

ECONOMIC IMPACTS OF REGULATORY DECISIONS ON REIT DIVIDEND DISTRIBUTION: THE CASE OF MAXI RENDA TRUST

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ABSTRACT

Real estate investment trusts (REITs) have recently gained prominence in the capital market. From an accounting point of view, the Maxi Renda Trust (MXRF11) has been the subject of recent discussions and contradictory decisions within the scope of the Brazilian Securities and Exchange Commission (CVM) regarding the calculation basis for the dividend distribution. In this context, we sought to investigate the economic impacts of fair value measurement under the framework of CVM's decisions in the Maxi Renda Trust and to verify how the theory of regulation can explain regulatory body decisions. The trust income for the period from 2015 to 2021 was restated based on the cash basis, used by the trust, and the accrual method, determined by the CVM, in order to identify differences in the amount of income that would be distributed with the change in the methodology issued by the regulatory agency. Also, an analysis of CVM's decisions and the trust's administrator's arguments was also conducted, to identify elements that could be correlated with the regulatory body's performance under the aspects of the theory of regulation. As a result, it was demonstrated that there is an economic impact on the minimum income calculated to be distributed by the trust between the two methodologies (cash and accrual), with smaller amounts for distribution considering the accrual basis, which exclude revenues and expenses that do not transit through cash, as is the case of fair value measurement. CVM's decisions may have resonance in the public interest theory so that the regulatory body's performance was aimed at protecting the investor, even though it may have suffered pressures exerted by interest groups or even captured by the regulated parties since it changed the initial understanding of the case. Besides the theoretical contribution, with the possibility of expanding studies on the applicability of accounting standards related to the measurement of fair value in investment trusts and their economic impacts, the study applied to the Maxi Renda Trust provides a better understanding of the topic to subsidize investors regarding decision making on investments in this type of trust.

Keywords: Fair Value. Real Estate Investment Trust. Regulation. Dividends.

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1 INTRODUCTION

Real estate investment trusts (REITs) have seen an exponential increase in investors in recent years. Data from Brasil, Bolsa, Balcão (B3) show the mark of 2.062 million shareholders in January 2023, a growth of 33.4% compared to December 2021 (Lima, 2023). Furthermore, according to Nogueira Jr. (2008) and Nakama (2021), the dividend distribution motivates investors, including those less bold, who seek alternatives to invest their resources in more attractive options in times of low inflation and reduced interest rates.

According to Lima (2023), REITs registered with the Brazilian Securities and Exchange Commission (CVM) grew from 697 trusts in 2021 to 805 in 2022, an increase of 15.5%. Regarding the trusts listed in B3, there were 402 REITs in 2021, compared to 467 in 2022. The net equity of REITs listed on the stock exchange totaled BRL 201 billion in 2022 (Lima, 2023). The expansion is justified by many investors' greater convenience and familiarity with the real estate market, which they consider more uncomplicated to operate than a company. The current regulations also explain the ordinary investor's interest in REITs, mainly due to the tax exemption on dividends distributed to shareholders, present in most cases and the fact that anyone can become a real estate investor (Oliveira & Milani, 2020; Almeida et al., 2021).

However, in terms of market value, from the end of 2019, the REITs have devalued, with a cumulative decrease of 13% in the Real Estate Investment Index (IFIX) (Kastner, 2022), given the increase in Brazilian inflation and Selic, aggravated by the economic crisis resulting from the COVID-19 pandemic, which caused the emptying of physical real estate spaces used by *shopping malls*, corporate, logistics sectors, among others, due to the rules of social distancing and limitation of the movement of people (Diniz, 2021; Martin, 2021).

According to Martins and Galdi (2022), the regulation of REITs requires that they be measured at their fair value so that the value of the equity share is more representative of their real market value. Fair value measurement generates an economic effect recognized in the financial statements, but not a related financial effect at the same time. This causes a mismatch between the date of recognition of gains and losses and their effective realization in cash. Thus, when real estate investment trusts are devalued, an economic loss is recognized in the accounts, compared to fair value measurement. However, as these trusts have inflows from rental or other income that generate cash, there is a dividend distribution based on these inflows, disregarding the accounting data. It may result in a dividend distribution above the accounting data and the trusts' accumulated profits.

As the role of accounting is to provide helpful information to its users, according to Technical Pronouncement CPC 00 (R2), which deals with the Conceptual Framework for Financial Reporting (Brazilian Accounting Pronouncements Committee [CPC], 2019), one can say that the valuation of real estate investment trusts at fair value presents relevant information, especially to investors, as it reflects the variations in risks of these trusts that impact their prices. In this context, the dividend distribution based on the cash basis could mislead investors in their risk assessments, especially when there is a reduction in the fair value of assets (Martins & Galdi, 2022).

