Vale informs on the CVM's report regarding the voting proposal submitted to the EGM to be held on March 12

Rio de Janeiro, March 2nd, 2021 - Vale S.A ("Vale" or "Company") hereby informs that the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários* – CVM) has sent the Company an analysis of the proposal to be submitted to the Extraordinary General Meeting ("EGM") called for March 12, 2021, included in item 8 of the agenda (new paragraph 10, items V and VI, of Article 11 of the Bylaws).

In this regard, we communicate the understanding of the Superintendency of Corporate Relations from CVM, which, among other aspects, concludes that the process for the election of members of the Board of Directors does not support the binary voting system, and therefore does not allow the counting of votes against or rejection of a certain candidate for the resolution quorum. The Analysis Report No. 13/2021 - CVM/SEP/GEA-4 is available in **Annex I** of this Notice to Shareholders.

Although Vale strongly believes that the proposal to adopt majority voting is in the best interest of the Company's shareholders, the public debate in the capital market must be acknowledged, and in light of CVM's understanding, Vale informs that the item regarding majority voting will be excluded from the agenda of the EGM to be held on March 12, 2021. Thus, item 8 of the agenda is cancelled, and all votes related to such resolution, including those received through the distance voting ballot, will be disregarded.

The Company reserves the right to request, in due course, that the matter be re-examined by the Collegiate Body of the CVM.

Finally, Vale highlights that nonetheless the exclusion of the majority voting proposal, the other matters included in the agenda of the EGM are maintained, in accordance with the Notice of Meeting, and it is notorious that the approval of the other items of the proposed amendments to the Company's Bylaws will bring important advances to Vale's governance.

Vale S.A.

Ever since the Covid-19 outbreak began, our highest priority is the health and safety of our employees. Our IR team adopted work-from-home, and as we continue to face these new circumstances, we strongly recommend you prioritize e-mail and online engagement.

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Annex I – Analysis Report No. 13/2021 - CVM/SEP/GEA-4

SECURITIES AND EXCHANGE COMMISSION ANALYSIS

REPORT No. 12/2021-CVM/SEP/GEA-4

Subject: Inquiry - Amendment to the Articles of Incorporation - Vale S.A. - CVM Administrative Proceeding No. 19957.001043/2021-74

Dear Manager,

1. This is an inquiry filed with this CVM by Mr. Marcelo Gasparino da Silva ("**Inquirer**"), as an independent member of the Board of Directors of Vale S.A. ("**Vale**" or "**Company**"), referring to the proposal to amend the Company's Articles of Incorporation to be submitted to the Special Shareholders' Meeting – AGE convened for 03.12.2021.

I. HISTORY

I.1. OF THE INQUIRY

2. On 02.04.2021, the Inquirer filed an inquiry with this CVM, referring to the proposal to amend Vale's Articles of Incorporation to be submitted to the AGE, then convened for 03.01.2021, particularly items IV, V and VI of the new §10 of article 11.

3. However, as decided at Vale's Board of Directors (RCA) meeting on 02.09.2021 (exhibit 1195784), such a call was cancelled, and a new AGE was proposed for 03.12.2021, with the same agenda, but with some changes in relation to the original proposal. Among these adjustments, it was eliminated an extract of the final part of item IV of the §10 of article 11 of the Articles of Incorporation that repeated the rule provided for in item V of the same statutory provision[1]. Thus, the matters subject to the Inquiry concerned only items V and VI of §10 of article 11 of the Articles of Incorporation (item 8 of the agenda of the Call Notice of the AGE of 03.12.2021), transcribed below:

> *"V - The candidates with the highest number of favorable votes shall be considered elected, **provided it is higher than the number of votes against**; in the event of a tie, the candidate who has received the least negative votes or the oldest shall be considered elected successively;*

*VI - **Not having, between the list submitted to the Shareholders' Meeting by the Board of Directors and any single candidates, candidates in a number corresponding to the composition approved for that term and who have received at the Shareholders' Meeting more favorable votes than otherwise, the Board of Directors shall be re-elected in another meeting**, with the preparation of a new list of candidates, in a number at least equal to the positions to be filled*, and in that period the Board of Directors shall operate with the members already elected". (emphasis added)

4. The Inquirer, as a member of Vale's Board of Directors, recorded on the minutes of said RCA held on 02/09/2021 his vote in favor of the new adjustments to the Management Proposal submitted at this new meeting, and" ***otherwise***, *in the exact terms of my vote cast at the RCA of 01/28/2021, on the proposal for the drafting of the new Paragraph 10, items V and VI of article 11, duly allocated in the 08 of the Call Notice*" (emphasis added).

5. Generally speaking, the Inquirer points out that (exhibit 1191459):

a. the proposed innovation deserves the analysis of this Municipality, as the format differs from all other publicly held companies and, even more, will bring an unprecedented procedure to the electoral process of corporations in general, as the "contrary vote", now under scrutiny, will have more value than the favorable vote;

b. in the specific case of Vale, which does not have a controlling shareholder, the "new method" aims at making sure that only those candidates who have been appointed by the Board of Directors, regarding the established governance, shall have real conditions to be elected. Such a procedure tends to perpetuate a condition that is not in line with what is legitimately expected of a true Corporation: enabling all shareholders to participate more actively in management;

c. the Company has reference shareholders (former signatories of the Shareholders' Agreement that have formally assured to them control of the Company by November 2020), whose number of shares still allows the formation of the majority of the Board and its shares, and in the same way as they elect they may prevent the other shareholders - "second-class minority shareholders" - from effectively contributing to the formation of the Board of Directors, thus reinforcing the aforementioned perpetuity;

d. the current Board of Directors, elected on 04.30.2020, consists of nine (09) non-independent directors (pursuant to the Shareholders' Agreement that is in force during the election period), three (03) independent directors, and one (01) director elected by the Company's employees;

e. there are doubts regarding the operationality that the "new method" will bring to the Company, shareholders and the market in general, since it is not clear in the material how the elected directors will be held, that is, whether they will immediately take office or wait for the full formation of the board, among other points;

f. this Inquiry aims at an analysis of this Body, especially regarding the proposed innovation, to create contrary votes as an option in electoral procedures, even more, with shareholders having legal mechanisms to select a candidate, (i) disqualifying them in accordance with the terms set out in article 147 of Law No.

6,404/1976; or (ii) presenting a competing candidate;

g. Professor Modesto Carvalhosa emphasizes what can be done in the procedure of election of the directors to prevent an election and there is no mention of the contrary vote, let us see:

> *"The directors will always be elected by the Shareholders' Meeting, by a majority of votes, even when appointed by different groups, as a result of a shareholders' agreement. The Shareholders' Meeting is always sovereign to elect the nominees, not dividing the electoral college at the meeting, to this end. (...) The shareholders' meeting may only fail to elect persons appointed by minority and preferred shareholders, or any other appointee as a result of the Articles of Incorporation (article 16 and 18), or by shareholders' agreement (art.118), if it does not meet the requirements of article 147."*

h. CVM, in determining in its CVM Instruction No. 480/2009, as amended, pursuant to §6 of article 21, the obligation to demonstrate on the minutes the number of favorable, contrary votes, and abstentions for each agenda, on the election of candidates, only determined that the votes cast for each one be demonstrated, not referring to the other types of voting;

i. the CVM standard confirms the understanding that the contrary votes cannot be used as an opposing mechanism for the election of candidates, and it is not a variable accepted as good practice by Brazilian Corporate Law, which although not directly expressed in Law No. 6,404/1976 is in line with the electoral format of the national electoral system, which similarly does not compute contrary votes in the candidates, but only favorable ones;

j. to corroborate this thought, one must have in mind that the corporations, since their origin, are capital companies, with the predominance of this element (capital) to the detriment of the personal element of the shareholders. In sum, they are not social clubs where usually there is the "black ball" mechanism;

k. a similar question has already been assessed by SEP in CVM Administrative Proceeding No. RJ2015/2925, specifically with what is intended to be included in this item, let us see:

> *"... 6. In relation to the disregard of the votes cast by the signatories of the shareholders' agreement in the election of the eighth member of the Board of Directors of Usiminas, we inform that, to the best of our knowledge, in our opinion, there is no possibility to calculate contrary votes in the election of managers, and this, if eventually cast, should be* ***disregarded for the purposes of quorum of resolution*****,** *under the provisions of article 129 of Law No. 6,404/76"* (emphasis of the Inquirer)

6. Therefore, the Inquirer requires the CVM's opinion on the following issues:

i. can any contrary votes cast to prevent the election of a candidate to the Boards of

publicly held corporations be deemed legal/valid?

ii. if the previous question is yes, may the votes used to approve a particular member of the Board of Directors be used – by the same shareholder or group of shareholders – to prevent, in a majority vote, other candidates from being elected?

iii. if the question (i) is stated, and the election by the Multiple Voting Process is held, can a controlling or "reference" shareholder stop using their votes to approve a given candidate(s) and use them to vote against a single candidate(s), so that the votes against exceed the favorable votes and thus prevent them from being declared elected?

iv. if the process is valid, as the CVM considers that the ownership of elected candidates, although without full completion of the board, takes place: (a) upon partial possession of those who were elected; or (b) waiting for a new shareholders' meeting to ensure the indivisibility of the members who will make up the new board?

v. taking into account that the votes of deliberative matters at meetings are binary, in other words, admit approval or rejection, can this same understanding be applied in the elections of the boards, where the occupation of the vacancy is not discussed, but the person who will occupy it? and

vi. whereas in the election of the board the contrary vote cannot be exercised, based on the previous answer, is the proposal of Vale's Management to be submitted to the AGE irregular?

