRASIL TELECOM S.A.	Telecommunications Wired Telecommunications Carriers	27/3/1980	9/5/2002	YES_STAND
BRASKEM S.A.	Petrochemical Manufacturing Basic Chemical Manufacturing	18/12/1978	13/2/2003	YES_STAND
CENTRAIS ELET BRAS S.A. - ELETROBRAS	Power and Communication Line and Related Structures Construction	28/1/1971	29/9/2006	YES_STAND
CESP – CIA ENERGETICA DE SAO PAULO	Power and Communication Line and Related Structures Construction	27/9/1971	28/7/2006	YES_STAND

	Commercial			
<b>CIA BRASILEIRA DE DISTRIBUICAO</b>	Food Retailer	4/4/1995	23/4/2003	YES_STAND
<b>CIA ENERGETICA DE MINAS GERAIS - CEMIG</b>	Power and Communication Line and Related Structures Construction	30/6/1971	17/10/2001	YES_STAND
<b>CIA FIACAO TECIDOS CEDRO CACHOEIRA</b>	Textile and Fabric Finishing Mills	11/8/1969	2/10/2003	YES_STAND
<b>CIA TRANSMISSAO ENERGIA ELET PAULISTA</b>	Power Generation Power Transmission	14/7/1999	18/9/2002	YES_STAND
<b>CIA VALE DO RIO DOCE</b>	Iron Ore Mining Iron Processing	2/1/1970	12/12/2003	YES_STAND
<b>CONFAB INDUSTRIAL S.A.</b>	Primary Metal Manufacturing	21/8/1980	19/12/2003	YES_STAND
<b>DURATEX S.A.</b>	Wood Product Manufacturing	26/4/1966	05/05/2005	YES_STAND
<b>FRAS-LE S.A.</b>	Vehicle Parts Manufacturing	20/7/1977	11/11/2004	YES_STAND
<b>GERDAU S.A.</b>	Primary Metal Manufacturing	3/9/1980	26/6/2001	YES_STAND
<b>IOCHPE MAXION S.A.</b>	Vehicle Parts Manufacturing Rail Trailer Parts Manufacturing	17/7/1984	10/11/2005	YES_STAND
<b>ITAUSA INVESTIMENTOS ITAU S.A.</b>	Finances Banking services and Holdings	20/7/1977	26/6/2001	YES_STAND
<b>KLABIN S.A.</b>	Wood Product Manufacturing Forestry and Logging	6/8/1997	10/12/2002	YES_STAND
<b>MANGELS INDUSTRIAL S.A.</b>	Primary Metal Manufacturing	28/12/1971	21/3/2003	YES_STAND
<b>METALURGICA GERDAU S.A.</b>	Primary Metal Manufacturing Management and Holdings	17/5/1968	25/6/2003	YES_STAND
<b>PARANA BCO S.A.</b>	Finance Banking services	11/6/2007	14/6/2007	NO
<b>RANDON S.A. IMPLEMENTOS E PARTICIPACOES</b>	Vehicle Parts Manufacturing	5/2/1993	26/6/2001	YES_STAND
<b>S.A. FABRICA DE PRODS ALIMENTICIOS VIGOR</b>	Food Manufacturing Dairy Products	21/2/1984	4/10/2001	YES_STAND
<b>SADIA S.A.</b>	Meat and Meat Product Merchant Wholesalers	27/12/2000	26/6/2003	YES_STAND
<b>SAO PAULO ALPARGATAS S.A.</b>	Rubber and Plastics Footwear Manufacturing	20/7/1977	15/7/2003	YES_STAND
<b>SUZANO PAPEL E CELULOSE S.A.</b>	Paper and Paper Product Woods Paper Mills	15/4/1992	8/5/2003	YES_STAND
<b>ULTRAPAR PARTICIPACOES S.A.</b>	Commercial and Industrial Holdings	27/9/1999	27/10/2005	YES_STAND
<b>UNIBANCO HOLDINGS S.A.</b>	Finances Banking services Holdings	24/1/1995	26/6/2001	YES_STAND
<b>UNIBANCO UNIAO DE BCOS BRASILEIROS S.A.</b>	Finances Investment bank	20/7/1977	26/6/2001	YES_STAND
<b>UNIPAR UNIAO DE IND PETROQ S.A.</b>	Petrochemical Manufacturing	8/12/1971	24/11/2004	YES_STAND
<b>USINAS SID DE MINAS GERAIS S.A.-USIMINAS</b>	Primary Metal Manufacturing Laminated Plans	11/04/1994	11/10/2007	YES_STAND
<b>VOTORANTIM CELULOSE E PAPEL S.A.</b>	Paper and Paper Product Woods Paper Mills	2/6/1986	14/11/2001	YES_STAND

Source: Author's elaboration is based on information available on the CVM and Bovespa's websites.

**TABLE 8****Direct Shareholding Composition of Firms Listed on Novo Mercado.**

A company with a majority shareholder is one that a single shareholder has more than 50% of the voting capital. Some of the companies may present fewer than 3 or 5 largest shareholders, and in these cases they are dropped from this classification.

<b>NOVO MERCADO</b>									
Shareholder	Companies with controlling shareholder (27)*			Companies without a controlling shareholder (65)			Total Sample (92)		
	voting capital (mean)	non-voting capital (mean)	Total capital (mean)	voting capital (mean)	non-voting capital (mean)	Total capital (mean)	Voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	60,87%	0,00	60,87%	26,23%	0,00	26,23%	36,39%	0,00	36,39%
3 Largest	70,40%	0,00	70,40%	47,28%	0,00	47,28%	52,38%	0,00	52,38%
5 Largest	70,91%	0,00	70,91%	54,73%	0,00	54,73%	56,16%	0,00	56,16%

Source: Author's calculations are based on ownership information available on the CVM website and Annual Information Reports referring to year-end 2006 and updated in 2007, except for company MPX whose ownership data come from its IPO prospectus (on Dec. 12<sup>th</sup>, 2007).