The case of the Maxi Renda Real Estate Investment Trust (MXRF11), managed by XP Investimentos S.A. (XP) and managed by BTG Pactual Serviços Financeiros S.A. (BTG Pactual), shed light on the subject, having been the subject of a regulatory impasse within the scope of the CVM, which on December 21, 2021, in a decision of its collegiate, concluded that the amounts distributed above what was calculated as profit for the year and/or accumulated profit "could not be classified as income, but rather as amortization of the cost of capital invested by the shareholders" (Brazilian Securities and Exchange Commission [CVM], 2021, 2nd paragraph). This decision would impact the trust's net equity with its decapitalization. Still, CVM considered that the decision protected the capital invested by the shareholders.

However, after a request for reconsideration made by the Trust's administrators on May 17, 2022, in a new decision of the CVM collegiate, this understanding was reversed, and the trusts would no longer be obliged to amortize the amounts that exceeded the accounting profits based on accrual basis (CVM, 2022).

These contradictory CVM's decisions directly impact the dividend distribution and, according to their accounting treatment, on shareholders' net equity as well, and consequently, with reflections on the investment made by the shareholders. Moreover, contradictory decisions provide legal uncertainty and have different tax effects, depending on the treatment given to the dividend distribution and the possibility of generating a misperceived risk by decision-makers (Martins & Galdi, 2022).

In this context, CVM's work as a regulatory agent directly influences accounting practices and takes a new look at the applicability of standards and their economic and market impacts, negative externalities, and regulatory asymmetries, with possible systemic implications since, depending on the accounting treatment given to the dividend distribution, there will be a change in the trusts' income, which affects the dividend distribution and the perceived risk of investors (CVM, 2021).

This research seeks to answer the question: What are the economic impacts of fair value measurement of real estate investment trusts under the framework of CVM's decisions? Therefore, this work aims to evaluate the economic impacts of fair value measurement of REITs under the framework of CVM's recent decisions in the case of the Maxi Renda Trust and to verify how the theory of regulation can explain them.

The study is relevant for its theoretical contribution, with the possibility of expanding studies on the applicability of accounting standards related to fair value measurement in investment trusts and their economic impacts, in addition to investigating whether the theory of regulation can explain the decisions made by the regulatory body.

As a practical contribution, the study applied to the Maxi Renda Trust can bring valuable and relevant results to the decision-making on investments in this type of trust by presenting the analysis of the economic impact with the fair value measurement of the trust under the framework of CVM's decisions, in order to foster risk assessment and return to investors.

2 THEORETICAL BACKGROUND

2.1 Equity Valuation of REITs: Fair Value Measurement

Real estate investment trusts are those intended to invest resources in the real estate sector, which can be conducted through physical ventures (real estate) or investment in securities related to the real estate market, such as Real Estate Letter of Credit (LCI), Mortgage Letters (LH), Certificate of Real Estate Receivables (CRI) or shares of other REITs and similar (Takoi, 2022).

Real estate investment trusts are investment vehicles that offer opportunities for small and medium-sized investors to invest their financial resources in developing or purchasing large properties. Neto (2015) says that real estate investment trusts resemble publicly traded companies, as they have a corporate purpose, corporate structure, meetings, income distribution, and shares traded on the stock exchange. The REIT is like a stable long-term savings, which provides liquidity to a traditionally illiquid market such as real estate (Dias & Silva, 2021).

In Brazil, REITs are regulated by CVM Instruction No. 472/2008, which provides for the "constitution, administration, operation, public offer for share distribution and disclosure of trust information". They are subject to "accounting practices adopted in Brazil, applicable to REITs," which include CVM Instruction No. 516/2011, which provides for the "preparation and disclosure of the Financial Statements, governed by this instruction, and other accounting guidelines and standards issued by CVM, as applicable."

The REIT regulation in the country requires that their accounting be conducted based on the fair value measurement of the assets that make up the portfolio. According to Martins and Galdi (2022), financial assets are initially recognized at fair value, equivalent to the transaction price. Financial instruments not measured at fair value through income are adjusted by transaction costs. In contrast, financial assets classified as “for trading” are measured at fair value without deducting estimated transaction costs that would eventually be incurred upon their disposal. In the case of REITs, the authors add that investment properties must be recognized at cost and, after initial recognition, must be continuously measured at fair value (Martins & Galdi, 2022).

According to the definitions of CPC 46 (Fair Value Measurement), the fair value of a financial instrument on a given date is interpreted as the amount at which it could be bought and sold on that date by two well-informed parties in an unforced transaction under regular market conditions. Also according to the standard, the most objective and common reference for the fair value of a financial instrument is the price that would be paid by it in an active, transparent, and significant market (“quoted price” or “market price”) (CPC, 2012).

Technical Pronouncement CPC 46 also establishes that the objective of fair value measurement is “to estimate the price at which an unforced transaction to sell the asset or to transfer the liability would occur between market participants on the measurement date under current market conditions, namely an exit price on the measurement date from the point of view of a market participant that holds the asset or liability” (CPC, 2012, item 2).

For a better understanding of the properties held for investments in the REITs, Gelbcke et al. (2018) say that the investment property accounting standard allows the entity to give differential treatment to properties that support liabilities, which pay a return directly related to the fair value of the properties or to the returns of a set of specified assets that includes this property. This understanding can be applied to REITs with a portfolio of assets whose return to be paid to shareholders is directly related to the fair value of the properties and the return on assets (if including properties) generated by their operating lease.