7. It is worth mentioning that the Inquirer, as an independent member of Vale's Board of Directors, cast at a meeting held on 01.28.2021 (exhibit 1191479) vote against the aforementioned proposal to include the contrary vote, reiterated in the RCA of 02.09.2021 (exhibit 1195784). Likewise, Director Isabella Saboya de Albuquerque, also an independent member, voted at the RCA on 01.28.2021, against the inclusion of said statutory provisions in the Management's proposal for the AGE, in the following terms:

> *"Vale's recent track record, which is now a pulverized capital company, but clearly still with reference shareholders (a group with a relevant ownership interest that until recently always voted by mutual agreement), may impose a veto on the election of this alternative candidate. I am afraid that making this methodology official in the bylaws will send an opposite message in relation to Vale's path to becoming a true corporation. The matter is new in the Brazilian regulatory framework and therefore, in my view, risky."*

I.2. OPINION OF THE COMPANY

8. As set out in the Management's Proposal for the AGE of 03.12.2021 (exhibit 1195805), the Board of Directors, based on the proposal presented by Vale's Nomination Committee and adjustments suggested by the People and

Governance Committee, proposes the amendment and restatement of the Company's Articles of Incorporation, including, among others, the new §10 of article 11, as transcribed below:

> *"Article 11 - The Board of Directors, a collective decision-making board, shall be elected by the Shareholders' Meeting, as provided for in this article, and shall be composed of a minimum of eleven (11) to thirteen (13) full members and respective alternates, being one of them the Chairman of the Board and the other the Vice Chairman.*
>
> *(...)*
>
> *§ 10 - Subject to the right to use the separate right of voting under Paragraphs 4 and 5 of Article 141 of Law 6.404/76, in the event of the controlling shareholder, subject to Paragraphs 11 and 12 of this article, and/or the request for adoption of the multiple voting system, the election shall be according to the following procedure:*
>
> *I – Based on a reasoned proposal from the Nomination Committee, the Board of Directors shall approve, no later than five (05) days before the convening of the Shareholders' Meeting where the new board shall be elected, according to the calendar of corporate events disclosed, a list of candidates to the board in numbers at least corresponding to the proposal of composition for that term of office, in observance of the limits of the Articles of Incorporation, and always considering the availability of the candidate's time for the position, including due to the simultaneous exercise of similar assignments in other entities, in particuar publicly held corporations;*
>
> *II – The list referred to in item I above shall be published within five (5) days before the date of disclosure of the management proposal and the remote voting ballot ("BVD");*
>
> *III – Candidates indicated in the list referred to in item II above, as well as any candidates whose inclusion in the BVD has been timely requested, in accordance with the standards established by the Securities and Exchange Commission, shall have their names submitted to the Shareholders' Meeting;*
>
> *IV – Each candidate on the list submitted to the Shareholders' Meeting by the Board of Directors, as well as any individual candidacy submitted by the date of the meeting, shall be subject to individual vote;*
>
> *V - The candidates **with the highest number of favorable votes shall be considered elected, provided it is higher than the number of votes against**; in the event of a tie, the candidate who has received the least negative votes or the oldest shall be considered elected successively;*
>
> *VI - Not having, between the list submitted to the Shareholders' Meeting by the Board of Directors and any single candidates, candidates in a number corresponding to the composition approved for that term and who have received at the Shareholders' Meeting more favorable votes than otherwise, **the Board of Directors shall be re-elected in another meeting, with the preparation of a new list of candidates, in a number at least equal to the positions to be filled, and in that period the Board of Directors shall operate with the members already elected**;*
>
> *VII – in case a separate vote is requested, if applicable, the election referred to in this paragraph 10 shall be the object of only the other directors, subject to the provisions of paragraph 2 of this article."* (emphasis added)

9. In its justification, contained in the table that composes Exhibit I to the Management Proposal, the Company initially emphasizes the reasons for the adoption of the individual election (not by electoral coallition)[2], and then clarify as follows:

"Thus, the name of each candidate would be submitted individually to the vote by the shareholders.

Those who receive the highest number of favorable votes, minus the number of votes against, and thus excluded those who have more votes against than favorable, in observance of the number of vacancies to be filled, shall be considered elected, and each shareholder can vote in favor of the election of up to as many candidates as many vacancies to be filled. This is the case for elected candidates with a significant number of votes in favour, exceeding any objections."

10. In order to support its proposal, Vale presented opinions of the drafting of jurists Paulo Cezar Aragão and Nelson Eizirik, both concluding by the lawfulness of the amendment to the articles of incorporation in question, the following points of which we highlight (exhibits 1197304 and 1197305):

a. it is necessary to start from a fundamental assumption, that is to say, that the law is silent about the methodology to be adopted in each company in the election of its Board of Directors. There is no legal provision that limits the options for the expression of the shareholder's will to approve or abstain;

b. CVM expressly provides in paragraph 6 of article 21 of CVM Instruction No. 480/2009, included by CVM Instruction No. 561/2015, votes against, as Officer Gustavo Gonzales points out, in a recently published article*: "Under Law No. 6,404/76, the shareholder who disagrees with the electoral coallition or names proposed, as the case may be, may simply vote against or present alternative electoral coallition/candidates".*

c. CVM instruction No. 481/2009, in its exhibit 21-F, with the wording given to it by CVM instruction No. 614/2019, expressly provides in item 12-C that, without election by electoral coallition, the shareholder may "reject", in the expression of the standard, the name of any candidate;

d. if the shareholder can speak in favour of a given proposition (and, for the same reason, in favour of a candidate), he/she must also be able to express his/her opposing opinion, which requires the necessary conclusion that the result will be the sum of favorable or contrary votes. Thinking otherwise would lead to the paradoxical conclusion that the express will of the shareholder in the opposite direction to a certain resolution would not be considered, taking into account only the favorable votes, which would certainly deny the shareholder's right to vote;

e. any precedents where this matter has been analyzed incidentally and only by the technical area of the CVM, as it has never been the subject of resolution by the CVM Collective Board, would only be relevant if the case analyzed would involve the discussion of the legality of the express statutory provision, which we understand as having not occurred, even if in the CVM technical area;

f. under CVM Administrative Proceeding No. RJ2015/2925, SEP analyzed a situation involving a specific shareholders' meeting of Usinas Siderúrgicas de Minas Gerais – Usiminas, whose Articles of Incorporation did not contain any rule regarding the manner of election of the members of the Board of Directors, nor did it expressly state the possibility of computing the

voting against in said election, or the measures to be taken if the number of candidates who receive more favorable votes than against did not make up the vacancies to be filled, contrary to what happens with the proposal that is currently analyzed in relation to Vale. Moreover, SEP's position was not even analyzed by the Collective Board in view of the withdrawal of the appeal filed;

g. therefore, there is no way to affirm that there is a position of the CVM on the possibility or not of computing the contrary vote in the elections for members of the Board of Directors, especially in the cases in which the Articles of Incorporation contain express rule on the matter, as will occur with Vale if the proposals for amendments to the articles of incorporation are approved;

h. the procedure proposed herein becomes impaired if shareholders representing the regulatory quorum require the adoption of the multiple vote framework provided for in article 141 of Law No. 6,404/1976;

i. it would have no basis to challenge the free statutory regulation of a point on which the law is totally silent, leaving at the discretion of the shareholders the form of organization they will adopt, in other words, respecting private autonomy;

j. the Federal Constitution enshrines the principles of freedom of association and free initiative, so that people can freely join, provided they aim to achieve a lawful purpose, and lay down the rules relating to the operation of society, in observance of the legislation in force;

k. the articles of incorporation is the document that regulates the activities of corporations, sets the rights and obligations of shareholders and governs the formation and performance of corporate bodies. With regard to the content of statutory rules, the principle of freedom to contract exists, so that, without legal prohibition, rules that best fit the interests of shareholders according to the particular circumstances of the constitution and throughout the existence of the company may be inserted into the organizational documents;

l. the power of free self-organization derives from the exercise of private autonomy, which, in relation to legal entities is related to their power to organize themselves legally in the way that best meets the interests of their members, which is why there is no standard articles of incorporation;

m. there are mandatory precepts, imposed by law, but each company must consider, in the preparation and updating of its "internal law", its characteristics and the objectives to be achieved;

n. Law No. 6,404/1976 does not establish any rule regarding the way the members of the Board of Directors are elected by the majority election system, nor does it have anything on the possibility of shareholders voting against the candidates submitted. Corporate law addresses with aspects such as the private jurisdiction of the Shareholders' Meeting to decide on the matter (article 40, head provision), the possibility of the Articles of Incorporation providing for participation in the Board of Directors of employees' representatives (article 140, sole paragraph), in addition to issues related to the adoption of the multiple voting process and the separate voting system by minority shareholders (article 141), which constitute exceptions to the majority election system;

o. thus, any aspect related to the election of the members of the Board of Directors by the majority voting system may be regulated by the

Company's Articles of Incorporation, provided that the statutory provisions do not confront any legal or regulatory provision;

p. if there is no express legal prohibition, it is perfectly regular the statutory provision that allows the shareholder to disagree with the proposed names to vote against the candidates submitted. There is also no illegality in the introduction of a statutory rule, making the election of candidates to directors of the Company conditional on receiving a number of favorable votes greater than the number of votes against;

q. a different understanding, which considered illegal the statutory provision accepting votes against in the election of directors would considerably hinder the shareholders' ability to externalize their opposition in relation to one or more candidates, making the only alternative for the shareholder to be able to oppose the appointment of alternative names, a measure that would prove ineffective, for instance, for holders of small equity interests;

r. understanding otherwise would also characterize undue denial of the right assured to Vale's shareholders, provided that there is no legal or regulatory prohibition, to freely dispose of the rules governing the operation of the Company, in violation of the principles of private autonomy and the freedom to contract.

11. Additionally, in attention to Official Letter No. 6/2021/CVM/SEP/GEA-4 (exhibit 1191697), the Company presented, in general terms, the considerations explained below, divided into three parts (exhibit 1196717).

12. In the first part, the procedures adopted by the Company that resulted in the proposal for amendment to the articles of incorporation to be submitted to the AGE were briefly described. In the second part, the grounds on which the Company would be sure of the legality and legitimacy of the drafting proposed for article 11, § 10, item V of the Articles of Incorporation were presented. In the third and final part, the Company expressed its understanding regarding each of the matters raised in the Inquiry and reproduced in item 6 of this Report.

<u>Procedures underpinning the proposal to amend the Articles of Incorporation</u>

13. In this topic, the Company points out that the matter questioned in the Inquiry would be inserted in a broad proposal to amend the Articles of Incorporation, aimed at improving Vale's procedures regarding the organization of the Board of Directors, including the form of election of its members, the result of an extensive process of analysis and discussion in different bodies of the Company's governance structure.