**TABLE 9****Direct Shareholding Composition of Firms Listed on Level 2.**

A company with a majority shareholder is one that a single shareholder has more than 50% of the voting capital. Some of the companies may present fewer than 3 or 5 largest shareholders, and in these cases they are dropped from this classification.

<b>LEVEL 2</b>									
Shareholder	Companies with controlling shareholder (14)			Companies without a controlling shareholder (6)			Total Sample (20)		
	voting capital (mean)	non-voting capital (mean)	Total capital (mean)	voting capital (mean)	non-voting capital (mean)	Total capital (mean)	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	75,91%	19,93%	48,83%	38,84%	15,88%	26,45%	64,79%	18,72%	42,11%
3 Largest	96,08%	24,21%	52,28%	65,56%	18,52%	39,52%	83,87%	21,93%	47,18%
5 Largest	97,93%	33,20%	59,21%	82,10%	30,08%	52,12%	91,60%	31,95%	56,37%

Source: Author's calculations are based on ownership information available on the CVM website and Annual Information Reports referring to year-end 2006 and updated in 2007.



**TABLE 10****Direct Shareholding Composition of Firms Listed on Level 1.**

A company with a majority shareholder is one that a single shareholder has more than 50% of the voting capital. Some of the companies may present fewer than 3 or 5 largest shareholders, and in these cases they are dropped from this classification.

<b>LEVEL 1</b>									
Shareholder	Companies with controlling shareholder (31)			Companies without controlling shareholder (13)			Total Sample (44)		
	voting capital (mean)	non-voting capital (mean)	Total capital (mean)	voting capital (mean)	non-voting capital (mean)	Total capital (mean)	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	76,07%	8,13%	39,33%	32,31%	4,72%	19,27%	63,14%	7,12%	33,40%
3 Largest	89,27%	20,76%	53,35%	64,20%	6,36%	35,42%	81,14%	16,09%	47,54%
5 Largest	92,75%	34,16%	63,15%	76,83%	16,01%	47,60%	84,79%	25,08%	55,37%

Source: Author's calculations are based on ownership information available on the CVM website and Annual Information Reports referring to year-end 2006 and updated in 2007.

**TABLE 11****Direct Shareholding Composition of Firms Listed on the standard market.**

A company with a majority shareholder is one that a single shareholder has more than 50% of the voting capital. Some companies may present fewer than 3 or 5 largest shareholders, and in these cases they are dropped from this classification.

<b>STANDARD</b>									
Shareholder	Companies with controlling shareholder (133)			Companies without controlling shareholder (50)			Total Sample (183)		
	voting capital (mean)	non-voting capital (mean)	Total capital (mean)	voting capital (mean)	non-voting capital (mean)	Total capital (mean)	voting capital (mean)	non-voting capital (mean)	Total capital (mean)
Largest	77,48%	27,00%	58,58%	33,62%	11,15%	24,42%	65,50%	22,65%	49,23%
3 Largest	89,72%	43,31%	69,78%	67,64%	26,51%	51,57%	81,64%	37,30%	63,06%
5 Largest	92,22%	47,20%	71,25%	78,80%	37,42%	66,18%	85,19%	42,31%	68,64%

Source: Author's calculations are based on ownership information available on the CVM website. Annual Information Reports referring to year-end 2006 and updated in 2007.



## DIAGRAM 1: ABBREVIATIONS

- **JKL** - JACOB KLABIN LAFER ADM. E PART. S.A.
- **MLP** - MIGUEL LAFER PARTICIPAÇÕES S.A.
- **VFV** - VFV PARTICIPAÇÕES S.A.
- **PRESH** - PRESH S.A.
- **GL** - GL S.A. PARTICIPAÇÕES
- **GLIND** - GLIMDAS PARTICIPAÇÕES S.A.
- **DARO** - DARO PARTICIPAÇÕES S.A.
- **DAWOJOBE** - DAWOJOBE PARTICIPAÇÕES S.A.
- **ESLI** - ESLI PARTICIPAÇÕES S.A.
- **LKL** - LKL PARTICIPAÇÕES S.A.
- **Bradesc Seguro** - BRADESCO SEGUROS S/A
- **Banco Bradesc** - BANCO BRADESCO S/A
- **Cidade de Deus** - CIDADE DE DEUS CIA.CIAL DE PARTIC.
- **Nova Cidade** - NOVA CIDADE DE DEUS PARTICIPAÇÕES S/A
- **Fundaç Bradesc** - FUNDAÇÃO BRADESCO
- **ELO** - ELO PARTICIPAÇÕES S/A
- **Caixa Func. Br** - CAIXA BENEF. FUNCIONÁRIOS DO BRADESCO
- **Bco Bilbao** - BANCO BILBAO VIZCAYA ARGENTARIA S/A
- **Bco (ES)** - BANCO ESPÍRITO SANTO S/A
- **SOC. Ltda** - SOC. TÉCNICA MONTEIRO ARANHA LTDA.
- **Euroamerican** - EUROAMERICAN FINANCE CORPORATION
- **AMC Part.** - AMC PARTICIPAÇÕES S/C LTDA.
- **CJMC Part** - CEJMC PARTICIPAÇÕES S/C LTDA.
- **SAMC Part** - SAMC PARTICIPAÇÕES S/C LTDA.
- **NIBLAK** - NIBLAK PARTICIPAÇÕES S.A.
- **KL** - KL PARTICIPAÇÕES LTDA.
- **GL** - GL S.A. PARTICIPAÇÕES
- **KLA** - KLA RO PARTICIPAÇÕES LTDA.
- **DARO** - DARO PARTICIPAÇÕES S/A
- **DAWOJOBE** - DAWOJOBE PARTICIPAÇÕES S/A
- **MEKLA** - MEKLA DELTA PARTICIPAÇÕES LTDA.
- **BNDESPAR** - BNDES PARTICIPAÇÕES S/A - BNDESPAR

**TABLE 12**  
**Direct Shareholding Composition of Firms Listed at Novo Mercado accounting for**  
**shareholders' agreement.**

A company with a majority shareholder is one that a single shareholder has more than 50% of the voting capital.

