

## Kathy Belyeu

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**From:** Relações com Investidores da B3 <RI@b3.com.br>  
**Sent:** Friday, October 18, 2019 9:05 AM  
**To:** Policy  
**Cc:** Daniel Sonder; Grasiela Cerbino; Rogerio de Araujo Santana; Bruna Menezes de Moura; Daniel Fernandes Kulcsar; Fernando Tavares De Campos  
**Subject:** Comments on Proposed New Policies and Changes - Brazil

To whom it may concern,

Please find below B3's comments on proposed new policies and changes for director and officer indemnification and liability provisions in Brazil.

- a. **Financial Limits** (*"Information regarding potential financial impact of the indemnity policy or contracts to the company"*)
- One of the main objectives of companies is to attract and hold skillful people on the management team
  - Such attraction depends to some extent on such officers being held harmless if business decisions made by them on behalf of the company are challenged by the authorities
  - D&O Insurance is perceived as an insufficient tool to hold harmless executives mainly because (a) insurance policies must be triggered by the company and not by executives themselves; (b) insurance companies tend to challenge the claims
  - Although D&O as an insurance product must have a financial limit, that does not have to be the case for indemnification agreements
  - In fact, to be understood as an effective protection for managers, it is ideal for indemnification not to have a financial limit
  - The very purpose of indemnity is to hold harmless its beneficiary for any and all costs such beneficiary may incur
  - If it is not "full indemnity", then it some kind of risk-sharing mechanism, and not ideal to protect managers
  - Therefore having a limit in an indemnification can impact negatively the purposes of the indemnification itself
- b. **Expiration date of the Indemnification** (*"Eligible beneficiaries of the policy, including the length of the post-employment period that will be covered by the policy or contract"*)
- Indemnification agreements must include provisions for two different periods:
    - (i) the period during which an executive is covered by the indemnification provisions ("Coverage Period")
    - (ii) the period during which an executive may present a claim regarding an event covered by the indemnification agreement ("Claim Period")
  - We understand that the Coverage Period should be limited to the period of the mandate of the manager
  - On the other hand we understand that there is no point in having a maximum Claim Period mainly because regulators in the capital markets tend to disregard time limits for the filing of complaints/proceedings against executives
  - It is also important to mention that the Brazilian Securities Commission (CVM) does not have a clear position regarding the Coverage Period or the Claim Period
  - It is also worth mentioning that usually the D&O insurance has a Coverage Period but does not have a Claim Period

Best regards

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