14. In this regard, it briefly states that:

a. since 2017, it has been going through a process of changes to its shareholding structure, which ended with the expiration, on 11.09.2020, of the effectiveness of the Shareholders' Agreement entered into among the former controlling shareholders, when the Company effectively ceased to have a controlling shareholder or

group defined;

b. depending on this scenario, in July 2017 a Nomination Committee was created, formed by the Chairman of the Board of Directors of Vale and two external and independent members, who do not integrate any corporate body, and do not hold any other position in the Company, for the purpose of proposing improvements related to the structure, size and composition of the Board of Directors, in addition to submitting a proposal for candidates for the next election of directors, to be held at the 2021 General Meeting of Shareholders;

c. as one of the results of its work, the Nomination Committee presented to the Board of Directors a proposal to amend Vale's Articles of Incorporation, in the part that addresses the election and composition of the Board. This proposal covers a series of items that, in view of the members of said committee, will contribute to the improvement of the Company's corporate governance structure, among which the prediction that, in the election of the members of the Board of Directors by the majority system, candidates who receive more votes against than favorable will not be deemed elected;

d. on 01.12.2021, the proposal for amendment to the articles of incorporation submitted by the Nomination Committee was sent to the members of the People and Governance Committee ("CPG") and the Board of Directors of the Company;

e. on 01.21.2021, this proposal was discussed and settled at a meeting of the CPG, which was also attended by the members of the Nomination Committee, external legal advisors of the Committee itself and the Board of Directors, as well as the directors Marcelo Gasparino, Eduardo Rodrigues and Oscar Camargo. The members of the CPG, after the discussions, approved the submittal of the proposal, with some adjustments, for resolution by the Board of Directors;

f. on 01.28.2021, the Board of Directors, again with the participation of the members of the Nomination Committee and external legal advisors, broadly discussed the proposal for statutory reform and approved its submission to the AGE, initially convened for 03.01.2021;

g. in view of certain questions raised by Mr. Marcelo Gasparino, in the sense that two points of the proposal for statutory reform had not been specifically addressed in the discussions of the Board of Directors, the body met again to analyze the matter on 02.04.2021, having fully ratified the terms of its previous resolution; and

h. at a meeting held on 02.09.2021, the Board of Directors decided to change the date of implementation of the AGE to 03.12.2021, promoting further disclosure of all documents relating to the proposal for statutory reform. This amendment aimed at allowing the Company's shareholders, especially those who will participate in the AGE through the remote voting ballot and holders of ADRs who vote by completing proxy cards, to vote separately on each of the matters subject to the proposed statutory reform, which in the Company's view will confer even greater legitimacy for the approved resolutions.

Legality and legitimacy of the proposed drafting for article 11, §10, item V, of

15. As for the proposed wording for paragraph V of §10 of article 11 of the Articles of Incorporation (and, therefore, item VI), the Company argues that the procedure for the election of the members of the Board of Directors regulated by Vale's statutory reform proposal is not only perfectly lawful, as there is no legal rule prohibiting it, but is also absolutely legitimate, as it provides security over the rules to be observed in the election of directors and allows all shareholders to be able to, on an equal footing, influence the composition of the body.

16. In this regard, it presents the following considerations:

a. what was intended with the item of the statutory reform proposal under discussion, in addition to solving a case of a tie in the voting, was to avoid a situation in which a candidate could be elected to the Board of Directors even if his/her name is rejected by a substantial portion of the Company's shareholders, higher than the one who voted in favor of the candidate in question;

b. after receiving the comments of Mr. Marcelo Gasparino on this point of the proposal for statutory reform, requested the opinion of the external legal advisors of the Nomination Committee (BMA Advogados) and the Board of Directors (Eizirik Advogados), both of which concluded that there is no illegality in the statutory provision on the calculation of votes against the election of the members of the Board of Directors, as stated in the opinions attached under exhibits 1197304 and 1197305;

c. in an article entitled "Vale's Articles of Incorporation: legality and innovation", prepared by Mr. Paulo Cezar Aragão and Mr. Nelson Eizirik, and published in the newspaper Valor Econômico on 02.09.2021 (exhibit 1197306), the plaintiffs reiterate the grounds that underlie the conclusions contained in the Opinions, in the sense that the item of the proposal for statutory reform under discussion is absolutely lawful, is based on international experience, and seeks to give Vale a modern and effective system of corporate governance;

d. as set out in the Opinions, Corporate Law is governed by the principles of private autonomy and the freedom to contract, according to which corporations are free to establish, in their articles of incorporation, the rules that their shareholders deem most appropriate, given the characteristics of each one, to govern the structure and operation of their corporate bodies, in compliance only with the legal standards that expressly impose a certain prohibition;

e. as Law No. 6,404/1976 does not contain any express rule on the matter, there is no way to understand as illegal the drafting proposal given to item V of §10 of article 11 of Vale's Articles of Incorporation;

f. in an article recently published by Officer Gustavo Machado Gonzalez, he acknowledges that*"Law No. 6,404/1976 chose not to regulate the election of the board of directors by means of a majority vote", "giving companies flexibility to structure their voting processes in a manner appropriate to their characteristics" and, after analyzing "the arguments against and those in favor of the possibility of voting against*" in the elections for the Board of Directors, it concludes that the

"second position seems more consistent with the system of the shareholding law"[3] (exhibit 1197307);

g. the absence of any illegality in the proposed rule for the Articles of Incorporation is further confirmed by the very wording of the Model Remote Voting Ballot, contained in Exhibit 21-F to CVM Instruction No. 481/2009. Actually, in item 12-C of said Exhibit, when dealing with the election of the members of the Board of Directors not carried out by the electoral coallition system, the fields for the shareholder to approve, reject or abstain in relation to the names of each of the candidates appointed are included;

h. if the vote against certain candidates to the Board of Directors could not be considered for any purpose, as claimed in the Inquiry, there would be no sense in such a prediction expressly appearing in the Model Remote Voting Ballot attached to CVM Instruction No. 481/2009;

i. Vale's situation is totally different from that which was the subject of analysis by this SEP in CVM Administrative Proceeding No. RJ2015/2925, mentioned in the Inquiry, in so far as that case was a company with a defined controlling group, and whose articles of incorporation did not contain any rule expressly regulating the form of election of the members of the Board of Directors and, much less, providing for the effects of casting votes contrary to certain candidates;

j. in turn, Vale is a company without a controlling shareholder, and the Reference Shareholders jointly hold shares representing just over twenty percent (20%) of the Company's voting capital and are no longer bound by any voting agreement or joint voting obligation. Therefore, no shareholder is able individually to prevent the election of any candidate to the Board of Directors by means of votes against;

k. unlike the case mentioned above, Vale's Articles of Incorporation will regulate the matter in detail, expressly mentioning the assumptions in which votes against a particular candidate will take effect (only if the candidate receives more votes contrary than those in favour, or if there is a tie in the number of favorable votes received by two or more candidates), and the consequences arising from the possible election of a smaller number of directors than originally anticipated (situation in which, as provided for in paragraph 6 of §10 of article 11 of the proposal for statutory reform, the Board of Directors shall operate with the elected members, and a new election must be called to fill the remaining vacancies);

l. one of the main improvements in the Company's governance arising from the proposed statutory reform submitted to the AGE is precisely the detailed regulation of the way the members of the Board of Directors are elected, giving security and predictability to all shareholders about the rules to be observed and preventing such matters, which are not provided for in Law No. 6,404/1976, from being decided, on a case-by-case basis, at the time of each Shareholders' Meeting;

m. contrary to what the Inquirer claimed, the proposal for statutory reform is precisely aimed at giving greater independence to the Board of Directors in relation to the Reference Shareholders, ensuring that the majority of directors (and a minimum of seven members) are independent, and establishing additional criteria of independence, including the absence of

formal ties with any shareholder holding more than five percent (5%) of the share capital, a situation in which the Reference Shareholders fall;

n. furthermore, the Reference Shareholders, who are no longer bound by any block voting agreement, currently hold just over twenty percent (20%) of Vale's voting capital, so that even if they voted in the same direction at a given meeting, they would not be able to prevent the election of any candidate appointed by other shareholders;

o. the proposal submitted for resolution at the AGE has an effect other than that claimed in the Inquiry, because it allows the other shareholders of the Company, holders of almost eighty percent (80%) of its share capital, to be able, through the contrary vote, to prevent the election of candidates supported by the Reference Shareholders, a situation that would be much more difficult if the Articles of Incorporation only allowed the calculation of favorable votes;

p. the proposal for statutory reform reinforces the possibility for all Vale shareholders to influence the election of the Board of Directors, as it prevents the shareholder from having to vote in favor of an electoral coallition with candidates with whom they may not agree, under penalty of not being able to consider extremely qualified candidates, or obliged to appoint another electoral coallition.

Company's understanding of the matters raised in the Inquiry

17. In this part, the Company submitted its understanding regarding each of the following matters raised by the Inquirer.

“(i) can any contrary votes cast to prevent the election of a candidate to the Boards of Publicly Held Corporations be deemed legal/valid?”

18. In this case, the Company mentions the legal opinions presented by its external advisors for the legality of the proposed amendment to the articles of incorporation, and reaffirms the understanding that any contrary votes that may be cast by Vale’s shareholders in the elections of the members of the Board of Directors occurred after the approval of the statutory reform in question, and computed in the manner indicated in item 12-C of the Model Remote Voting Ballot set out in Exhibit 21-F to CVM Instruction No. 481/2009 shall be considered perfectly valid and legal and, as a result, shall produce the effects provided for in item 10(V) of article 11 of the Bylaws.

"(ii) if the previous question is yes, may the votes used to approve a particular member of the Board of Directors be used - by the same shareholder or group of shareholders - to prevent, in a majority vote, other candidates from being elected?"

19. The Company initially points out that one of the topics of the

statutory reform submitted to the AGE is the prediction that the elections to the Board of Directors will be held by the individual voting system in the candidates submitted (and no longer by the plate system), a system in which it is inherent that all shareholders can vote (for, against or abstaining) in the deliberation on each of the candidates who run for office on the Board of Directors.

20. Thus, it states that, if the individual voting system is used to fill the positions of its Board of Directors, as provided for in the proposal for statutory reform, the votes for or against delivered by all shareholders in the resolution on the election of each of the candidates submitted must be properly computed.

"(iii) if the question (i) is stated, and the election by the Multiple Voting Process is held, can a controlling or "reference" shareholder stop using their votes to approve a given candidate(s) and use them to vote against a single candidate(s), so that the votes against exceed the favorable votes and thus prevent them from being declared elected?"

21. The Company points out that the proposed wording for §10 of Art. 11 of Vale's Bylaws makes it absolutely clear that the rules provided for in the different items of such provision will only apply in elections where the use of the multiple voting system established in Article 141, head provision and §§ 1 to 3 of Law No. 6,404/1976 is not mandatory:

> *"Article 11 - § 10 - **Subject** to the right to use the separate right of voting under Paragraphs 4 and 5 of Article 141 of Law 6.404/76, in the event of the controlling shareholder, subject to Paragraphs 11 and 12 of this article, **and/or the request for adoption of the multiple voting system, the election shall be according to the following procedure**: (...)"* (emphasis by the Company)

22. Additionally, the Company alleges an apparent misunderstanding in the Consultation, which would implicit the existence of an alleged unconditional "algebraic sum" of the votes, so that only the favorable votes net of the contrary votes are computed. It pointed out, however, that this does not occur, and that the improvement of the wording of item V of §10 of art. 11 of the Bylaws sought to make this even clearer, as it would have been highlighted in an article published by the newspaper Valor Econômico on 10.Feb.2021 (doc 1197308).