<b>NEW MARKET</b>					
<b>Companies with a controlling shareholder (27)</b>		<b>Companies without a controlling shareholder (65)</b>		<b>Total Sample (92)</b>	
Shareholder	voting capital (mean)	Shareholder	voting capital (mean)	Shareholder	voting capital (mean)
Largest	60,87	Largest	26,23	Largest	36,39
<b>Companies with a controlling shareholder taking into account shareholders' agreements (47)</b>		<b>Companies without a controlling shareholder taking into account shareholders' agreements (45)</b>		<b>Total Sample taking into account shareholders' agreements (92)</b>	
Shareholder	voting capital (mean)	Shareholder	voting capital (mean)	Shareholder	voting capital (mean)
Largest Shareholders Block	62,74	Largest Shareholders Block	26,98	Largest Shareholders Block	45,25
<b>Companies that ended up with a controlling shareholder taking into account shareholders' agreements</b>					
Shareholder	No. of firms	voting capital not taking into account shareholder agreements (mean)		voting capital taking into account shareholder agreements (mean)	
Largest Shareholders Block	20	28,06		65,27	

Source: Author's calculation based on shareholders' agreements available on the CVM website.

**TABLE 13**  
**Direct Shareholding Composition of Firms Listed on Level 2 accounting for shareholders’ agreement.**

A company with a majority shareholder is one that a single shareholder has more than 50% of the voting capital.

<b>LEVEL 2</b>					
<b>Companies with a controlling shareholder (14)</b>		<b>Companies without a controlling shareholder (6)</b>		<b>Total Sample (20)</b>	
Shareholder	voting capital (mean)	Shareholder	voting capital (mean)	Shareholder	voting capital (mean)
Largest	75,91	Largest	38,84	Largest	64,79
<b>Companies with a controlling shareholder taking into account shareholders’ agreements (18)</b>		<b>Companies without a controlling shareholder taking into account shareholders’ agreements (2)</b>		<b>Total Sample taking into account shareholders’ agreements (20)</b>	
Shareholder	voting capital (mean)	Shareholder	voting capital (mean)	Shareholder	voting capital (mean)
Largest Shareholders Block	72,19	Largest Shareholders Block	46,29	Largest Shareholders Block	69,60
<b>Companies that ended up with a controlling shareholder taking into account shareholder agreements</b>					
Shareholder	No. of firms	voting capital not taking into account shareholder agreements (mean)	voting capital taking into account shareholder agreements (mean)		
Largest Shareholders Block	4	35,11	55,86		

Source: Author’s calculation based on shareholders’ agreements available on the CVM website.

**TABLE 14**  
**Direct Shareholding Composition of Firms Listed on Level 1 accounting for shareholders' agreement.**

A company with a majority shareholder is one that a single shareholder has more than 50% of the voting capital.

<b>LEVEL 1</b>					
<b>Companies with a controlling shareholder (31)</b>		<b>Companies without a controlling shareholder (13)</b>		<b>Total Sample (44)</b>	
Shareholder	voting capital (mean)	Shareholder	voting capital (mean)	Shareholder	voting capital (mean)
Largest	76,07	Largest	31,26	Largest	63,14
<b>Companies with a controlling shareholder taking into account shareholders' agreements (40)</b>		<b>Companies without a controlling shareholder taking into account shareholders' agreements (3) *</b>		<b>Total Sample taking into account shareholders' agreements (43)*</b>	
Shareholder	voting capital (mean)	Shareholder	voting capital (mean)	Shareholder	voting capital (mean)
Largest Shareholders Block	74,99	Largest Shareholders Block	42,94	Largest Shareholders Block	72,75
<b>Companies that ended up with a controlling shareholder taking into account shareholders' agreements (9)</b>					
Shareholder	No. of firms	voting capital not taking into account shareholder agreements (mean)		voting capital taking into account shareholder agreements (mean)	
Largest Shareholders Block	9	27,00		70,09	

Source: Author's calculation based on shareholders' agreements available on the CVM website.

**TABLE 15**  
**Composition of Controlling Groups and Largest Shareholders in Novo Mercado**  
**NEW MARKET (92)**

<i>Companies with controlling shareholders (27)</i>									
Shareholder	Direct Structure ( 8)			Indirect Structure (19)			Total Sample (27)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	0	0	0	0	0,00	0,00	0	0,00	0,00
Foreign	1	52,06	52,06	2	64,29	64,29	3	60,21	60,21
Individual or family	3	62,82	62,82	17	61,89	54,37	20	62,03	55,64
Government	4	60,83	60,83	0	0	0	4	60,83	60,83
<i>Companies without controlling shareholders (65)</i>									
Shareholder	Direct Structure ( 31)			Indirect Structure (34)			Total Sample (65)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	4	9,95	9,95	2	37,52	18,09	6	19,14	12,66
Foreign	17	22,40	22,40	4	22,45	22,45	21	22,41	22,41
Individual or family	9	23,01	23,01	28	37,07	33,29	37	33,65	30,79
Government	1	49,50	49,50	0	0	0	1	49,50	49,50
<i>Companies with and without controlling shareholders (92)</i>									
Shareholder	Direct Structure ( 39)			Indirect Structure (53)			Total Sample (92)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	4	9,95	9,95	2	37,52	18,09	6	19,14	12,66
Foreign	18	24,05	24,05	6	36,40	36,40	24	27,14	27,14
Individual or family	12	32,96	32,96	45	46,44	41,26	57	43,61	39,51
Government	5	58,56	58,56	0	0	0	5	58,56	58,56

Source: Annual Information Reports referring to year-end 2006 available in CVM website

**TABLE 16**  
**Composition of Controlling Groups, Largest Shareholders and Market Capitalization**  
**in the Novo Mercado**  
Market capitalization is reported in R\$ millions.

