

Setting up a Non-Resident Omnibus Account in Brazil under Resolution 2689

This document explains the necessary steps for a non-Brazilian intermediary, such as a U.S. Futures Commission Merchant (FCM), to establish a 2689 omnibus account and add clients as passengers to this account. Adding clients as passengers to an existing omnibus account involves a simplified process that can usually be accomplished within 24 to 48 hours. An FCM should consider using this process rather than following a lengthy and evolved process of setting up individual conventional 2689 accounts for each of their clients.

- The simplified process for the registration of passengers is available only to foreign intermediaries who have established a written agreement with a licensed BM&FBOVESPA broker that will be responsible for the foreign intermediary performing, among other things, all necessary Know Your Client (KYC) and Anti-Money Laundering (AML) checks under the United States and Brazilian Laws. In these circumstances, the Brazilian Securities and Exchange Commission—CVM (*Comissão de Valores Mobiliários*) Instruction 419 allows the foreign intermediary to be responsible for providing additional documentation only upon request from the CVM, rather than requiring them to provide all documentation when establishing the account.
- A 2689 omnibus account is different from a brokerage account and, please note, the term “omnibus account” is used differently in Brazil than in North-American and European derivatives markets. The principal advantage of a 2689 omnibus account is the time saved in setting up the account; not in any ability to transact business or multiple parties without disclosing individual identities and positions. An FCM with a 2689 omnibus account is still required to identify the final beneficiary of each executed trade at BM&FBOVESPA on a T+0 basis; however, BM&FBOVESPA does offer a trading and settlement account structure, that market participants find useful for managing intra-day positions.
- This document is intended to provide a clear description of the steps necessary to establish these accounts; however, it is not intended to be comprehensive in its treatment of all cases of this topic. Contacting a licensed BM&FBOVESPA Broker or licensed custodian (a list is available at <http://www.cmegroup-bmfbovespa.com.br/pages/eng/howtotrade.asp>) is the next appropriate step to take in order to obtain more information.

Overview of the process

1. Identifying Potential Investor

1.1. Foreign Investors Eligibility

In order to invest in Brazil under Instruction 2689, non-resident investors must be qualified under one of the following classifications so that they can register with the Central Bank of Brazil and the CVM.

1.2. Eligible Applications

Non-resident investors can invest in the same products available to local investors, from equity-related investments to fixed income investments, observing the applicable tax treatment differences.

Classifications

- a. Commercial banks, investment banks, savings and loan associations, global custodians and similar institutions, regulated and supervised by the appropriate government authorities;
- b. Insurance companies regulated and supervised by the appropriate government authorities;
- c. Corporations and entities acting as underwriters or traders in the negotiation of securities, acting on their own account (proprietary account) or third parties registered and regulated by a CVM recognized body;
- d. Pension funds regulated by the appropriate government authorities;
- e. Non-profit institutions as long as they are regulated by the appropriate government authorities
- f. Any entity whose purpose is the investment of funds in money and capital markets whose participants are exclusively individuals and legal entities residing and domiciled abroad, as long as that entity is registered and regulated by a CVM recognized body;
- g. Any entity whose purpose is the investment of funds in money and capital markets whose participants are exclusively individuals and legal entities residing and domiciled abroad as long as that entity's portfolio management is carried out at the discretion of a professional manager registered and regulated by a CVM recognized entity;
- h. Other funds or collective investment entities;
- i. Legal entities organized abroad;
- j. Individuals residing abroad.

Financial assets, securities and other financial transactions carried out by non-resident investors as a result of applications under Resolution no. 2689 must:

- Be registered and maintained in a deposit account under an institution or entity authorized to provide such services by the Central Bank of Brazil or by the CVM; or
- Be duly registered in the registration, settlement and custody systems recognized by the Central Bank of Brazil or authorized by the CVM within their relevant scopes.

The depository institutions and entities providing custody and registration services for non-resident investors, must provide customer information when it is requested by the Central Bank of Brazil or by the CVM.

2. Types of Accounts

The non-resident investor can operate through the following types of accounts:

Account Holder/Own Account—enables the investor to operate within the holder's account.

Account Holder/Omnibus (Collective) Account—authorizes the holder to operate both in its own name and on behalf of other non-resident investors duly admitted as participants in the omnibus account, known as "passengers".

Participant (Passenger)/Omnibus Account—granted to the client of the omnibus account holder previously described.