23. In this regard, it presents the following example: *"if candidate A receives 100 votes in favor and 99 votes against, his 100 votes will be counted and he will be in a more favorable position than candidate B who receives 98 votes in favor and no other. The contrary votes, again, will only be relevant in relation to a candidate C who has, for example, 90 negative votes and 10 in favor."*

24. It argues that "*each shareholder may exercise his or her right to vote freely in relation to each candidate (and, of course, to each share of which he or she is a holder) without having to "distribute" his/her votes among the candidates, as would occur in the multiple voting system. In other words, each candidate and every action he must speak if he votes in favor, contrary to or prefers to abstain.*".

25. In his view, as the shareholder may vote in favor of or contrary to any resolution, "it must also be able *to do so with regard to the election of managers, as indicated in the BVD model adopted by CVM*".

"(iv) if the process is valid, as the CVM considers that the ownership of elected candidates, although without full completion of the Council, takes place: (a) upon partial possession of those who were elected; or (b) waiting for a new assembly to ensure the indivisibility of the members who will make up the new Council?"

26. The Company notes that the answer to the question transcribed above is expressly provided for in the proposal for statutory reform submitted to the resolution of Vale's shareholders, as verified by the wording to be attributed to item VI of §10 of Art. 11 of the Bylaws as follows:

> *"VI - Not having, between the list submitted to the Shareholders' Meeting by the Board of Directors and any single candidates, candidates in a number corresponding to the composition approved for that term and who have received at the Shareholders' Meeting more favorable votes than otherwise, the Board of Directors shall be re-elected in another meeting, with the preparation of a new list of candidates, in a number at least equal to the positions to be filled*, **and in that period the Board of Directors shall operate with the members already elected** ;" (emphasis by the Company)

27. It alleges that, in the case of matters not regulated by Law No. 6,404/1976, the principles of freedom to contract and autonomy of the will therefore prevail, and the solution expressly provided for and regulated in the Bylaws itself must prevail.

28. It clarifies, therefore, that in the event that a given meeting results in the election of a lower than expected number of directors, the elected members will take office immediately and, at the same time, a new shareholders' meeting shall be convened to fill the vacant positions, with the preparation of a new list of candidates and the possibility of appointment of new candidates by the shareholders, and during this period , the Board of Directors shall operate only with members already elected.

29. It states that this situation is extremely common, in so far as it may take place, for example, of any possibility of vacancy in the positions of the Board of Directors and argues that "*there is no legal rule or legal principle that establishes, for elections held by the majority voting system, the need to "ensure the indivisibility of the members who will compose the new board", since the Shareholders' Meeting has sovereign powers to, at any time, remove any directors and elect their substitutes, without this affecting the term of office of the other directors. To put it another way, there is no basis for the supposed principle of indivisibility of candidates, which seems nothing more than an argument based on the election by slates (where, strictly speaking, it does not prevail).*"

30. And it points out that the only legal hypothesis in which the Board of Directors

assumes such characteristics is in the election by multiple vote, in the form of §3 of Article 141 of Law No. 6,404/1976, which would have nothing to do with the situation at hand.

"(vi) considering that in the board election the opposite vote cannot be exercised, based on the previous response, is Vale's management proposal to be submitted to the AGE of 01/Mar/3021 also irregular?"

31. Vale reiterates its understanding that there is no irregularity in the proposal for statutory reform to be deliberated in the AGE called for 12.Mar.2021, including with regard to the wording of item V (and item VI) of §10 of article 11 of the Bylaws, as shown above.

32. Through Official Letter No. 24/2021/CVM/SEP/GEA-4 (doc. 1199805), the Company was urged to inform, additionally, how the counting of votes and the recognition of the election of each candidate to the Board of Directors would be determined, specifying whether the election of a candidate should take place, according to the criteria provided for in the statutory reform of the Company, by an absolute majority or relative majority, considering the case of dispersion of votes.

33. In response, Vale clarified the following (doc. 1202314):

a. one of the proposals to be resolved at the AGE is the adoption of the individual voting system in candidates appointed to the Board of Directors (item 7 of the Notice of Meeting). In this sense, as stated in the wording proposed for in item IV of §10 of article 11 of the *Bylaws "each candidate of the list submitted to the Shareholders' Meeting by the Board of Directors, as well as any individual candidacy submitted by the date of the meeting, shall be the subject of individual voting*";

b. thus, the name of each candidate submitted will be the subject of specific and independent voting at the Shareholders' Meeting, in which all shareholders may vote, with all shares owned by them, for or against such candidate or, furthermore, express their abstention, observing that each shareholder may vote in favor of as many candidates as the vacancies to be filled;

c. at the end of the votes in relation to the names of each candidate, the following procedures will be adopted:

i. candidates who receive more votes against than favorable ones, without computing blank votes and abstentions, may not be elected to make up the Board of Directors, as established in the proposed wording for items V and VI of § 10 of article 11 of the Bylaws, because their names will have been rejected by an absolute majority of valid votes cast in the respective individual vote;

ii. among candidates who have received more favorable votes than otherwise, without computing blank votes and abstentions, candidates who receive the highest number of votes in favor shall be deemed to be elected, as provided for in the wording proposed for in item V of § 10 of article 11 of the Bylaws, **regardless of the total number of valid votes cast in the individual votes of all candidates submitted and subject to the number of positions to be filled**, which will have been previously defined by voting

held at the Shareholders' Meeting itself;

iii. if there are no candidates who have received more favorable votes than against enough to fill all positions on the Board of Directors, a new Shareholders' Meeting will be convened, after the preparation of a new list of candidates, for the election of the remaining vacancies, and until the holding of this new election, the Board of Directors will function only with the members elected at the first Shareholders' Meeting, as established by the proposed wording for item VI of §10 of article 11 of the Bylaws [our emphasis].

d. whereas the name of each candidate to the Board of Directors will be submitted to a specific vote, and each candidate will only be elected if the total number of favorable votes received by him is higher than that of the contrary votes, not counting the blank votes and abstentions, it is concluded that the election of each candidate will take place by means of voting by an absolute majority;

e. the resolution by absolute majority corresponds to the cases in which a particular matter or proposal is adopted if it receives the majority of the valid votes cast, without computing blank votes and abstentions, while the relative majority would correspond to cases where, with more than two possible voting options (and not only for or against), the proposal that receives the highest number of favorable votes is declared as the winner, even if it does not represent the majority of the total valid votes cast, without computing blank votes and abstentions;

f. in the case of the individual voting system, which will be adopted by the Company after the approval of the statutory reform proposal, the concept of relative majority will not apply, because, in the specific vote on the name of each candidate, the shareholder may only vote for, against or abstain, with no more than two possible voting options; and

g. depending on the individual voting system described above, no candidate shall be elected without the number of votes in favor of him being more than the number of votes against, that is to say, without his name having been approved by an absolute majority of valid votes cast in the vote on his name, and the blank votes and abstentions are not counted. It should be emphasized that, due to the adoption of the individual voting system, this absolute majority will be determined in relation to the number of valid votes cast in the specific vote of the name of each candidate, not necessarily in relation to the total number of shares held by shareholders who cast valid votes in the individual votes of all candidates to the Board of Directors.

I.3. SEP PREVIOUS ANALYSIS ON THE MATTER

34. As reported above, both parties mention CVM Administrative Procedure No. RJ2015/2925, in which SEP analyzed a matter with essential characteristics similar to those presented in the specific case.

35. This case has as subject matter a complaint filed with this CVM which considered, among other issues, the disregard by the chairman of the AGE of Usinas Siderúrgicas de Minas Gerais S.A. –

Usiminas, held on 06.Apr.2015, of the "contrary votes" cast by the shareholders signatory to the shareholders' agreement in the election of the eighth position to the Company's Board of Directors.

36. SEP was stated in the terms embodied in the RA/CVM/SEP/GEA-4/Nº045/15, the excerpt of which is transcribed below:

> *"86. Initially, it urges that, with the case of multiple voting, the corporate law does not stipulate (nor the Bylaws of Usiminas) a specific voting methodology to be observed at the time of this election, which is why it would not be necessary to speak, in my view, in irregularity in the adoption by the Board of the Shareholders' Meeting of the procedure for the election of the directors through the voting list (and not voting slates), which is expressly admitted by the most authorized doctrine and, at least implicitly, by CVM itself.* ***[4]*** *-* *[5]* *In fact, it is even stated in doctrine, although not without criticism, that the election of directors by the shareholders' meeting always occurs through uninominal voting, even if the candidates are part of a slate.* ***[6]***
>
> ***87****. Consequently, in view of the absence of specific rules in the corporate law, only the general rule provided for in article 129 shall apply.* ***[7]***
>
> *88. As we know, the aforementioned legal provision - according to which the resolutions are taken by an absolute majority of votes, not computing the blank votes - recognizes in our corporate regulations the majority voting system with a minimum quorum of absolute majority, given the theoretical impossibility of the shareholders' meeting to decide on all matters unanimously.*
>
> ***8*** *9. **Therefore, in general, the matters put to the resolution of the meetings will as a rule be approved if they reach the approval of more than half of the voting capital present at the meeting, and , on the other hand, are rejected if they do not permeate this quorum of resolution.***
>
> *90. **It is possible to view this voting system in cases where there is a resolution that will henceforth be called binary, that is, the one in which the shareholder can express his understanding by approval ("yes") or rejection ("no") of the matter. Abstention, although it also denotes disaffection or distrust, is configured, unlike other cases, as a one-off waiver of the right to vote, not being confused, therefore, with its effective exercise - it is, so to speak, a "non-vote".*** ***[8]***
>
> *9 1. **On the other hand, to the best of our knowledge, the same conclusion about binary voting is not consistent with the voting cases whose matter is the election of the company's managers by the shareholders' meeting. Contrary to what happens in the case of the majority of votes, the election of members to the Board of Directors and the Audit Committee does not, in my view, support the calculation of a contrary or rejection vote.***
>
> *92. **This is because the voting, in the case of elections, aims to choose the one that will hold an existing position that is vacant, not being subject to voting whether or not such a position will be held.** As stated by Mr. Paulo Penido, one should apply by analogy the intelligence of the electoral system, through which the people elect their representatives: the office (President of Brazil, Governor, Senator, etc.) already exists in advance, being subject to voting only who - which candidate - will hold it.*
>
> *93. Indeed, also in the case of the election of representatives of the shareholders, it is already known, in advance, how many "positions" (in this case,*

how many vacancies) must be filled; it is on the basis of this number of vacancies (whether predefined in the bylaws or previously determined at the meeting itself)[9] that the shareholders vote on the candidates who will hold the available positions.