To the extent that the shares of such trusts are continuously traded, “periodic determination of the value of their equity is required. Based on reliable information about the assets [held], the investor can regularly identify how much profit or loss was earned for trading shares or assessing the risks associated with the paper” (Martins & Galdi, 2022, 4th paragraph).

2.2 Dividend Distribution in REITs

Dividends are a portion of the entities’ net profit destined to investors (stockholders, shareholders, and others) as compensation. In the case of REITs, as a result of investments made by investment trusts, shareholders are legally entitled to receive part of this income proportionally to their shares. This means that the income of the REITs is the amounts paid to the shareholders for the return on their investments.

According to article 10, sole paragraph, of Law No. 8,668 of June 25, 1993, the Trust “shall distribute to its shareholders, at least, 95% of the profits earned, calculated according to the cash basis, based on a balance sheet or semi-annual balance sheet, ended on June 30 and December 31 of each year”. Also, it appears that the distribution of these earned profits, the surplus after paying the administrative and operating expenses of the Trusts, must be made quarterly or semiannually (Law No. 8,668, 1993).

The CVM/SIN/SNC/No. 01/2014 Circular Letter states that the trustee of the trust shall start from the accounting data and that when it “chooses to distribute the income monthly to the shareholders, it must observe that, at the end of the semester, at least 95% of the income earned, calculated based on a cash basis, are distributed”, to comply with the provisions of article 10, sole paragraph, of Law No. 8,668/93 (CVM, 2014).

According to Carvalho (2012), although several REITs distribute their income monthly, this type of investment cannot be considered fixed income. This is because there are the risks of

the venture, as well as the fact that the value of the trust shares varies. With the acquisition of the properties, the Trust obtains income from its rental, sale, or lease. If the REIT invests in securities, the income comes from the income distributed by these assets or the difference between their purchase and sale price.

The issue that sparked discussion and intervention by the CVM is how to distribute this income to the shareholders, whether on a cash basis, through the cash generated by the trusts, or, if on an accrual basis, through the accounting data impacted by economic and not immediately financial effects.

In an analysis of this mismatch between the distribution by cash and accrual basis, Tres and Victor (2016) concluded there are significant differences between the two distribution models and that the main components that led to the difference in the calculation basis, due to the change in the regime introduced by CVM/SIN/SNC/No. 01/2014, were interest income, fair value adjustments, and income on sale, all referring to the real estate assets of the trust.

The way of measuring the assets of the REITs and the consequent results of their variations may imply a mismatch between the moment of recognition of gains and losses, such as the results of variations in the fair value of the assets, with their effective realization in cash, which returns to the question as to the best metric for conducting the income distribution to the trust's shareholders.

Therefore, for Martins and Galdi (2022, 25th paragraph), "it is not the distribution of cash generated by the trust that causes issues, but the information that this distribution is fully formed by profit when, part of it, is the return of capital." They continue by stating that "this inaccurate information can lead to the incorrect decision by the investor and, [in this context], accounting fails to fulfill its most fundamental objective, which is to provide adequate information to its users regarding the economic reality [of the entities]."

2.3 Theory of Regulation

The information produced by accounting should help support users' decision-making, especially when allocating their resources. However, investors interested in an entity's economic and financial conditions may have different interests, as Almeida and França (2021) mentioned.

As there is a possibility of information asymmetry between those who prepare financial statements or internal and external users of the entity and that market forces alone are insufficient to control risk problems and adverse selection, there is a need for regulation in producing this information to protect investors (Almeida & França, 2021).

Hendriksen and Van Breda (1999) state that the classic argument for regulation is that the market is somehow flawed and cannot offer optimal information; thus, regulation is necessary to protect the "public interest." This understanding can be complemented by the view of Pohlmann and Alves (2004), who state that regulation in the accounting environment can be explained through an economic view to study the political process and what reasons or incentives would be behind this process. Using the seminal study by Stigler (1971), among the objectives of the theory of regulation, we seek to explain the "beneficiaries" and those "harmed" by regulation and their effects on the allocation of resources.

Thus, Almeida and França (2021) clarify that the accounting regulation theory would result from applying theories that study the regulation of economic activity and the preparation and disclosure of accounting information. In this context, the CVM is one of the competent bodies in the regulatory process and has, as one of its attributions, to protect the holders of securities and investors and ensure public access to information on the securities traded, as determined by Law No. 6,385 of December 7, 1976 (Law No. 6,385, 1976). Based on the above, it is possible to verify the application of the theory of regulation in decisions regarding the regulation of standards by the CVM.

According to Viscusi et al. (2005), the theory of regulation can be seen under three perspectives: public interest theory, capture theory, and economic theory of regulation or interest group theory.