The registration of an omnibus account participant allows:

- The account holder to have the opportunity to earn income by charging passengers on the account for services rendered.

- The holder of the omnibus account to register with the CVM to operate its own funds in one or more accounts.

3. Opening the Account

3.1. Choosing a Representative

Prior to trading at BM&FBOVESPA, a non-resident investor intending to open a 2689 omnibus account must appoint a legal representative, a fiscal representative and a custodian in Brazil. Several financial institutions are authorized by the Brazilian Securities and Exchange Commission (CVM) and the Central Bank of Brazil (BCB—*Banco Central do Brasil*) to perform the custodian activities, and those same institutions can also act as an investor's legal and fiscal representative. The custodian will sign a contract with the Investor and will ask him/her to provide all the detailed information stipulated by the Brazilian regulatory requirements of "Know your Customer".

The representative does not necessarily cover Brazilian tax legislation requirements; although in practice the representative may also perform these duties.

3.1.2. Representative Duties

A representative of an omnibus account shall perform the following functions as mandated under Brazilian Law:

- Provide the CVM with the Electronic Declaratory Registration (RDE) number in the Central Bank of Brazil;
- Forward a copy of the Non-Resident Investor Identification Form duly filled out and signed by the non-resident investor as well as a copy of the Representation Contract within 15 days after requesting the registration;
- Maintain records under its safeguard and whenever requested provide the CVM with the Securities Custody Contract entered into by the non-resident investor and the institution authorized by CVM to provide such service;
- Fill out the Non-Resident Investor Identification Form for each participant in the omnibus account and make such registrations with the CVM.

3.2. Registration with the CVM

A local representative will start the registration process with the CVM, but this cannot start until the non-resident investor signs a representation agreement with a local representative. By signing the representation agreement, the non-resident investor gives the local representative the authority to apply electronically with the CVM. The Non-Resident Representative Identification Form and the Custodian Identification Form will be submitted to CVM's *Gerência de Investidores Estrangeiros* (Annex to Resolution 2689), by e-mail at gje@cvm.gov.br or by fax (21) 3233-8370.

The CVM will respond to the registration request within 24 hours of the submission of the application.

3.3. Application for the investor's operational classification code

It is also the Custodian's responsibility to apply to CVM for the investor's Operational Code. CVM will provide the Code within 24 hours, and simultaneously request that the Brazilian Internal Revenue Services, *Secretaria da Receita Federal* (SRF), provide the investor with a Legal Entity Federal Taxpayer Registry number (CNPJ).

4. Accounts

The registration number assigned by the CVM must appear in all transactions carried out in the name of each investor participating in an omnibus account and in all transactions carried out by the holder of an own account thus allowing for:

- The identification of the final investors in all the transactions which are carried out; and
- The segregation between the holder's and each participant's orders.

5. Contracting and Registration with Custodian

Non-resident investors intending to operate as account holders must sign, directly or through their representative, a contract for provision of securities custody services with an institution authorized by the CVM. Omnibus account participants (passengers) may adhere to the custody contract of the omnibus account holder.

The following forms should be filled out by the account holders and their representatives:

1. Custody Contract
2. Custody Contract Adhesion Instrument

6. Registration at the Central Bank of Brazil

Under the terms of Resolution 2689, funds brought into Brazil are subject to registration at the Central Bank of Brazil in electronic declaratory form. The initial Electronic Declaratory Registration and subsequent updates are an obligatory requisite for movement across the foreign exchanges and must be obtained before such movements can take place. The representative is responsible for the registration of such operations.

Whenever they are requested to do so, the holder of an own account or an omnibus account, its representative, depository institutions or entities rendering registration services must provide the Central Bank of Brazil's Department of Registration and Supervision of Foreign Capital (FIRCE) with documents detailing, by participant, the transactions carried out, the asset portfolio, custody transactions or any other additional information that FIRCE may request.

7. Add Omnibus Passengers

A holder of an omnibus account can add passengers to the account by providing the legal representative basic information about the passenger. The basic information will include name, address, qualification and tax status. This information is included in the registration form that the representative will forward to the CVM for approval. Under the United States and Brazilian Laws, the KYC and AML functions can be performed by the omnibus holder.

Within 24 hours of the receipt of the passenger registration form, CVM will issue the trading code and passenger tax ID number (CNPJ) to the representative. Accounts are then open and the passenger is able to trade immediately by working with a local broker or bank.