<b>Novo Mercado</b>									
Shareholder	Companies with controlling shareholders (27)			Companies without controlling shareholders (65)			Total Sample (92)		
	No. of firms	Market Capitalization em R\$	%	No. of firms	Market Capitalization em R\$	%	No. of firms	Market Capitalization em R\$	%
Institutional	0	0,00	0,00	6	64.746.363.054,48	26,95	6	64.746.363.054,48	15,08
Foreign	3	17.096.422.523,52	9,04	21	76.726.010.803,99	31,94	24	93.822.433.327,51	21,86
Individual or family	20	77.545.682.907,49	41,02	37	93.115.605.752,27	38,76	57	170.661.288.659,76	39,75
Government	4	94.405.937.408,35	49,94	1	5.656.264.144,20	2,35	5	100.062.201.552,55	23,31
<b>TOTAL</b>	<b>27</b>	<b>189.048.042.839,36</b>	<b>100</b>	<b>65</b>	<b>240.244.243.754,94</b>	<b>100</b>	<b>92</b>	<b>429.292.286.594,30</b>	<b>100</b>

Source: Author's calculation based on market capitalization provided by Bovespa for Dec. 19<sup>th</sup>, 2007.

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

<b>LEVEL 2 (20)</b>									
<i>Companies with controlling shareholders (14)</i>									
Shareholder	Direct Structure (6)			Indirect Structure (8)			Total Sample (14)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	0	0,00	0,00	0	0,00	0,00	0	0	0
Foreign	3	75,39	50,79	1	61,34	6,34	4	71,88	39,68
Individual or family	2	92,48	71,10	6	80,02	48,60	8	83,13	54,22
Government	1	50,18	20,20	1	70,02	16,38	2	60,10	16,38
<i>Companies without controlling shareholders (6)</i>									
Shareholder	Direct Structure (3)			Indirect Structure (3)			Total Sample (6)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	0	0,00	0,00	0	0,00	0,00	0	0,00	0,00
Foreign	1	32,78	26,98	0	0,00	0,00	1	32,78	26,98
Individual or family	2	44,20	15,79	3	45,80	25,59	5	45,16	21,67
Government	0	0,00	0,00	0	0,00	0,00	0	0,00	0,00
<i>Companies with and without controlling shareholders (20)</i>									
Shareholder	Direct Structure (9)			Indirect Structure (11)			Total Sample (20)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	0	0,00	0,00	0	0,00	0,00	0	0,00	0,00
Foreign	4	64,74	44,84	1	61,34	6,34	5	64,06	37,14
Individual or family	4	68,34	43,44	9	68,61	40,93	13	68,53	41,70
Government	1	50,18	20,20	1	70,02	16,38	2	60,10	18,29

Source: Annual Information Reports referring to year-end 2006 available in CVM website

**TABLE 18**  
**Composition of Controlling Groups, Largest Shareholders and Market Capitalization in the Level 2**  
Market capitalization is reported in R\$ millions.

<b>LEVEL 2</b>									
Shareholder	Companies with controlling shareholders (14)			Companies without controlling shareholders (6)			Total Sample (20)		
	No. of firms	Market Capitalization em R\$	%	No. of firms	Market Capitalization em R\$	%	No. of firms	Market Capitalization em R\$	%
Institutional	0	0,00	0,00	0	0,00	0,00	0	0,00	0,00
Foreign	4	13.164.547.105,35	24,34	1	3.281.505.350,79	13,79	5	16.446.052.456,14	21,12
Individual or family	8	29.029.333.846,20	53,68	5	20.516.692.337,43	86,21	13	49.546.026.183,63	63,62
Government	2	11.885.829.089,44	21,98	0	0,00	0,00	2	11.885.829.089,44	15,26
<b>TOTAL</b>	<b>14</b>	<b>54.079.710.040,99</b>	<b>100</b>	<b>6</b>	<b>23.798.197.688,22</b>	<b>100</b>	<b>20</b>	<b>77.877.907.729,21</b>	<b>100</b>

Source: Author's calculation based on market capitalization provided by Bovespa for Dec. 19<sup>th</sup>, 2007



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

<b>LEVEL 1 (31)</b>									
<i>Companies with controlling shareholders (31)</i>									
Shareholder	Direct Structure (7)			Indirect Structure (24)			Total Sample (31)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	0	0,00	0,00	3	48,01	13,89	3	48,01	13,89
Foreign	1	99,22	38,99	2	75,36	36,85	3	83,31	37,56
Individual or family	2	76,64	54,69	19	75,60	34,49	21	75,70	36,41
Government	4	74,56	29,04	0	0	0	4	74,56	29,04
<i>Companies without controlling shareholders (13)</i>									
Shareholder	Direct Structure (2)			Indirect Structure (11)			Total Sample (13)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	1	49,77	49,08	2	65,02	22,27	3	59,93	31,20
Foreign	0	0	0	1	21,57	11,03	1	21,57	11,03
Individual or family	1	30,78	18,95	8	51,96	30,81	9	49,61	29,49
Government	0	0	0	0	0	0	0	0	0
<i>Companies with and without controlling shareholders (44)</i>									
Shareholder	Direct Structure (9)			Indirect Structure (35)			Total Sample (44)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	1	49,77	49,08	5	58,40	17,24	6	53,97	22,55
Foreign	1	99,22	38,99	3	57,43	28,24	4	67,88	30,93
Individual or family	3	61,35	42,78	27	68,60	33,40	30	67,87	34,34
Government	4	74,56	29,04	0	0	0	4	74,56	29,04

Source: Annual Information Reports referring to year-end 2006 available in CVM website.

**TABLE 20**  
**Composition of Controlling Groups, Largest Shareholders and Market Capitalization in the Level 1**  
Market capitalization is reported in R\$ millions.