2.3.1 Public Interest Theory

According to Almeida and França (2021), information asymmetry, which occurs when disclosing less than optimal information to users, can cause a disproportionate distribution of wealth among economic agents. Thus, from the aspect of the public interest, the theory of regulation, also known as the positive theory of regulation, would have the function of correcting this inefficient allocation of resources, maximizing social welfare, and ensuring the public interest, in which there is a prevalence of the latter over the interest of economic agents (Lima et al., 2014).

Almeida and França (2021) argue that the regulatory agent should not be subject to corruption or lobbying influence insofar as it shall act in favor of social welfare because, generally, its performance results from public demand. According to Araujo (2020), the social benefits generated by the standard must overcome its costs, with the feasibility and validity of the normative process, where the target must be society as a whole and not specific groups or entities. Based on this theory, Beaver (1998) advocates that, implicitly, the regulator's performance must be in accordance with the public interest and that it is well defined.

However, for Mitnick (1980, as cited in Almeida & França, 2021), some aspects cause the public interest theory to fail as a robust theoretical framework, such as, for example, the lack of clarity of what the public interest would be, the fact of disregarding the economic reality and ignoring that regulatory agents are composed of interest groups with their motivations.

Among the studies that used the theory of regulation, Araujo (2020) stands out, which sought to investigate which groups exerted influence in CVM public hearings. Consequently, it was obtained that the opinion most considered by the CVM in the promulgation of instructions was that of the auditors and standard setters, which suggests the lobbying of these agents, with possible prioritization of the interest of certain groups over the public interest.

2.3.2 Capture Theory

Beaver (1998) explains that, based on the capture theory, the main beneficiary of regulation is not society or the general public, but those regulated. Hendriksen and Van Breda (1999) argue that, after regulation, the groups that demanded it move away and leave only the regulator involved, who is "captured" by the very forces it intended to regulate. Thus, the regulator would now serve the interests of those regulated, as it would become passive and bureaucratic since it would be stabilized. It would act again only when corruption scandals and crises demanded its restructuring, as exposed by Lima et al. (2014).

Neto (2015) mentions that the capture theory suggests that most benefits of a regulatory policy are attributed to a small group, while, on the other hand, the costs are borne by a large group; in this context, society. Moreover, the author understands that capture is an almost inevitable phenomenon between the regulator and those regulated due to the high power that the regulated entities have, in which there is a kind of agreement with benefit for the entities and not for society.

On the other hand, the research by Torres (2007), which sought to investigate whether the CVM has promoted improvement in the market, concluded a relevant link between the normative work of this regulatory body and the capital market efficiency, in which the CVM has contributed positively over the last decades.

2.3.3 Interest Group Theory

Also known as economic theory of regulation or theory of competition, interest group theory considers the possibility of lobbying influence on regulation. For Almeida and França

(2021), regulators would be between the public interest theory's benevolence and the capture theory's selfishness because regulators are under pressure from different interest groups.

Almeida and França (2021) also explain that regulation is seen as a commodity governed by the laws of demand of interest groups and the supply of market forces, in line with Posner, 1974. In this case, the regulator meets the needs of groups with greater political power to convince. Watts and Zimmerman (1978) assume that individuals act to maximize their utility. Thus, accounting regulation (normalization) results from a political process in which individuals and groups compete for wealth transfer in their own interest. Thus, "regulation is made according to the interests of the groups that are most politically effective in convincing the regulator/standard setter to act for their benefit" (Santos & Santos, 2014, p. 126).

A study such as that by Carmo et al. (2014), which investigated the influence of interest groups (lobbying) in the international accounting standardization process of the *International Accounting Standards Board* (IASB), obtained results suggesting that only the opinions of accounting professionals, national standard setters, and scholars exerted influence on the decisions of the standard setter, in the specific case of the study, focused on Leasing.

Matos et al. (2018) also verified the influence of interest groups in public consultation processes on the development of auditing standards by the *International Auditing and Assurance Standards Board* (IAASB). They concluded that it is possible that the body has faced pressure from certain interest groups or has been captured by the regulated parties. This demonstrates the applicability of the interest group theory to the regulatory body.

3 RESEARCH METHODOLOGY

At first, the methodology used was simulation. Vicente (2005, p. 5) says that "the use of this methodology is employed as a way to reach a model, confirm it, or make a projection of future events." Subsequently, content analysis was conducted, a technique by Laurence Bardin that, according to Sousa and Santos (2020), aims to obtain, by systematic and objective procedures to describe the content of messages, indicators (quantitative or not) that allow the inference of knowledge of conditions of production/reception (inferred variables) of these messages. The Maxi Renda Real Estate Investment Trust (MXRF11) was used as a case study, in which the economic impacts resulting from the dividend distribution calculation methodologies were simulated, in addition to analyzing the documents of the process opened by the CVM.

3.1 Data collection

The accounting data of the Maxi Renda Trust (MXRF11) were obtained from the financial statements it disclosed, collected on XP's website, from 2015 to 2021.