94. ***Therefore, in the case of election of directors, what is wanted to know is who, among the candidates nominated by the shareholders, will hold the open vacancy. For this reason, the shareholder has the option of voting affirmatively to a particular candidate if he understands that he is suitable to hold the position to which he is running; on the other hand, the shareholder's rejection to that candidate can only be demonstrated by abstaining, or, then, with the vote on another candidate who is also running for that vacancy****.*

95. Of course, the shareholder is given the possibility to issue a statement of vote in any sense; however, ***any expression of vote other than the alternatives compatible with the voting represents, in my view, a null vote, as it is foreign to the matter subject to voting, and should therefore be excluded from the calculation of the quorum of resolution****.*

96*. It is necessary to recall, in this line, that, by force of what is set forth in the final part of article 129 of Law No. 6,404/76,* ***the vote considered apolitical, thus considered as the one that does not contribute validly to the composition of the corporate decision, either because of its incomprehensibility or for not translating any manifestation, that is, for its strangeness in relation to the matter submitted to the meeting, is not computable.[10]***

97. Moreover, it should be noted that, in my opinion, the above-mentioned understanding is present even when the election of directors takes place through the slate voting system. In view that the shareholders' meeting must necessarily elect the directors, in the event that there are two competing slates, the votes cast by the shareholder will only be computable if the shareholder votes on slate A or B; the other viable alternative would be the presentation of a third slate to be voted. In this case, the way to show dissatisfaction with one of the slates is to vote in favor of another. On the other hand, any "vote against" the two existing slates would, in my view, have the same effect as an abstention, since, for the purposes of counting the quorum, it would also translate a 'non-vote'."

In line with the arguments brought by Mr. Paulo Penido, in what was accompanied by the NSSMC Group, the understanding so far is corroborated by the new §6 of article 21 of CVM Instruction No. 480/09, introduced by CVM Instruction No. 561/15, as can be seen from its reading:

"CVM INSTRUCTION No. 561 OF APRIL 7, 2015 (...)

Article 1 - Articles 21, 30 and 31 of CVM Instruction No. 480, of December 7, 2009, shall enter into force with the following wording: (...)

§6 The minutes of the annual shareholders' meeting shall indicate how many approvals, rejections and abstentions each resolution has received, ***as well as the number of votes given to each candidate, when there is an election of a member to the board of directors or to the audit committee****." (emphasis by me.)*

It is noted that, in fact, CVM recognizes that there is a distinction between binary resolution and the election of directors: in those there is the possibility of the minutes registering the number of votes in favor, against and

possible abstentions; while in this, because the votes against are not compatible with the matter, it is only possible to record, for quorum purposes, the number of positive votes given to each candidate.

100. It could be argued, in line with counter-argument, that item 12-C of Annex 21-F to CVM Instruction No. 561/15, which deals with the content of the ballot bulletin at distance, would allow, in cases where the election of a member of the board of directors is not made by means of slate voting system, the calculation of the rejection votes, as shown below:

12.C - Election of a member of the board of directors, if the election is not by plate (the shareholder may nominate as many candidates as the number of vacancies to be filled in the general election):

Candidate 1

[ ]Approve [ ] Reject [ ] Abstain

Candidate 2

[ ] Approve [ ] Reject [ ] Abstain

Candidate 3

[ ] Approve [ ] Reject [ ] Abstain

Candidate 4

[ ] Approve [ ] Reject [ ] Abstain

Candidate 5

[ ] Approve [ ] Reject [ ] Abstain

Candidate 6

[ ] Approve [ ] Reject [ ] Abstain

In case of adoption of the multiple vote election process, should the votes corresponding to your shares be distributed, in the following percentages, by the candidates you have chosen?

Candidate 1 - [ ] % percentage of votes to be awarded to the candidate Candidate 2 - [ ] % percentage of votes to be assigned to the candidate Candidate 3 - [ ] % percentage of votes to be assigned to the candidate Candidate 4 - [ ] % percentage of votes to be assigned to the candidate Candidate 5 - [ ] % percentage of votes to be assigned to the candidate Candidate 6 - [ ] % percentage of votes to be assigned to the candidate

101. However, this prediction of the possibility of the shareholder "rejecting" a candidate (which would be equivalent to "no") does not mean, as the T/T Group might argue, that the candidate would only be elected if the favorable votes exceeded the rejection votes. ***On the contrary, in line with the previously deduced understanding, the above model aims only to clarify the voting options (at distance) that are available to the shareholder, which should not be confused with the way in which such votes should be computed. In fact, the rejection of a given candidate differs only from abstention by the fact that the first, unlike the second, is an express manifestation of disapproval, which may eventually influence matters of shareholder responsibility, but does not alter its incompatibility with the matter for quorum counting purposes.*** " (our emphasis)

37. As it turns out, SEP observed at the time that there is no possibility of calculation of votes against in the election of directors, which, if at any time cast, should be disregarded for the purposes of the *quorum* of resolution, so that it would not be appropriate to speak, therefore, in irregularity in the performance of the chairman of the board of that AGE of Usiminas.

38. This manifestation of the technical area was the subject of appeal to the Panel, which, however, did not come to analyze the matter due to the abandonment presented by the appellants (Panel Meeting of 22.May.2018, Regulations 9775/15).

II. ANALYSIS

II.1. SCOPE OF THE ANALYSIS

39. Initially, we emphasize that we are not questioning here the power of free self-organization arising from the principles of private autonomy and the freedom to hire, to support, in accordance with the legal opinions presented by Vale, the statutory changes proposed by the Management. We understand that it is salutary for the securities market the initiative of publicly held companies to promote changes in their bylaws that, in their assessment, represent the adoption of good corporate governance practices, such as the detailed regulation of the way of electing the members to its Board of Directors, giving it greater legal certainty.

40. At this point, Vale emphasizes the breadth of the Management's proposal to the AGE of 03.Dec.2021, regarding the process of electing the members of the Board of Directors, which covers a number of items, including: the election by individual vote to the candidates, not through the presentation of slates; the flexibility of the number of members; mandatory election of a majority of independent members; and the establishment of additional criteria to those provided for in the Novo Mercado Regulation for the characterization of a particular adviser as "independent". It also states that it has followed a rite of governance in which the matter was intensively studied and debated in different instances of the Company.

41. It turns out that the provision draws attention, which is unprecedented in the articles of Brazilian publicly held companies, expressly predicting that a particular candidate would no longer be elected if he were to have a number of votes for rejection higher than the votes that approved, indicating, in principle, that this candidate could be elected with the same number of positive votes , if there was no such rejection.

42. Thus, the core of this consultation lies in the analysis of the regularity of Vale's proposed to of the Bylaws, contained in item 8 of the agenda of the Notice of the AGE of 12.Mar.2021 (doc. 1195801), as follows:

> *"8. It is expected that, for the election of the members of the Board of Directors, it shall be considered elected those candidates who*

receive the highest number of favorable votes, and excluded those candidates who have more votes against than otherwise, observing the number of vacancies to be filled, as provided in the Management Proposal (new §10, items V and VI, article 11 of the Bylaws).".

43. Therefore, this analysis does not cover the other statutory changes proposed by the Company related to the electoral process under discussion, such as the adoption of individual election (and not by slate voting system), among others. Also, the criticisms about the process of resolution on the proposal by the Board of Directors, mentioned in the Consultation, will also not be addressed here, which, as highlighted by the Inquirer, may from time to time be the subject of a specific complaint with this CVM.

II.2. PRIVATE AUTONOMY AND THE NEED TO COMPLY WITH THE RULES AND PRINCIPLES ESTABLISHED IN THE LAW

44. As reported, the Company invokes the principles of private autonomy and the freedom to contract, in order to substantiate the proposed changes to its Bylaws. However, as the Company also recognizes, the power of free self-organization is not absolute, to the extent that there are mandatory precepts, imposed by law, which must be observed in relation to the content of the statutory rules.

45. These principles, therefore, do not appear to be complete, and should be relativized in relation to other rights enshrined in the Brazilian legal system, which is structured according to constitutional precepts. Thus, the power of free self-organization finds not only its guarantee in the constitutional writing, but also its limitation, implying the weighting between the interests and values under discussion.

46. Specifically with the statutory rules governing corporations, it is imperative to observe the provisions of Law No. 6,404/1976, elaborated in such a way as to counterbalance the invoked power of free self-organization in relation to the rights of the shareholders of these companies, especially minority shareholders, creating the legal structure necessary to strengthen the securities market. Therefore, the Bylaws cannot overlap with the rights of shareholders provided for in Law No. 6,404/1976, except when allowed by the Law itself.

47. In this sense, it is necessary to analyze whether the statutory amendment proposed by Vale in paragraphs V and VI of the new §10 of article 11 of the Bylaws represents a violation of the shareholder's right guaranteed by Law No. 6,404/1976, notably the violation of their right to vote in the context of the election process of the Board of Directors, which will be addressed throughout this analysis.

II.3. UNPRECEDENTED MATTER

48. As set out above, despite having SEP analyzed a case with essential characteristics similar to those presented in the present case, the matter was not subject to consideration by the Panel of this Agency, due to abandonment by the applicants (CVM Administrative Procedure No. RJ2015/2925 -RA/CVM/SEP/GEA-4/Nº045/15).

49. Moreover, it turns out that this case is unprecedented in relation to the inclusion proposal, in the Company's Bylaws, expressly predicting that a particular candidate to the Board of Directors would no longer be elected if he were to have a number of votes for rejection higher than the votes that approved, indicating, in principle, that this candidate could be elected with the same number of positive votes , if there was no such rejection.

50. Nevertheless, the Company argues that CVM provides for contrary votes in the electoral process for the Board of Directors, expressly in §6 of Article 21 of CVM Instruction No. 480/2009, as well as in Annex 21-F (item 12-C) of CVM Instruction No. 481/2009, both of which were included in CVM Instruction No. 561/2015.

51. Regarding this specific point, however, we refer to the opinion on this technical area exhibited in RA/CVM/SEP/GEA-4/N.045/15, and transcribed in item I.3 of this Report. In our view, such provisions inserted by CVM Instruction No. 561/2015 do not represent an understanding by CVM about the possibility that the opinions of rejection to the election of a particular candidate to the Board of Directors (if the election is not by slate voting system) were counted as contrary votes and, therefore, considered for the purposes of the quorum of the resolution, in order to prevent the election of such candidate.

52. Certainly, it is necessary to seek the intention of CVM with the edition of CVM Instruction No. 561/2015, which promoted changes to CVM Instructions No. 480/2009 and No. 481/2009. This standard was elaborated in order to regulate the distance participation and voting of shareholders in the Shareholders' Meetings of publicly held companies, in order to facilitate participation at the meeting and the exercise of certain rights by non-controlling shareholders.