<b>LEVEL 1</b>									
Shareholder	Companies with controlling shareholders (31)			Companies without controlling shareholders (13)			Total Sample (44)		
	No. of firms	Market Capitalization em R\$	%	No. of firms	Market Capitalization em R\$	%	No. of firms	Market Capitalization em R\$	%
Institutional	3	293.689.552.246,58	46,49	3	129.480.474.380,80	52,43	6	423.170.026.627,38	48,16
Foreign	3	15.675.512.187,34	2,48	1	26.432.048.308,20	10,70	4	42.107.560.495,54	4,79
Individual or family	21	265.475.374.283,31	42,02	9	91.033.251.818,31	36,86	30	356.508.626.101,62	40,57
Government	4	56.914.808.603,38	9,01	0	0,00	0,00	4	56.914.808.603,38	6,48
<b>TOTAL</b>	<b>31</b>	<b>631.755.247.320,61</b>	<b>100</b>	<b>13</b>	<b>246.945.774.507,31</b>	<b>100</b>	<b>44</b>	<b>878.701.021.827,92</b>	<b>100</b>

Source: Author's calculation based on market capitalization provided by Bovespa for Dec. 19<sup>th</sup>, 2007

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

<b>STANDARD COMPANIES (183)</b>									
<i>Companies with controlling shareholders (133)</i>									
Shareholder	Direct Structure (29)			Indirect Structure (104)			Total Sample (133)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	2	95,60	63,25	8	49,91	34,46	10	59,05	40,22
Foreign	9	76,13	63,30	18	81,97	69,44	27	80,03	67,39
Individual or family	7	75,55	44,79	71	71,50	45,97	78	71,87	45,86
Government	11	75,19	63,45	7	68,54	44,79	18	72,61	58,07
<i>Companies without controlling shareholders (50)</i>									
Shareholder	Direct Structure (23)			Indirect Structure (27)			Total Sample (50)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	3	19,66	18,14	0	0	0	3	19,66	18,14
Foreign	4	40,35	30,07	6	71,79	62,72	10	59,22	49,66
Individual or family	16	28,78	19,84	21	56,83	37,61	37	44,70	29,93
Government	0	0	0	0	0	0	0	0	0
<i>Companies with and without controlling shareholders (92)</i>									
Shareholder	Direct Structure ( 52)			Indirect Structure (131)			Total Sample (183)		
	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)	No. of firms	voting capital (mean)	Total capital (mean)
Institutional	5	50,04	36,18	8	49,91	34,46	13	49,96	35,12
Foreign	13	65,13	53,08	24	79,42	67,76	37	74,40	62,60
Individual or family	23	43,02	27,43	92	68,15	44,06	115	63,13	40,74
Government	11	75,19	63,45	7	68,54	44,79	18	72,61	38,07

Source: Annual Information Reports referring to year-end 2006 available in CVM website

**TABLE 22**  
**Composition of Controlling Groups, Largest Shareholders and Market Capitalization in the standard market**

Market capitalization is reported in R\$ millions.

<b>STANDARD</b>									
Shareholder	Companies with controlling shareholders (133)			Companies without controlling shareholders (50)			Total Sample (183)		
	No. of firms	Market Capitalization em R\$	%	No. of firms	Market Capitalization em R\$	%	No. of firms	Market Capitalization em R\$	%
Institutional	10	19.571.494.252,55	2,47	3	1.921.836.112,68	1,48	13	21.493.330.365,23	2,33
Foreign	27	287.885.347.991,44	36,27	10	73.849.331.727,51	56,94	37	361.734.679.718,95	39,18
Individual or family	78	37.182.969.910,46	4,69	37	53.922.161.095,74	41,58	115	91.105.131.006,20	9,87
Government	18	448.989.230.512,91	56,57	0	0,00	0,00	18	448.989.230.512,91	48,63
<b>TOTAL</b>	<b>133</b>	<b>793.629.042.667,36</b>	<b>100</b>	<b>50</b>	<b>129.693.328.935,93</b>	<b>100</b>	<b>183</b>	<b>923.322.371.603,29</b>	<b>100</b>

Source: Author's calculation based on market capitalization provided by Bovespa for Dec. 19<sup>th</sup>, 2007

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

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

Source: Author's calculations are based on information available on the CVM website.

**TABLE 24: Types of Shareholders' Agreements**

Number of companies	Name of companies	Type of Shareholders' Agreements			
		Purchase/sale of shares	Preference to purchases shares	Voting rights	Control Exercise
16	Abyara Planejamento Imobiliário S.A. (NM) Brasil Ecodiesel Ind. Com. Bio. Ol. Veg. S.A. (NM) Cia. Concessões Rodoviárias (NM) CPFL Energia S.A. (NM) CSU Cardsystem (NM) EZ TEC Empreendimentos e Participações S.A. (NM) Positivo Informática S.A. (NM) Redecard S.A. (NM) Rodobens Negócios Imobiliários S.A. (NM) ALL América Latina Logística S.A. (L 2) Marcopolo S.A. (L 2) Multiplan Empreendimentos Imobiliários S.A. (L 2) Aracruz Celulose S.A. (L 1) Banco Industrial e Comercial S.A. (L 1) BRADESPAR S.A. (L 1) Sadia S.A. (L 1)		X	X	X
12	Açúcar Guarani S.A. (NM) Brasil Brokers Participações S.A. (NM) Cia. Providência Indústria e Comércio (NM) Cyrela Brazil Realty S.A. Empreendimentos e Participações (NM) Even Construtora e Incorporadora S.A. (NM) Light S.A. (NM) Natura Cosméticos S.A. (NM) Tempo Participações S.A. (NM) Santos-Brasil S.A. (L 2) Cia. Fiação Tecidos Cedro Cachoeira (L 1) Iochpe-Maxion S.A. (L 1) Usiminas S.A. (L 1)	X	X	X	X
03	Agra Empreendimentos Imobiliários S.A. (NM) Odontoprev S.A. (NM) Perdigão S.A. (NM)		X	X	
03	Braslagro – Cia. Brasileira de Propriedades Agrícolas (NM) Inpar S.A. (NM) Medial Saúde S.A. (NM)	X	X	X	
02	Indústrias Romi S.A. (NM) Banco Bradesco S.A. (L 1)	X	X		
02	Grendene S.A. (NM) Banco Indusval (L 1)			X	X
02	EDP – Energias do Brasil S.A. (NM) Itaúsa Investimentos Itaú S.A. (L 1)	X		X	X
01	Bolsa de Mercadorias & Futuros – BM&F S.A. (NM)	X			
01	LPS Brasil - Consultoria de Imóveis S.A. (NM)	X		X	

Source: Author's elaboration. Shareholders' agreements available on the CVM website, visited between Sept. and Dec. 2007.