To analyze the facts that may have influenced the divergent understanding of the CVM collegiate regarding the income distribution model in real estate investment trusts, the recent decisions and appeals that involved the case of the Maxi Renda Trust obtained on the CVM website were used, with the collection of the following documents: (i) Appeal against the SSE decision — Income distribution in a real estate investment trust — BTG Pactual Serviços Financeiros S.A. DTVM — PROC. SEI 19957.006102/2020-10; (ii) Collegiate Decision of 12/21/2021; (iii) Request for reconsideration of the decision of the Collegiate — Income distribution in real estate investment trust — BTG Pactual Serviços S.A. DTVM - PROC. SEI 19957.006102/2020-10; and (iv) Collegiate Decision of 05/17/2022.

3.2 Simulation

Initially, the appropriate and distributed income and the excess distribution of the accounting profit made by the Trust were calculated based on the accrual basis. In other words,

based on the net profit on an accrual basis, according to the CVM methodology, which also considers in the calculations the accumulated profit or loss of the previous year to obtain the calculation basis on which the 95% limit for minimum distribution was applied, as determined by Law No. 8,668/93.

Then, the simulation of the minimum income to be distributed was conducted based on the accrual basis and the percentage of appropriation made by the Trust relative to the adjusted accounting net profit (cash basis). In other words, it excludes revenues based on accrual not retained in cash and includes expenses based on accrual not retained in cash.

The identification of economic impacts was conducted by comparing the minimum income distributed by the Trust and calculating it based on cash and those that would be distributed based on accrual, according to the CVM's perspective. To assess whether the position of the CVM collegiate of December 21, 2021, caused any distortion in the market price of the shares, the value of the trust's share was obtained on the Investing website on the last day of each year subject to the study.

3.3 Content Analysis

From the reading of the materials collected on the CVM website, a summary of the main arguments and understandings of each party, Maxi Renda Trust and CVM, was prepared. It was analyzed under the aspect of the theory of regulation, based on the elements that may represent the action of the regulatory agent in favor of the public interest (public interest theory), in favor of regulated groups (capture theory), or in meeting the needs of any specific group (interest group theory).

To identify the elements of the theories that may be present in CVM's decisions, Table 1 presents the aspects that may mean the action of the regulatory agent in the public interest (for example, improvement of accounting information, reduction of information asymmetry, better risk perspective, investor protection, etc.), elements that may represent the capture of the regulator to design the regulation desired by those regulated (for example, meeting the specific interests of those regulated, among others), in addition to other aspects that may indicate the interference of other interest groups (for example, lobbying). These elements were listed based on the reading of previous studies (Araújo & Dias Filho, 2020; Cardoso et al., 2009; Carmo et al., 2016; Cortese & Irvine, 2010; Lima et al., 2014; Matos et al., 2018) that used the theories of regulation for developing studies, as well as those presented in the theoretical framework.

Table 1

Elements that may represent the influence of theories of regulation

Public interest	Regulator Capture	Interest groups
Improvement of accounting information and reduction of information asymmetry (Araújo & Dias Filho, 2020; Cardoso et al., 2009)	Meeting the interests of those regulated (Araújo & Dias Filho, 2020)	Lobbying (Araújo & Dias Filho, 2020; Carmo et al., 2016; Lima et al., 2014; Matos et al., 2018)
Better risk perspective and investor protection (Cortese & Irvine, 2010)	Benefits of regulation are attributed to a small group over the costs borne by a large group (Cardoso et al., 2009; Lima et al., 2014)	Meeting the needs of specific groups, with greater political power to convince and by the pressure exerted on the regulatory body (Araújo & Dias Filho, 2020; Cardoso et al., 2009; Carmo et al., 2016; Lima et al., 2014; Matos et al., 2018)
Public demand for correction or mitigation of market failures, such as natural monopolies and negative externalities (Lima et al., 2014)	Exchange of professionals between the industry and regulatory bodies and the relationship between these professionals, in addition to the appointment of members of the board	Opinions of accounting professionals, standard setters, and scholars influence decisions (Araújo & Dias Filho, 2020)

of directors of regulatory agencies by major players in the regulated sector (Lima et al., 2014)

Source: Prepared by the authors.

4 RESULTS ANALYSIS AND DISCUSSION

4.1 Simulation: Dividends on a Cash x Accrual Basis

Table 2 shows the calculations, based on the Financial Statements of the Maxi Renda Trust from 2015 to 2021, of the minimum income distribution (95%), based on the accounting net profit adjusted to the “cash” basis, with the purge of operations (revenues and expenses) that were not retained in the trust’s cash in the period, with emphasis on the fair value measurement adjustments of CRIs, REITs, and shares of private companies, whose entries were detailed, by the Trust, in the explanatory notes as of 2019.

