BANCO CENTRAL DO BRASIL

Brazilian Payments System
(*Sistema de Pagamentos Brasileiro, SPB*)

Law 10,214, of March 27, 2001

Provides for the performance of the clearinghouses and clearing and settlement service providers within the scope of the Brazilian payments system, among other provisions.

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BANCO CENTRAL DO BRASIL

Foreword

This document aims to provide information about the Brazilian Payments System. Hence it should not be deemed as an official translation. This document is not enforceable and *Banco Central do Brasil* does not warrant that it reflects the complete and current legal framework.

BANCO CENTRAL DO BRASIL

LAW 10,214 OF MARCH 27, 2001

Provides for the performance of clearinghouses and clearing and settlement service providers, within the scope of the Brazilian payments system, among other provisions.

I hereby make known that the President of the Republic issued the Provisional Measure 2,115-16, of 2001, which was approved by the National Congress, and I, Jader Barbalho, President of the Federal Senate, for the purposes of the provisions set out on the Sole Paragraph of Article 62 of the Federal Constitution, enacted the following Law:

Article 1. This Law regulates the activities of clearinghouses and clearing and settlement service providers, within the scope of the Brazilian payments system.

Article 2. The Brazilian payments system hereof, comprises the entities, systems and procedures related to the transfer of funds and other financial assets, or to the processing, clearing and settlement of payments in any form.

Sole Paragraph - In addition to the clearing services for checks and other instruments, the following systems are part of the Brazilian payments system, pursuant to the authorization granted to the respective clearinghouses, or to the clearing and settlement service providers, by the Banco Central do Brasil or by the Securities and Exchange Commission of Brazil, within their respective competencies:

I. - clearing and settlement of electronic debit and credit orders;

II. –transfer of funds and other financial assets;

III. - clearing and settlement of bonds and securities operations;

IV. - clearing and settlement of operations carried out on commodities and futures exchanges; and

V. - others, including those comprising financial derivatives operations, for which clearinghouses or clearing and settlement service providers have been authorized under this article.

Article 3. - Multilateral clearing of obligations is permitted within the same clearinghouse or clearing and settlement service provider.

Sole Paragraph - For the purposes of this Law, multilateral clearing of obligations is defined as the procedure for the calculation of the sum of each participant's bilateral debit and credit position in relation to the others.

Article 4. On systems in which the operations' volume and nature, at *Banco Central do Brasil* discretion, may put at risk the soundness and smooth operation of the financial system, the clearinghouses and clearing and settlement service providers shall assume, with no prejudice to any obligations arising out of any law, regulations or contract, in relation to each participant, position of contracting party, for the purpose of settlement of obligations carried out within the clearinghouse or clearing and settlement service provider.

Paragraph 1 - The clearinghouses and clearing and settlement service providers shall not be liable for the performance of the issuer's obligations, to redeem the principal and other amounts related to the financial assets and securities subject to clearing and settlement.

Paragraph 2 - The systems referred to in the article hereof should maintain mechanisms and safeguards so as to allow the clearinghouses and clearing and settlement service providers to ensure the certainty of settlement of the operations cleared and settled thereby.

Paragraph 3 - The mechanisms and safeguards referred to in the previous paragraph include, among other aspects, appropriate safety devices and rules on risks control, on contingencies, on the sharing of losses among participants and on the direct execution of positions in custody, of contracts and of collateral provided by the participants.

Article 5. Without prejudice to the provisions of paragraph 3 of the previous article, the clearinghouses and clearing and settlement service providers responsible for one or more systemically important systems shall, pursuant to all regulations issued by the *Banco Central do Brasil*, keep a separate special equity formed by assets and rights intended to ensure exclusively the performance of the existing obligations in each of the systems that are operating the performance of the existing obligations within each of the systems operated by them.

Paragraph 1 - The assets and rights that make up the special equity, as referred to in the article hereof, as well as their yields and earnings, must be kept separately from the general equity or other special equity accounts of the same clearinghouse or clearing and settlement service provider, and shall not be used to perform or guarantee any obligation assumed by the clearinghouse or clearing and settlement service provider in a system other than that to which they relate.

Paragraph 2 - The acts for the formation of special equity and their respective destination shall be approved or registered pursuant to the applicable law or regulation.

Article 6. The assets and rights within the special equity account, as well as those offered as collateral by the participants, cannot be pledged, and shall not be the subject matter of attachment, seizure, search and impounding or any other act of judicial restraint, except for the performance of the obligations assumed by the clearinghouse or by the clearing and settlement service provider, acting as contracting party, pursuant to the provisions of article 4.

Article 7. The regimes of civil insolvency, business reorganization, intervention, liquidation or extra-judicial liquidation of any participant shall not affect the performance of its obligations assumed within the clearinghouses or clearing and settlement service providers, which shall be finalized and settled by the clearinghouse or the clearing and settlement service provider pursuant to its rules.

Sole Paragraph - The proceeds from the execution of collateral provided by the participant subject to any of the regimes set out in the article hereof, as well as bonds, securities and any other assets object of clearing or settlement, shall be utilized to settle the obligations assumed within the clearinghouses or clearing and settlement service providers.

Article 8. In the hypothesis mentioned in the previous article, or in the event of the default of any system´s participant, the settlement of obligations, pursuant to the rules and procedures of clearinghouses or clearing and settlement service providers, shall be executed as follows:

I – through delivery of the traded assets or transfer of funds, in the event of financial transactions; and

II – through the delivery of the proceeds from the collateral execution, and the enforcement of the mechanisms and safeguards referred to in the paragraphs 2 and 3 of article 4 hereof, when the traded assets or the funds to be delivered are insufficient or non-existent.

Sole Paragraph – If, after the measures mentioned on the sub-paragraph I and II are taken, there is a positive balance, such balance shall be returned to the participant, becoming part of its holdings. If there is a negative balance, such balance shall constitute a claim held by the clearinghouse or clearing and settlement service provider against the participant.

Article 9. Any violation of the legal and regulatory provisions that regulate the payments system shall subject the clearinghouses and clearing and settlement service providers, their directors and members of their auditing, advisory, or similar committees to the provisions set forth in Law 6385, of December 7, 1976, and other legal provisions. (As amended by Law 13,506, of November 13, 2017)

Sole Paragraph – It may be possible to appeal, within 30 (thirty) days, with no suspensive effect, the decisions rendered by the *Banco Central do Brasil* or by the *Securities Commission of Brazil*, pursuant the Article hereof, before the *Conselho de Recursos do Sistema Financeiro Nacional* (National Financial System Appellate Council). (As amended by Law 13,506, of November 13, 2017)

Article 10. The National Monetary Council, the Banco Central do Brasil and the Securities Commission of Brazil, pursuant to their respective competencies, shall enact the rules and guidelines required to the compliance with this Law.

Article 11. Any acts under the Provisional Measure 2,115-15 of January 26, 2001 are hereby deemed legitimate.

Article 12. This Law shall be effective on the date of its publication.

The National Congress, on March 27, 2001, 180th year of Independence and 113th year of the Republic.

Senator Jader Barbalho
President of the National Congress