NM – Novo Mercado; L 2 – Level 2; L 1 – Level 1.

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

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

		<i>Santos-Brasil S.A.</i>	L 1
		<i>Iochpe-Maxion S.A.</i>	L 1
		<i>Usiminas S.A.</i>	L 1
Issuance of securities	09	<i>Brasil Brokers Participações S.A.</i>	NM
		<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	NM
		<i>Cia. Providência Ind. Com.</i>	NM
		<i>CSU Cardsystem S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Medial Saúde S.A.</i>	NM
		<i>Tempo Participações S.A.</i>	NM
		<i>Santos-Brasil S.A.</i>	L 2
		<i>Usiminas S.A.</i>	L 1
Election or dismissal of managers	08	<i>Brasilagro -Cia. Brasileira Prop. Agrícolas S.A.</i>	NM
		<i>Cia. Providência Ind. Com.</i>	NM
		<i>CPFL Energia S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Medial Saúde S.A.</i>	NM
		<i>Perdigão S.A.</i>	NM
		<i>Tempo Participações S.A.</i>	NM
<i>Iochpe-Maxion S.A.</i>	L 1		
Liquidation, dissolution, merger, incorporation, and transformation of the company	06	<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	NM
		<i>CSU Cardsystem S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Perdigão S.A.</i>	NM
		<i>ALL América Latina Logística S.A.</i>	L 2
<i>Usiminas S.A.</i>	L 1		
Nomination or dismissal of independent auditors	06	<i>Brasilagro -Cia. Brasileira Prop. Agrícolas S.A.</i>	NM
		<i>Cia. Providência Ind. Com.</i>	NM
		<i>CPFL Energia S.A.</i>	NM
		<i>CSU Cardsystem S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Multiplan Empreendimentos Imobiliários S.A.</i>	L 2
Plans of judicial or extra judicial reorganization, or bankruptcy	06	<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	NM
		<i>Brasilagro -Cia. Brasileira Prop. Agrícolas S.A.</i>	NM
		<i>CSU Cardsystem S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>ALL América Latina Logística S.A.</i>	L 2
		<i>Usiminas S.A.</i>	L 1
Amortization, redemption or acquisition of shares to be held by corporate treasury or to be cancelled	06	<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	NM
		<i>CPFL Energia S.A.</i>	NM
		<i>CSU Cardsystem S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Perdigão S.A.</i>	NM
		<i>Tempo Participações S.A.</i>	NM
Acquisition of shareholding participation in other companies	06	<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	NM
		<i>CPFL Energia S.A.</i>	NM
		<i>Inpar S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Perdigão S.A.</i>	NM
		<i>Santos-Brasil S.A.</i>	L 2
Establishing/providing warranties by the company	05	<i>Brasil Brokers Participações S.A.</i>	NM
		<i>CPFL Energia S.A.</i>	NM
		<i>CSU Cardsystem S.A.</i>	NM
		<i>Santos-Brasil S.A.</i>	L 2
		<i>Iochpe-Maxion S.A.</i>	L 1
		<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	NM

Changes in the Bylaws	05	<i>Brasilagro -Cia. Brasileira Prop. Agrícolas S.A.</i>	NM
		<i>CSU Cardsystem S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Usiminas S.A.</i>	L 1
Transactions between the company and shareholders or their related parties	05	<i>Brasil Brokers Participações S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Medial Saúde S.A.</i>	NM
		<i>Multiplan Empreendimentos Imobiliários S.A.</i>	L 2
		<i>Santos-Brasil S.A.</i>	L 2
Creation of corporate groups (joint ventures, or strategic alliances)	04	<i>Brasilagro –Cia. Brasileira Prop. Agrícolas S.A.</i>	NM
		<i>Cia. Providência Ind. Com.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Santos-Brasil S.A.</i>	L 2
Purchase of new shares by the company	04	<i>Cia. Providência Ind. Com.</i>	NM
		<i>CSU Cardsystem S.A.</i>	NM
		<i>Multiplan Empreendimentos Imobiliários S.A.</i>	L 2
		<i>CPFL Energia S.A.</i>	NM
Compensation policy and benefits for managers and board members	04	<i>CSU Cardsystem S.A.</i>	NM
		<i>Cia. Providência Ind. Com.</i>	NM
		<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	NM
		<i>Multiplan Empreendimentos Imobiliários S.A.</i>	L 2
Determination of the criteria for establishing managers' remuneration	04	<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	NM
		<i>Cia. Providência Ind. Com.</i>	NM
		<i>Tempo Participações S.A.</i>	NM
		<i>Iochpe-Maxion S.A.</i>	L 1
Changes in the corporation's business	04	<i>CSU Cardsystem S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Perdigão S.A.</i>	NM
		<i>Usiminas S.A.</i>	L 1
Issuance of new classes of shares	04	<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Perdigão S.A.</i>	NM
		<i>Usiminas S.A.</i>	L 1
Reduction of/raising social capital	04	<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	NM
		<i>CSU Cardsystem S.A.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Usiminas S.A.</i>	L 1
Entering into transactions between the company, its controlling, affiliated or controlled companies	04	<i>Cia. Providência Ind. Com.</i>	NM
		<i>CSU Cardsystem S.A.</i>	NM
		<i>Inpar S.A.</i>	NM
		<i>Tempo Participações S.A.</i>	NM
Increase of capital within the limits of the authorized capital	04	<i>Brasilagro –Cia. Brasileira Prop. Agrícolas S.A.</i>	NM
		<i>CPFL Energia S.A.</i>	NM
		<i>Inpar S.A.</i>	NM
		<i>Iochpe-Maxion S.A.</i>	L 1
Changes in accounting policies	03	<i>Cia. Providência Ind. Com.</i>	NM
		<i>Light S.A.</i>	NM
		<i>Tempo Participações S.A.</i>	NM
Creation/ extinction of controlling companies	03	<i>Brasilagro –Cia. Brasileira Prop. Agrícolas S.A.</i>	NM
		<i>Cia. Providência Ind. Com.</i>	NM
		<i>CPFL Energia S.A.</i>	NM
Making other businesses than those related to the corporate purpose	03	<i>Inpar S.A.</i>	NM
		<i>ALL América Latina Logística S.A.</i>	L 2
		<i>Multiplan Empreendimentos Imobiliários S.A.</i>	L 2
Initiating suits/ arbitration procedures in which the company is a party	02	<i>CSU Cardsystem S.A.</i>	NM
		<i>Multiplan Empreendimentos Imobiliários S.A.</i>	L 2