Table 2

Calculation of the minimum income distribution based on adjusted accounting net profit — cash basis (In thousands of Reais)

Account / Year	2015	2016	2017	2018	2019	2020	2021
Net profit for the year	25,915	32,714	211	22,049	42,865	85,545	256,929
(-) Revenues based on accrual not retained in cash	(410)	(8,331)	-	-	-	-	-
(+) Expenses based on accrual not retained in cash	248	-	24,312	4,135	-	-	-
Fair value adjustment of certificate of real estate receivables	-	-	-	-	7,773	985	(30,895)
Reversal of provision on amounts receivable	-	-	-	-	(7,679)	-	-
Fair value adjustment of investments in REIT accounts	-	-	-	-	(5,239)	4,328	4,684
Fair value adjustment with shares of private companies	-	-	-	-	1,074	(4,618)	(44,059)
Distribution adjustment with certificate of real estate receivables	-	-	-	-	(2,275)	20,076	7,038
Other obligations	-	-	-	-	184	2,394	8,268
(=) Cash basis income	25,753	24,383	24,523	26,184	36,703	108,710	201,965
Retained earnings	-	-	-	-	(686)	561	125
(=) Adjusted net profit for Distribution Calculation Basis	25,753	24,383	24,523	26,184	36,017	109,271	202,090
Minimum income to be distributed (95%) — CASH BASIS	24,465	23,164	23,297	24,875	34,216	103,807	191,986
Appropriated and distributed income	25,849	24,101	24,620	26,130	36,017	109,271	202,090
% of appropriation relative to adjusted net profit	100.37%	98.84%	100.40%	99.79%	100.00%	100.00%	100.00%

Source: Research data.

It appears that the average percentage of appropriation relative to the adjusted net profit for the “cash” basis, in the period, to the Trust’s shareholders was 99.92%, exceeding the 95% estimated as the minimum for distribution, as shown in Table 2.

Table 3 below presents the calculations according to the CVM understanding, which considers profit as subject to the distribution of the sum of the accumulated profits or losses of the previous year and the profit or loss calculated in the year. In the event of a negative result, distributing income to the shareholders would not be possible, or this distribution would be considered a return on the invested capital.

Table 3

Calculation of the minimum income distribution from the CVM’s perspective — net profit basis for the accounting year (In thousands of Reais).

Account / Year	2015	2016	2017	2018	2019	2020	2021
(A) (Losses) /accumulated profits from the previous year	(16,459)	(16,393)	(7,780)	(32,189)	(36,270)	(30,108)	(53,273)
(B) Net profit for the year	25,915	32,714	211	22,049	42,865	85,545	256,929
(C = A + B) Profit subject to distribution (CVM understanding)	9,456	16,321	(7,569)	(10,140)	6,595	55,437	203,656
(D = C x 95%) Minimum distribution (95%) = Law No. 8.668/93	8,983	15,505	-	-	6,265	52,665	193,473
(E) Appropriated and distributed income	25,849	24,101	24,620	26,130	36,017	109,271	202,090
(F = E - C) Excess profit distribution for the accounting year	16,393	7,780	32,189	36,270	29,422	53,834	(1,566)

Source: Research data.

In this simulation, it is clear that the Trust presented an accumulated loss from previous years in the period studied, from 2015 to 2021, even though it presented net accounting profit in these years. As can be seen in the calculations, in this case, comparing the amounts of appropriated and distributed income (E) calculated based on the cash method relative to the profit subject to distribution in the CVM understanding (C), based on the accrual method, the Trust would have distributed income in excess relative to the profit for the accounting year (F), which would, in the CVM’s perspective, return to the shareholder part of its invested capital. This would have practical consequences, such as an impact on individuals (Tres & Victor, 2016) since the income distribution is exempt from income tax, while the return of capital is taxed (Ferreira et al., 2020). Also noteworthy is the risk of decapitalization of the trust, the possibility of questioning by shareholders and the market with the possible devaluation of the trust, and the change in the frequency of dividend distribution.

Table 4 shows the comparison of the minimum income values calculated based on the accounting net profit adjusted for the cash basis as a reference for the Trust to distribute to the shareholders and the net profit for the accounting year (accrual basis), in which it is clear that until 2020, the income distributed, if they were by accrual basis, would be in smaller amounts compared to those calculated based on the adjusted net profit for the cash basis.

Table 4

Comparison of minimum income values based on net profit: cash versus accrual (In thousands of Reais)

Cash x Accrual	2015	2016	2017	2018	2019	2020	2021
Minimum Income Cash Basis	24,465	23,164	23,297	24,875	34,216	103,807	191,986
Minimum Income Accrual Basis	8,983	15,505	-	-	6,265	52,665	193,473
Market value of the share (in BRL) on the last day of each year (Investing)	4.42	5.28	6.21	7.26	11.31	8.71	9.10

Source: Research data.