53. And, to instrumentalize the distance voting procedure, a document called Distance Voting Bulletin (BVD) was created, which allows shareholders to indicate, for example, whether they wish to adopt the multiple voting procedure or the creation of the Audit Committee, issues that, although not proposed by the Management, should be included in that bulletin, since they deal with shareholder rights provided for in Law No. 6,404/1976. It also brings together all the proposals for resolution included in the agenda of the meetings to which it applies, either by the controlling shareholders and by the Management, or by the non-controlling shareholders.

54. In this line, CVM Instruction No. 561/2015 included to CVM Instruction No. 481/2009 article 21-W, §3, establishing the obligation for the company to disclose, on the eve of the date of the general meeting, by means of an electronic system on the CVM webpage and on the company's own webpage, a synthetic voting map consolidating the votes cast at distance, as indicated in the maps of items I and II of the head provision*,* according to the shareholding positions provided by the bookkeeper.

55. In this way, the creation of the Distance Voting Bulletin, seeks to work not only as a voting instrument, but also to promote interaction between shareholders, that is, visibility to minority candidates,

articulation, and voting coordination[11].

56. Specifically as to the introduction of §6 of article 21 to CVM Instruction No. 480/2009, the main objective would be to expand the disclosure of information of the meeting, in order to disclose to the shareholder, with a higher level of detail, how each matter was voted, in response to the demand for more transparency, in addition to avoiding information asymmetries between the company and its shareholders. It is clearly stated by SDM Public Hearing Notice No. 9/2014, as well as the resulting Report [12].

57. It is also noteworthy, from the reading of this Public Hearing Report, the absence of any questioning or interpretation in the sense that the model of Distance Voting Bulletin, proposed in Annex 21-F to CVM Instruction No. 481/2009, could represent an understanding by CVM as to the admission and how the contrary votes should be computed, as proposed by Vale.

II.4. ELECTION PROCESS

58. The consultation formulated by the Company's board of directors is essentially focused on the shareholder's right to vote contrary to the election of a particular candidate to the Company's Board of Directors and how that vote should be computed.

59. There is, however, an issue that should, in our view, be analyzed, first of all, and whose conclusion significantly impacts the effectiveness of the discussion that follows regarding the possibility of computing the contrary vote.

60. The question concerns the majority required to elect a particular candidate to the Board of Directors.

61. First, we highlight that, according to the Management Proposal for the AGE of 12.Mar.2021 (head provisionof the new §10 of article 11 of the Bylaws), and corroborated by Vale in response to CVM, the procedure proposed by the Company, contained in item 8 of the agenda, does not apply to separate voting, nor to voting by multiple voting regime, so that this discussion is restricted to the election of the Board of Directors by means of majority voting.

62. According to Law No. 6,404/1976, in its article 122, item II, it is privately incumbent upon the shareholders' meeting to elect or remove, at any time, the company's directors and members of its audit committee, except for the provisions of item II of article. 142[13]. Likewise, article 140 of the Corporate Law establishes that the Board of Directors shall be composed of at least three (3) *members, "elected by the shareholders' meeting*, *who may be removed by it at any time"*.

63. The same Law, however, does not contain a specific rule defining the quorum of resolution, when the general election to the Board of Directors takes place by majority vote. However, it establishes, as a general rule, except for the exceptions provided for by law, that the resolutions at the Shareholders' Meeting will be taken by an absolute majority of votes, not computing the blank votes (article 129, head provision).

64. For Director Gustavo Gonzalez[14] , in the absence of a specific rule

for the election of the Board of Directors, as a majority vote, it is applied the general rule of said article 129 of Law No. 6,404/1976, noting that such an understanding would be in line with the opinions expressed by Luciano de Souza Leão Jr. and Modesto Carvalhosa [15].

65. The aforementioned Director also highlights the existence of good arguments to defend that, at least in situations where competing proposals exist, the general election of the Board of Directors should follow the relative majority rule, concluding, however, that the change in the quorum necessary for the election of the Board of Directors by majority vote "*cannot be made by an interpretative exercise, depending, therefore, on a specific amendment of Law No. 6,404/1976*"***[16]***.

66. When providing on the quorum of resolution of corporations, Ricardo Tepedino thus clarifies[17]:

> *"**The law, however, establishes some precepts not to allow any majority to suffice for the volitional issue of the company**. It requires, already seen, a minimum presence of shareholders for the installation of the Assembly in the first convocation (quorum of installation, § 252-2), **as requires a certain number of votes to consider approved in the Assembly the resolutions - is the deliberative quorum, which, of ordinary, will correspond to the absolute majority of votes, disregarded the blank votes (art. 129, caput), and there are cases of qualified quorum, mentioned below (§§ 270-271)**.*
>
> *It should be noted that **majorities can be absolute when they exceed half of the total possible or relative votes, which represent the largest number of votes obtained, albeit in a fraction less than half of the whole**; they are also simple, that it is that "constituted for cases of common and common expression, the general rule of the majority", or qualified, which is "the reinforced majority, exceptionally required in matters of greater importance and severity" (PINTO FURTADO, 1993, p. 121).*
>
> ***The minimum quorum for the resolutions of the Assembly,*** including the qualified quorum required by law or by statute, is an essential requirement of *the **validity (or existence, according to doctrinal affiliation) of the Assembly's resolution,** as will best be studied in § 261-4."* (emphasis added)

67. Specifically regarding the calculation of the deliberative quorum, Ricardo Tepedino complements[18]:

> *"As mentioned earlier, Article 129 required, as a deliberative quorum, an absolute majority of votes, **which will be calculated on the basis of the votes of the shareholders present at the Meeting, and not on the total voting shares**. That is, if the company has 1,000 shares, all with voting rights, and shareholders holding 250 of them answered the call of the notice in first call (which provided legal number for the installation), a proposal will only be approved if it has at least 126 votes. If, in another case, three are the propositions submitted to shareholders, and one obtains 120 votes, and the other 65 votes each, none will be approved - or, with better technical*

precision, all will have been rejected." (emphasis added)

68. This particular point was also the object of demand by this SEP, in the RA/CVM/SEP/GEA-4/Nº045/15 (CVM Administrative Procedure No. RJ2015/2925), as addressed in item I.3 of this Report.

69. In the specific case, as reported, the Company was asked to inform about the counting of votes and the recognition of the election of each candidate to the Board of Directors, specifying whether the election of a candidate should take place, according to the criteria provided for in the statutory reform of the Company, by absolute majority or relative majority, considering the case of dispersion of votes.

70. In response, the Company provided the following clarifications:

a. considering the adoption of the individual voting system, the name of each candidate submitted will be the subject of a specific and independent vote at the Shareholders' Meeting, in which all shareholders may vote, with all shares owned by them, for or against such candidate or, furthermore, express their abstention, observing that each shareholder may vote in favor of up to as many candidates as the vacancies to be filled;

b. at the end of the votes in relation to the names of each candidate, the following procedures will be adopted:

i. **candidates who receive more votes against than favorable, without computing blank votes and abstentions, may not be elected to make up the Board of Directors,** as established in the proposed wording for paragraphs V and VI of § 10 of Art. 11 of the Articles of Incorporation, because their names will have been rejected by an absolute majority of valid votes cast in the respective individual vote;

ii. **among candidates who have received more favorable votes than against, without computing blank votes and abstentions, shall be considered elected**, as provided for in the wording proposed for item V of Article 10 of art.11 of the Articles of Incorporation, **candidates who receive the largest number of favorable votes, regardless of the total number of valid votes cast in the individual votes of all candidates submitted and observing the number of positions to be filled**, which will have been previously defined by voting held at the Shareholders' Meeting itself;

iii. **if there are no candidates who have received more favorable votes than against enough to fill all positions on the Board of Directors,** a new Shareholders' Meeting will be convened, after the preparation of a new list of candidates, for the election of the remaining vacancies, and until the holding of this new election, the Board of Directors will function only with the members elected at the first Shareholders' Meeting, as established by the proposed wording for item VI of §10 of Art. 11 of the Articles of Incorporation.

c. whereas the name of each candidate to the Board of Directors will be submitted to a specific vote, **and each candidate will only be elected if the total number of favorable votes received by him is higher than that of the contrary votes**, not counted the votes

blank and abstentions, it is concluded that the election of each candidate will take place by means of an absolute majority vote;

d. the resolution by absolute majority corresponds to the cases in which a particular matter or proposal is adopted if it receives the majority of the valid votes cast, without computing blank votes and abstentions, while the relative majority would correspond to cases where, **with more than two possible voting options (and not only for or against),** the proposal that receives the highest number of favorable votes is declared as the winner, even if it does not represent the majority of the total valid votes cast, without computing blank votes and abstentions;

e. in the case of the individual voting system, which will be adopted by the Company after the approval of the statutory reform proposal, **the concept of relative majority will not apply, because, in the specific vote on the name of each candidate, the shareholder may only vote for, against or abstain, with no more than two possible voting options**; and

f. depending on the individual voting system described above, no candidate shall be elected without the number of votes in favor of him being more than the number of votes against, that is to say, without his name having been approved by an absolute majority of valid votes cast in the vote on his name, and the blank votes and abstentions are not counted. It should be emphasized that, due to the adoption of the individual voting system, this absolute majority will be determined in relation to the number of valid votes cast in the specific vote of the name of each candidate, not necessarily in relation to the total number of shares held by shareholders who cast valid votes in the individual votes of all candidates to the Board of Directors.

71. It should be noted that, in the individual voting system, each shareholder votes on a number of candidates corresponding to the number of vacancies to be filled, and such votes at the end are gathered for the purposes of the calculation of the resolution quorum. In this sense, director Gustavo Gonzalez states that:[19]

> *"Strictly speaking, in the majority one-nominal vote, there is the sequential filling of the positions, and each action is given one vote per vacancy, so that, in the end, the most voted candidates are elected to the positions to be filled (...) In practice, however, the individual election is operationalized with each shareholder voting on a number of candidates corresponding to the number of vacant seats. In the end, the votes are gathered and it turns out who were the most voted candidates. In this dynamic, in which each shareholder votes simultaneously in all vacancies, there is in a certain way a "multiplication" of the votes attributed to each of the shares (...)".*

72. In the present case, based on the clarifications presented above by Vale, it appears that, in practice, the electoral process of the Board of Directors by majority vote, according to the proposal presented, would be dismembered in two stages, which, in our view, would not be in line with the system of Law No. 6,404/1976.