Alienation of Shares by the Company of their subsidiaries	02	<i>ALL América Latina Logística S.A.</i>	<b>L 2</b>
		<i>Santos-Brasil S.A.</i>	<b>L 2</b>
Creation/liquidation, acquisition and alienation of subsidiaries	02	<i>Brasilagro –Cia. Brasileira Prop. Agrícolas S.A.</i>	<b>NM</b>
		<i>Iochpe-Maxion S.A.</i>	<b>L 1</b>
Proxy authorization conferred to any person in order to decide about any subject that requires shareholders' votes or alienation of assets	02	<i>Brasilagro –Cia. Brasileira Prop. Agrícolas S.A.</i>	<b>NM</b>
		<i>Tempo Participações S.A.</i>	<b>NM</b>
Installation/ election of members of the fiscal board	02	<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	<b>NM</b>
		<i>Perdigão S.A.</i>	<b>NM</b>
Election of board members	02	<i>Medial Saúde S.A.</i>	<b>NM</b>
		<i>Perdigão S.A.</i>	<b>NM</b>
Remuneration of board members	02	<i>Tempo Participações S.A.</i>	<b>NM</b>
		<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	<b>NM</b>
Decision of omitted cases	02	<i>Santos-Brasil S.A.</i>	<b>L 2</b>
		<i>Tempo Participações S.A.</i>	<b>NM</b>
Offering call options or subscription of shares to managers, board members, and employees of the company	02	<i>Brasil Brokers Participações S.A.</i>	<b>NM</b>
		<i>Tempo Participações S.A.</i>	<b>NM</b>
Changes in the number of managers and board members	01	<i>Brasil Ecodiesel Ind. Com. Ol. Veg. S.A.</i>	<b>NM</b>
Issuance of non-voting shares or increase in the number of classes of existing non-voting shares	01	<i>Perdigão S.A.</i>	<b>NM</b>
Issuance of subscription bonuses	01	<i>CPFL Energia S.A.</i>	<b>NM</b>
Changes in the terms of contracts on permission of public services	01	<i>CPFL Energia S.A.</i>	<b>NM</b>
Detailing matters for committee analysis	01	<i>CPFL Energia S.A.</i>	<b>NM</b>
Remuneration of committee members	01	<i>CPFL Energia S.A.</i>	<b>NM</b>
Entering/ altering contracts of personal insurance of the CEO or other key manager of the company	01	<i>CSU Cardsystem S.A.</i>	<b>NM</b>
Hiring consulting service of third parties not expressed in the company's plans	01	<i>Multiplan Empreendimentos Imobiliários S.A.</i>	<b>L 2</b>
Creation of Founder's shares (shares with special rights)	01	<i>Perdigão S.A.</i>	<b>NM</b>
Creation of committees and technical or advisory commissions	01	<i>Santos-Brasil S.A.</i>	<b>L 2</b>
Contracting, altering, breaching shareholders' agreements or any fiduciary business	01	<i>Santos-Brasil S.A.</i>	<b>L 2</b>
Rules for issuance and cancellation of Units	01	<i>Santos-Brasil S.A.</i>	<b>L 2</b>
Creation of capital reserve for contingencies or any kind of operation which may result in a reduction of the profits that shall be distributed among the shareholders	01	<i>Light S.A.</i>	<b>NM</b>
Register of securities offerings or going private transactions	01	<i>Light S.A.</i>	<b>NM</b>

Source: Author's Elaboration. Shareholders Agreements Available in CVM Website. NM – New Market; L 2– Level 2; L 1 – Level 1.