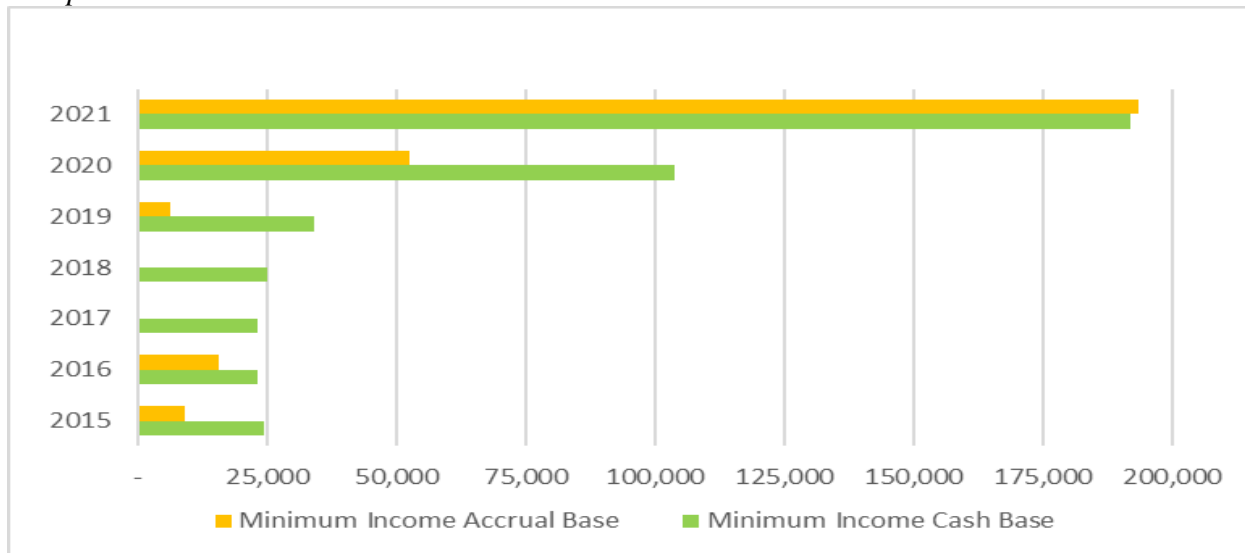
Figure 1 shows the mismatch between the two calculations, which enables the answer to the first question of this research regarding the economic impact on the distribution of the Trust’s income resulting from the adjustments or not in the Trust’s net profit for the accounting year,

mainly given the accounting entries related to fair value measurement, under the framework of recent CVM's decisions.

This result corroborates the findings of Tres and Victor (2016), who concluded that this mismatch between the cash and accrual basis distribution generates significant differences in the income distribution. One of the main components that causes such a mismatch is the adjustments related to fair value measurement.

Figure 1

Comparative: minimum income based on cash versus accrual

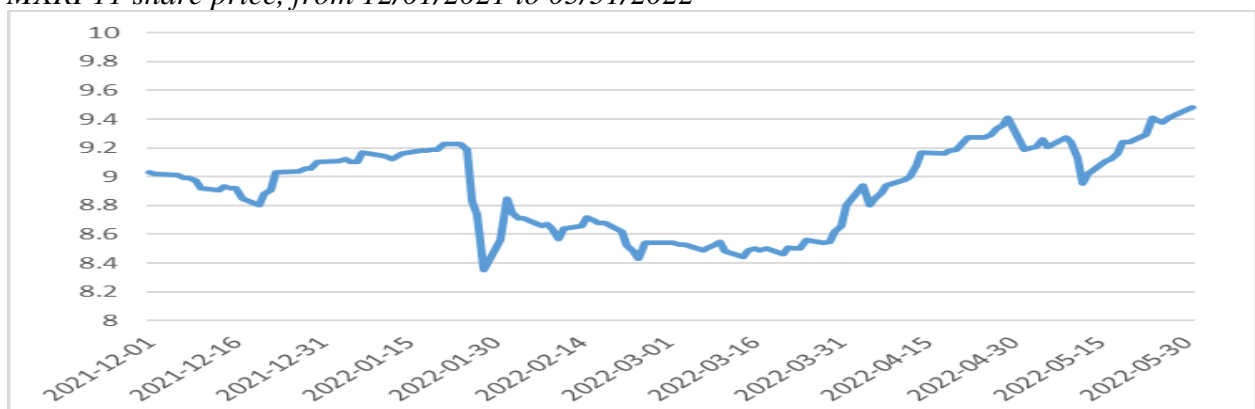


Source: Research data.

Figure 2 shows the evolution of the share price of the Maxi Renda Trust for the period between 12/01/2021 and 05/31/2022. One can observe that in the period when the CVM's decision occurred (12/21/2021), the share did not decrease but slightly increased until the end of January 2022, when it reached the maximum price of BRL 9.23 on 01/24/2022. From that date, there was a decrease in the share value, which reached BRL 8.35 on 01/28/2022, and then a new increase, maintaining its price until the end of March 2022 around BRL 8.50. Afterward, it started a new increase period and peaked on 05/31/2022, with BRL 9.48. Thus, the decreases are apparently unrelated to the CVM's decisions.

Figure 2

MXRF11 share price, from 12/01/2021 to 05/31/2022



Source: Research data.

4.2 Analysis of Appeals and Decisions under the light of the Theory of Regulation

With the support of the theoretical framework and previous studies that used the theory of regulation as a theoretical background, elements were raised that may indicate the intention or direction of the regulatory body in favor of the public interest or having been captured by those regulated to meet the regulation desired, or in addition, having suffered the interference of other interest groups, as previously defined in Table 1.