73. According to the system presented by Vale, in a first step, the Company would verify the eligibility of each candidate, not according to the criteria defined in the Law, but according to the candidate's rejection rate resulting from the resolution of the shareholders in an individual vote. Thus, candidates who receive votes against in a quantity greater than the favorable votes obtained, may not be elected to make up the Board of Directors.

74. From this, there is a second stage, which covers only eligible candidates, so that in this general election are elected those who receive the largest number of favorable votes. According to the Company, such election takes place "***regardless of the total number of valid votes cast in the individual votes of all candidates submitted and observing the number of positions to be filled***, *which will have been previously defined by voting held at the Shareholders' Meeting itself.*" (emphasis added).

75. In this sense, the Company, through this statutory amendment, intends to adopt, in fact, the rule of the relative majority for the majority election of the Board of Directors, according to a definition extracted from the teachings of Ricardo Tepedino and shared by Director Gustavo Gonzalez, reproduced above. In this regard, it is observed that the Company uses a different concept for the relative majority, as verified by its response to this CVM.

76. For illustration purposes, let's look at the example below, which includes 10 candidates to fill 5 vacancies to the Board of Directors, in a majority election by individual vote. Groups A to D represent the groups of shareholders present at the Shareholders' Meeting.

	C1	C2	C3	C4	C5	C6	C7	C8	C9	C10
Group A	40	40	40	40	40	-	-	-	-	-
Group B	30	30	30	30	-	-	30	-	-	-
Group C	30	30	30	-	-	-	30	-	30	-
Group D	30	-	30	-	-	30	-	30	-	30
Total votes in favor	**130**	**100**	**130**	**70**	**40**	**30**	**60**	**30**	**30**	**30**
Total contrary votes	**-**	**30**	**-**	**60**	**-**	**60**	**70**	**-**	**70**	-

77. As this is an individual vote, each group of shareholders has allocated their votes in favor for each of the five vacancies to be filled. Thus, Group A allocated its votes in favor of candidates 1, 2, 3, 4 and 5; group B in candidates 1, 2, 3, 4 and 7; Group C in candidates 1, 2, 3, 7 and 9; and Group D in candidates 1, 3, 6, 8 and 10.

78. According to the procedure proposed by the Company, in which shareholders are also granted the right to the so-called contrary vote, computed for the purposes of verifying the eligibility of each candidate, we consider, for example, that only candidates 2, 4, 6, 7 and 9 received contrary votes, in the amounts reported in the table above. In this scenario, we consider that not all shareholders expressed a rejection of competing candidates, through the contrary vote, which is perfectly feasible.

79. By the system reported by the Company, in a first step,

the candidates who took the opposite votes in a higher amount than the votes in favor are identified, so that, in the example above, candidates 6, 7, and 9 are excluded.

80. Then, among the candidates who received more favorable votes than against (candidates 1, 2, 3, 4, 5, 8 and 10), will be considered elected those who received "*the largest number of favorable votes*, *regardless of the total number of valid votes cast in the individual votes of all candidates submitted and observed the number of positions to be filled, which will have been previously defined by voting held at the Shareholders' Meeting itself*." It is worth saying, according to the procedure on screen, the candidates 1,2,3,4 and 5 of the example above, even if the latter candidate (no. 5) did not obtain an absolute majority of valid votes (66 of 130 valid votes), not counted blank votes and abstentions.

81. It is observed that, in the proposed terms, only in the event that there are no candidates who have received more favorable votes than contrary in sufficient numbers to fill all positions on the Board of Directors, is that there is the provision for the convening of a new Shareholders' Meeting, for the election of the remaining vacancies.

82. If there were no votes expressly indicating the rejection of candidates, candidates 1, 2, 3, 4 and 7 would be elected, in the example given, observing the relative majority election criterion that the Company intends to adopt, since candidate 7 would have reached 60 votes.

83. Thus, it is verified that the criteria desired by the Company not only intend to have the approval of the assembly resolution of the election of a given candidate without the observation of an absolute majority, but may result in situations in which a particular candidate is omitted for another with a lower number of favorable votes.

84. In this sense, the first stage of the proposed procedure, with the calculation of votes for rejection for the purpose of deliberating on the eligibility of each candidate, represents, in our opinion, a subversion of the electoral process with the possibility of limiting the right of minorities who have legitimately succeeded in concentrating more favorable votes on a given candidate.

85. It cannot be considered that, in the event that all shareholders vote to express in relation to all candidates (by the approval of their candidates and the rejection of all others), it would be, in our opinion, to be met by the legal criterion of election by absolute majority, to the extent that only candidates with more than half of the valid votes would be elected.

86. It cannot be said, however, that this will occur, in practice, in all cases and it cannot be considered that, in principle, there is no way to predict all possible situations that may arise from the criteria, in our view, in disagreement with the Law, proposed by Vale's Administration.

II.5 THE POSSIBILITY OF THE SHAREHOLDER VOTING FOR REJECTION AND POSSIBLE IMPACT IN THE RESOLUTION REGARDING THE ELECTION

87. In corporations, the social will is formed through the exercise of the right to vote, manifested in the Shareholders' Meetings. Thus, ownership interest and voting in the Shareholders' Meetings represents the exercise of a fundamental prerogative of the shareholder status, since the vote expressed by him may influence the formation of the company's will.

88. Pursuant to art. 110 of Law No. 6,404/1976, shareholders holding common shares necessarily have the right to vote in the resolutions of the Shareholders' Meeting, and each common share corresponds to 1 (one) vote.

89. Vale's share capital is composed of common shares and preferred shares of a "special" class, the latter belonging exclusively to the Federal Government. Pursuant to art. 5, §3 of the Company's Articles of Incorporation, each common share and each special class preferred share is entitled to one vote in the resolutions of the Shareholders' Meetings, respecting the provisions of its §4. In turn, this paragraph establishes that the preferred shares of the special class will have the same political rights as the common shares, except with respect to the vote for the election of the members of the Board of Directors, which will only be guaranteed to them in the cases provided for in §4 and §5 of art. 141 of Law No. 6,404/1976 (separate election). Preferred shares are also guaranteed the right to elect and remove a Member of the Fiscal Council and the respective alternate.

90. With regard to the election of the Directors, Law No. 6,404/1976 made available to minority shareholders the instruments of action provided for in its art. 141, consistent in the adoption of the multiple voting system(*caput*) and the separate election (§§4 and 5), fulfilled the legal requirements, as a way to guarantee them greater representativeness.

91. Under the multiple vote system, where all shareholders with voting rights vote, without distinction, each action is no longer entitled to a single vote, but to as many as many seats in the Council to be filled. Shareholders can concentrate their votes on one or more candidates, and thus enable the election of their representatives on the Board of Directors. In the separate election, non-controlling shareholders who pertain to the minimum percentage required have the right to elect and unplace a member and his/her alternate.

92. In the present case, as provided in the Management Proposal for the EDA of 12.03.2021 (*caput* of the new §10 of art. 11 of the Articles of Incorporation), and corroborated by the Company in its response, the procedure provided for therein does not apply to the separate vote, nor to the vote by the multiple vote regime, so, as already highlighted, this discussion is restricted to the election by majority vote.

93. It is observed that, depending on the information provided by Vale to this CVM, and contained in its Reference Form 2020 (item 15.8, version 19), due to the closure, on 11.09.2020, of the term of the Shareholders' Agreement, the Company no longer has a controlling shareholder or control block, becoming a pulverized capital company. Thus, at first, the AGE convened for the day 12.03.2021 would not admit the separate election of which the art is treated. 141, §§4 and 5 of Law No. 6,404/1976.

94. Vale's shareholders' agreement, concluded between Litel Participações S.A., Bradespar S.A., Mitsui & Co, Ltd, BNDES Participações - BNDESPAR and Litela Participações S.A., linked 20% of the total common shares issued by the Company.

95. In view of this process of changes in its shareholding structure, according to the Company, the Management's proposal for the AGE of May 12, 2021, to reform its Articles of Incorporation, was prepared, in order to improve the procedures related to the organization of the Board of Directors, including the form of election of its members.

96. It turns out that, as reported, the inclusion proposal draws attention, to what is unprecedented in the articles of Brazilian publicly held companies, expressly predicting that a particular candidate would no longer be elected if he were to have a number of votes for rejection higher than the votes that approved, indicating, in principle, that this candidate could be elected with the same number of positive votes , if there was no such rejection.

97. This procedure is proposed by the Company under the individual voting system, so that, as informed by it, the name of each candidate presented will be the subject of a specific and independent vote at the Shareholders' Meeting, in which all shareholders may vote, with all shares owned by them, for or against such candidate or, furthermore, express their abstention , noted that each shareholder can vote in favor of up to as many candidates as the vacancies to be filled.

98. According to the system proposed by Vale, the so-called counter vote would be decisive in the election of the candidate, functioning as a true opposing instrument to his election, directly and decisively interfering in the outcome of the votes.

99. As stated in item II.5 of this Report, in practice, the electoral process would be dismembered in two stages, and, first, the Company would verify the eligibility of each candidate, not according to the criteria defined in the Law, but according to the candidate's rejection rate resulting from the resolution of the shareholders in an individual vote. Thus, candidates who receive votes in a greater amount than the favorable votes obtained will be excluded and may not be elected to make up the Board of Directors.

100. On the one hand, we understand that there is no right to the shareholder's right to express his or her contradiction in relation to one or more candidates to the Board of Directors, as defended by the Company.

101. On the other hand, as already commented, the calculation of the opposite vote for the purpose of considering an ineligible candidate characterizes, in our view, a scan of the shareholder's right to vote, in the majority election to the Company's Board of Directors, as provided by Law No. 6,404/1976.

102. As highlighted by the Client, shareholders already have legal mechanisms to select a candidate, disqualifying it in the terms set out in art. 147 of Law No. 6,404/1976 or presenting a competing candidate. In this regard, even in the CIRCULAR LETTER/CVM/SEP/No. 2/2020 (item 7.1.5), SEP draws attention to the fact that, in line with the provisions of Art. 6, item II, of CVM Instruction No. 481/2009, companies must disclose information about candidates to the Board of Directors and Fiscal Council proposed by non-controlling shareholders, giving these candidates the same transparency and disclosure today given to candidates proposed by the Management or by the controlling shareholders under art. 10 of the same instruction.

103. In addition, as highlighted in this Report, with the regulation of the participation and distance voting of shareholders at Shareholders' Meetings of

companies, it was facilitated to participate in the conclave and the exercise of certain rights by non-controlling shareholders. More than that, with the creation of the Distance Voting Bulletin, we sought not only to enable a voting instrument, but also to promote interaction between shareholders, that is, visibility to minority candidates, articulation, and voting coordination.