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

Companies Listed On Novo Mercado	Super Tag-along	Types Of Poison Pills' Clauses	Threshold Of Poison Pills' Clauses		Types Of Penalty Clauses For Breach Of Poison Pills
			Type A	Type B	
1. Abyara Planejamento Imobiliário S.A.	Yes	-	-	-	-
2. Açúcar Guarani S.A.	Yes	-	-	-	-
3. Agra Empreendimentos Imobiliários S.A.	Yes	A	20%	-	1 and 2
4. American Banknote S.A.	Yes	A and B	20%	10%	1 and 2
5. Bematech Indústria e Comércio de Equipamentos Eletrônicos S.A.	Yes	A	25%	-	1
6. Bolsa de Mercadorias & Futuros S.A.	Yes	-	-	-	-
7. Bovespa Holding S.A.	Yes	A	20%	-	1
8. BR Mall Participações S.A.	Yes	-	-	-	-
9. Brasil Brokers Participações S.A.	Yes	A	20%	-	1
10. Brasil Ecodiesel Indústria e Comércio de Biocombustíveis e Óleos Vegetais S.A.	Yes	A and B	30%	10%	1 and 2
11. Brasilagro – Companhia Brasileira de Propriedades Agrícolas	Yes	A	20%	-	1 and 2
12. Companhia Brasileira Desenvolvimento Imobiliário e Turístico	Yes	A	35%	-	1
13. Companhia Concessões Rodoviárias	Yes	-	-	-	-
14. Companhia Hering	Yes	A	20%	-	1
15. Companhia Providência Indústria e Comércio	Yes	-	-	-	-
16. Company S.A.	Yes	A	20%	-	1
17. Construtora Tenda S.A.	Yes	A	20%	-	1
18. COSAN S.A. Indústria e Comércio	Yes	-	-	-	-
19. CPFL Energia S.A.	Yes	-	-	-	-
20. CR2 Empreendimentos Imobiliários S.A.	Yes	-	-	-	-
21. Cremer S.A.	Yes	A	20%	-	1
22. CSU Cardsystem S.A.	Yes	-	-	-	-
23. Cyrela Brazil Realty S.A. Empreendimentos e Participações	Yes	-	-	-	-
24. Cyrela Commercial Property S.A. Empreendimentos e Participações	Yes	A	15%	-	1 and 2
25. Datasul S.A.	Yes	A and B	15%	5%	1 and 2
26. Diagnósticos da América S.A.	Yes	A	15%	-	1 and 2
27. Drogasil S.A.	Yes	-	-	-	-
28. EDP - Energias do Brasil S.A.	Yes	-	-	-	-
29. Embraer – Empresa Brasileira de Aeronáutica S.A.	Yes	A	35%	-	1
30. Eternit S.A.	Yes	-	-	-	-
31. Even Construtora e Incorporadora S.A.	Yes	A	20%	-	1
32. EZ TEC Empreendimentos e Participações S.A.	Yes	A and B	15%	8%	1 and 2
33. Gafisa S.A.	Yes	-	-	-	-
34. Grendene S.A.	Yes	-	-	-	-
35. GVT Holding S.A.	Yes	A and B	15%	9,9%	1
36. Helbor Empreendimentos S.A.	Yes	A	20%	-	1 and 2
37. Indústrias Romi S.A.	Yes	A	15%	-	1 and 2
38. Inpar S.A.	Yes	A and B	20%	10%	1 and 2
39. Klabin Segall S.A.	Yes	A and B	15%	5%	1 and 2
40. Light S.A.	Yes	-	-	-	-

41. Localiza Rent a Car S.A.	Yes	B	-	10%	1
42. Log-In Logística Intermodal S.A.	Yes	A	35%	-	1 and 2
43. Lojas Renner S.A.	Yes	A	20%	-	1 and 2
44. LPS Consultoria de Imóveis S.A.	Yes	A and B	20%	8%	1 and 2
45. Lupatech S.A.	Yes	A	20%	-	1
46. Medial Saúde S.A.	Yes	A	20%	-	1
47. Metalfrio Solutions S.A.	Yes	-	-	-	-
48. MRV Engenharia S.A.	Yes	B	-	10%	1
49. Natura Cosméticos S.A.	Yes	A and B	15%	30%	1
50. Odontoprev S.A.	Yes	A	15%	-	1 and 2
51. PDG Realty Empreendimentos e Participações S.A.	Yes	-	-	-	-
52. Perdigão S.A.	Yes	A	20%	-	1 and 2
53. Porto Seguro S.A.	Yes	B	-	10%	1
54. Positivo Informática S.A.	Yes	A	10%	-	1 and 2
55. Profarma Distribuidora de Produtos Farmacêuticos S.A.	Yes	A and B	20%	10%	1 and 2
56. Redecard S.A.	Yes	A	26%	-	1
57. Renar Maçãs S.A.	Yes	-	-	-	-
58. Rodobens Negócios Imobiliários S.A.	Yes	A and B	15%	5%	1 and 2
59. Rossi Residencial S.A.	Yes	B	-	15%	1
60. São Carlos Empreendimentos e Participações S.A.	Yes	A	25%	-	1
61. São Martinho S.A.	Yes	A	10%	-	1
62. SLC Agrícola S.A.	Yes	A	20%	-	1
63. Tegma Gestão Logística S.A.	Yes	-	-	-	-
64. Tempo Participações S.A.	Yes	A	20%	-	1
65. Totvs S.A.	Yes	A and B	20%	8%	1 and 2
<b>Companies Listed On Level 2</b>	<b>Super Tag-along</b>	<b>Types Of Poison Pills' Clauses</b>	<b>Threshold Of Poison Pills' Clauses</b>		<b>Types Of Penalty Clauses For Breach Of Poison Pills</b>
			<b>Type A</b>	<b>Type B</b>	
66. ALL América Latina Logística S.A.	-	-	-	-	-
67. Kroton Educacional S.A.	Yes	A	15%	-	1
68. Marcopolo S.A.	Yes	-	-	-	-
69. Multiplan S.A.	Yes	A	20%	-	1 and 2
70. Santos-Brasil S.A.	Yes	A	20%	-	1
71. Saraiva S.A.	Yes	-	-	-	-
<b>Companies Listed On Level 1</b>	<b>Super Tag-along</b>	<b>Types Of Poison Pills' Clauses</b>	<b>Threshold Of Poison Pills' Clauses</b>		<b>Types Of Penalty Clauses For Breach Of Poison Pills</b>
			<b>Type A</b>	<b>Type B</b>	
72. Aracruz Celulose S.A.	-	-	-	-	-
73. Banco Bradesco S.A.	-	-	-	-	-
74. Banco Industrial e Comercial S.A.	Yes	-	-	-	-
75. Banco Indusval S.A.	Yes	-	-	-	-
76. Banco Panamericano S.A.	Yes	-	-	-	-
77. BRADESPAR S.A.	-	-	-	-	-
78. Companhia de Fiação e Tecidos Cedro e Cachoeira	-	-	-	-	-
79. Iochpe-Maxion S.A.	-	-	-	-	-
80. Itaúsa Investimentos Itaú S.A.	-	-	-	-	-
81. Metalúrgica Gerdau S.A.	-	-	-	-	-
82. Parapanema S.A.	Yes	-	-	-	-
83. Sadia S.A.	-	-	-	-	-
84. Usinas Siderúrgicas de Minas Gerais S.A.	-	-	-	-	-

Source: Author's elaboration based on the Bylaws of eighty-four companies available on the CVM website. Bylaws available in the Annual Information Reports referring to year-end 2006, visited between Sept. 2007 and Dec. 2007.