104. Nevertheless, in a scenario in which there is competition, that is, when the number of candidates is higher than the number of vacancies to be filled, the opposite vote, in the context proposed by the Company that we consider in disagreement with art. 129 of Law No. 6,404/76, may significantly change the outcome of the election, compared to the simple election of the most voted candidates.

105. Certainly, the opposite vote would only make sense in scenarios where there is no competition, that is, the number of candidates to the Council is equal to the number of vacancies to be filled, and there is no legal requirement of the minimum deliberative quorum of absolute majority, which would allow the election of a counselor considered unfit for office with only a few favorable votes. It is also in this context that the *Council of Institutional Investors* of the United States argues that the election of the *board of directors* should be by majority election, with the possibility of contrary voting [20].

106. On the contrary, as already pointed out, the opposite vote may represent a real instrument of veto, to the extent that the election of the competing candidate eventually nominated by the minority shareholders would be hampered, since it is conditional on obtaining negative votes in a smaller amount than the favorable votes.

107. In addition, it is worth remembering that this SEP has already manifested itself, in CVM Administrative Process No. RJ2015/2925, in the sense that the process of election of the members of the Company's Board of Directors does not support the binary voting system, thus not admitting the calculation of a contrary vote or rejection of a particular candidate for the purposes of the resolution quorum (item I.3 above).

108. In this regard, unlike the defendant by the Company, we conclude that the provisions of §6 of art. 21 of CVM Instruction No. 480/2009, included by CVM Instruction No. 561/2015, in fact, reinforces the understanding that the resolution for the election of members to the Board of Directors is not binary, provided separately at the end of the paragraph that the minutes of the Assembly shall indicate *"the number of votes given to each candidate, when there is an election of a member to the board of directors or to the fiscal council."* If this were not the case, it would be sufficient for the rule to be restricted to establishing that the minutes *"must indicate how many approvals, rejections and abstentions each resolution has received"*, as already provided for in the first part of the provision in question.

109. Finally, we point out that, despite the fact that this analysis is limited to the specific case, it is noteworthy, in view of the repercussion already experienced, that the said proposal for a statutory amendment made by Vale's Management constitutes an innovation, so that, to the best of our knowledge, it is necessary to consider that its effects may eventually transpose the company's land, indirectly impacting the entire securities market in Brazil, if replicated by other publicly held companies.

110. In this sense, it must be taken into account the various variables presented, such as the dynamism of the shareholding composition of a

company, especially in terms of concentration or dispersion, the level of participation in shareholder meetings and the different strategies to be adopted by shareholders in the elections of managers, to avoid that, in the future, in another context, they will produce undesirable effects.

III. CONCLUSION

111. According to all the above, we concluded that:

a. The resolutions of the Shareholders' Meeting, among which the majority election of the Board of Directors, are by an absolute majority of votes, not computing the blank votes, in accordance with art. 129 of Law No. 6,404/1976;

b. The process of electing Vale's Board of Directors, by majority vote, contained in the Management Proposal for the AGE of 12.03.2021 (item 8 of the Call Notice) is not consistent with the system of Law No. 6,404/1976, since it intends to elect candidates who do not obtain an absolute majority of the total valid votes cast in the election of the Board of Directors (see item II.4 of this Report); and

c. As a consequence, the first stage of the majority election to the Company's Board of Directors, indicated in the proposal for a statutory amendment, consistent in the calculation of the votes against for resolution on the eligibility of each candidate, in the context and observing the criteria proposed by the Company's Management for the entire electoral process, may result in an undue obstacle to the exercise of the right to vote of the shareholder who voted in favor of the election of the candidate considered ineligible (see items II.4 and II.5 of this Report). As commented, in the case of adopting the quorum of resolution by absolute majority (considering the total number of valid votes cast in the individual votes of all candidates submitted), the question of the calculation of the vote by rejection of the candidate would lose relevance.

112. We suggest sending a letter to the Company with the above understanding.

Yours faithfully,

ROBERTA OLIVEIRA SOARES SULTANI

Analyst

To SEP, agreed.

JORGE LUÍS DA ROCHA ANDRADE

Agreed, FERNANDO

SOARES VIEIRA

Business Relations Superintendent

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[1] The previous wording proposed for item IV of §10 of art. 11 of the Articles of Incorporation was as *follows: "Each candidate on the list submitted to the Shareholders' Meeting by the Board of Directors, as well as any single candidacy submitted up to the date of the assembly, shall be the subject of individual voting,* ***collecting the votes in favor and the votes against his election, subject to his election, subject to his election to which the number of votes in favor is higher than the contrary votes, disregarding the blank votes."*** (emphasis added). The proposed new wording does not contain the excerpt highlighted above.

[2] It is observed that the Client does not question the proposal for the adoption of the individual election, but rather the inclusion of the opposite vote, in the terms proposed in items IV and V of the new §10 of art. 11 of the Articles of Incorporation.

[3] GONZALEZ, Gustavo Machado. "Notas Sobre a Eleição do Conselho de Administração Por Meio de Votação Majoritária". In: Rodrigo Rocha Monteiro de Castro, Luis André Azevedo, and Marcus de Freitas Henriques (coord.). Direito Societário, Mercado de Capitais, Arbitragem e Outros Temas - Homenagem a Nelson Eizirik. São Paulo: Quartier Latin, 2021, p. 446-447.

[4] In the same vein, see: LEÃO JR., Luciano de Souza. In: **Direito das Companhias**. Volume I, Coord.: Alfredo Lamy Filho and José Luiz Bulhões Pedreira. Rio de Janeiro: Forense, 2009, p. 1038.

[5] Item 12-C of Annex 21-F to CVM Instruction No. 561/15 expressly provides for the possibility of a vote that does not use the group system.

[6] This is the understanding of Modesto Carvalhosa, according to LEÃO JR. (op. cit., pp. 1038-1039).

[7] *"Art. 129. The resolutions of the shareholders' meeting, with the exception of the exceptions provided for by law, will be taken by an absolute majority of votes, blank votes not being counted."*.

[8] *"Abstentionism. This term is used essentially to define non-participation in the act of voting. It can, however, comprise the non-participation in a set of political activities, although, in its most accentuated forms, non-participation can be defined as apathy, alienation, and so on. Like many of the variables related to electoral participation, Abstentionism is easy to evaluate quantitatively. It is, in fact, calculated as a percentage of those who, being entitled, do not present themselves to the polls. The case is different from those who, by presenting themselves, leave the ballot blank or deliberately annul it in several ways. Although both those who do not present themselves to the polls and those who speak by voting do not validly wish to express*

disaffection or mistrust, both phenomena are considered as analytically distinct." BOBBIO, Norberto; PASQUINO, Gianfranco. **Dicionário de política**. Transl.: VARRIALE, Carmen C. *et. al*. Brasília: Editora Universidade de Brasília, 1º Ed., 1998, p. 7.

[9] Along these lines, it is important to mention that, under the terms of art. 140, item I, of Law No. 6,404/76, the articles of incorporation must define a fixed number of directors, or else establish the maximum and minimum number allowed. In the latter case, according to the understanding of the Collegiate In CVM Processes No. RJ-2013-4386 and No. RJ- 2013-4607, j. **04.11.14**, the definition of the number of directors is made by decision by majority vote at the shareholders' meeting that will elect such directors. For this reason, SEP recommends, in its Circular Office, that the most appropriate procedure is the disclosure, in the call notice, which is on the agenda of the respective meeting the information that the number of members to be the company's Board of Directors will be decided.

[10]About what should be understood by "blank vote", José Waldecy Lucena (**Das sociedades anônimas: comentários à Lei, Volume 2 - arts. 121 to 188**. Rio de Janeiro: Renova, 2009, p. 125-126) states that "*there is a doctrinal consensus, which goes back to the commentators of the 1940 Diploma, according to which, when referring to the exclusion of blank voting, either the Law that effectively considers themselves, for the formation of the deliberative quorum, **only those votes that contribute validly and effectively to the social resolution**, either in the affirmative sense (approval), or in the negative sense (disapproval)*." (Emphasis added.)

In that same sense, Modesto Carvalhosa (**Comentários à Lei das Sociedades Anônimas: 2nd volume - Arts. 75 to 137**. São Paulo: Saraiva, 5º Ed., p. 920), in which he is accompanied by Ricardo Tepedino (In: **Direito das Companhias**. Volume I. Coord.: Alfredo Lamy Filho and José Luiz Bulhões Pedreira. Rio de Janeiro: Forense, 2009, pp. 953-954), states that: "*the deliberative* quorum *excludes not only the blank votes themselves, (...) as well as null votes. Blank votes are those that, by the voting system, do not contain any statement. Abstention of vote is the one that occurs in open voting, by verbal and individual manifestation of each shareholder. Null vote is one that, in the ballot voting system, contains a statement that is foreign to the subject of the vote. **The shareholder's verbal statement in open voting, which is not in line with the matter voted at that time, shall also be considered null and void***. (Emphasis added.)

[11] In this sense, see CIRCULAR LETTER/CVM/SEP/Nº 2/2020, of 02.28.2020.

[12] Available at: http://conteudo.cvm.gov.br/audiencias_publicas/ap_sdm/2014/sdm0914.html.

[13] Art. 142, item II, provides that it is for the Board of Directors to elect and unplace the company's directors and to set their duties, in compliance with what the statute provides.

[14] GONZALEZ, op. cit. p. 443.

[15] LEÃO JR., Luciano de Souza. "Conselho de Administração e Diretoria". In: LAMY FILHO, Alfredo; PEDREIRA, José Luiz Bulhões (Coords.). Direito das Companhias. 2nd ed. current. and reform. Rio de Janeiro: Forense, 2017, p. 753. CARVALHOSA, Modesto. Comentários à Lei das Sociedades Anônimas, 2º volume: artigos 138 a 205. 5th ed. São Paulo: Saraiva, 2011.

[16] GONZALEZ, op. cit. pp. 443-446.

[17] TEPEDINO, op. cit., pp. 951-952.

[18] Ibid., pp. 952-953.

[19] GONZALEZ, op. cit. p. 436.

[20] https://www.cii.org/majority_voting_directors. As highlighted by Director Gustavo Gonzalez (op.cit., p. 447).

Document signed electronically by **Roberta Oliveira Soares Sultani** , **Analyst,** on 01/03/2021, at 19:36, based on art. 6 of Decree No. 8,539 of October 8, 2015.

Document signed electronically by **Jorge Luís da Rocha Andrade**, **Manager,** on 01/03/2021, at 19:47, based on art. 6 of Decree No. 8,539 of October 8, 2015.

Document signed electronically by **Fernando Soares Vieira**, **Superintendent,** on 01/03/2021, at 19:50, based on art. 6 of Decree No. 8,539 of October 8, 2015.

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