After analyzing CVM's decisions and BTG Pactual's appeals, some points associated with aspects of theories of regulation were identified. These points are shown in Table 5, which refers to the elements identified in BTG Pactual's statements, and Tables 6 and 7, which refer to the aspects raised in CVM's decisions.

Table 5
Elements identified in BTG Pactual's manifestations

Public interest	Improvement of accounting information and reduction of information asymmetry	The purpose of the accounting plan of an investment trust is to standardize the statements and provide information to shareholders about the equity held by the trusts [...]
Public interest	Investor protection	Adopting a cash regime for income distribution is a form of protection for the shareholder, aiming to guarantee them a fair income, not affected by future provisions/expenses that have not yet been retained in cash.
Public interest	Investor protection	Shareholders expect that the trusts that have generated Profit/Cash will distribute dividends, and any adverse negotiations may frustrate the expectations and the effective perceived value of the trust's shares.
Public interest	Investor protection	Accepting the SSE understanding would mean confronting the understanding previously expressed and corroborated by the Collegiate, which corresponds to the risk of being questioned by the shareholders by adopting a procedure that is not in line with the market.
Interest groups	Professional opinion	The request for reconsideration was submitted accompanied by an Accounting Technical Opinion prepared by an accounting professor and two other legal opinions.

Source: Research data.

In BTG Pactual's statements, elements were identified, for the most part, which may represent the intention of the trust to act in the public interest, with arguments that especially defend investor protection. This position is evident when BTG Pactual states that adopting the income distribution regime on a cash basis protects the shareholder. Any different treatment could frustrate expectations and the perceived value of the trust's share. It is also reported that the shareholders could question the trust by adopting a procedure that is not in line with the market.

Based on the elements of the public interest theory, it can be mentioned that BTG Pactual argues about the accounting purpose of an investment trust, the standardization of the statements, and the provision of information to shareholders about the equity of the trusts, in line with the improvement of accounting information and reduction of information asymmetry.

On the other hand, the request for reconsideration filed by the Trust regarding the CVM's decision of 12/21/2021, unfavorable to its claim, includes an accounting technical opinion prepared by an accounting professor, in addition to legal opinions, which may demonstrate some pressure exerted by the interest groups.

Table 6
Elements identified in CVM's Decision of 12/21/2021

Public interest	Investor protection	The trust has increasing accumulated losses despite recording net profit in the years due to the amount of distributed income exceeding the sum of net profit for the year with accumulated profits/losses, which decreases the net equity. Therefore, it is understood that the shareholders apply the distribution of capital, not income results. This impacts the investor's acquisition cost and affects the capital gain at the time of disposal.
Public interest	Improved risk perspective and investor protection	Generous distributions of income to shareholders have the power to mislead shareholders and new investors and significantly affect the valuation at market value of trust shares.

Source: Research data.

In CVM's decisions, both on 12/21/2021 and on 05/17/2022, which reformed the previous understanding, only elements that could be compared with actions in the public interest were identified to protect the investor and provide a better risk perspective.

Table 7
Elements identified in CVM's Decision of 05/17/2022

Public interest	Investor protection	The Collegiate unanimously decided to acknowledge the request for reconsideration. It recognized the existence of obscurity and contradiction to be addressed on the merits, with regard to the treatment that should be given to cash profit higher than accounting profit to have retroactive effects or not, such as republication of financial statements, correction of income reports to thousands of shareholders that would imply adjustments in their equity and income situations or other equally challenging measures. It also did not indicate how the treatment of the amount of profit per cash that would be amortized from the shares would be operationalized and whether it would be a matter of the trust's manager or meeting.
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Source: Research data.

It was evident in CVM's position of 05/17/2022, which reconsidered its initial decision, that the Collegiate understood that there was a lack of clarity and contradiction in the decision of 12/21/2021, especially regarding the operationalization and other practical consequences of the initial understanding, which would have relevant impacts on investment trusts, shareholders, and other stakeholders.

However, one should note that there was a change in the composition of the Collegiate that issued the first decision unanimously on 12/21/2021 compared to the Collegiate that issued the second decision on 05/17/2022, which may have influenced the reconsideration of BTG Pactual's request.

Thus, the second question of this research, which refers to how the theory of regulation can explain CVM's decisions, is that the regulatory body initially acted in the public interest, represented at this time by the shareholders. However, it may have suffered pressure from various interest groups or even been captured by those regulated. Nonetheless, based on the simulations performed, it should be emphasized that it is impossible to observe elements that could be directly associated with these aspects of the theory of regulation.

5 FINAL CONSIDERATIONS

Fair value measurement is one of the components of the Income Statement that has most corroborated the mismatch between accounting profit and the cash income of REITs, given the valuation and devaluation fluctuations that this type of investment has presented in recent years,

especially from the end of 2019, with the increase in inflation in Brazil and the Selic rate, in addition to the crisis caused by the COVID-19 pandemic.

In this context, in December 2021 and May 2022, CVM presented contradictory decisions involving the Maxi Renda Trust relative to the limit for the income distribution: based on accounting profit (accrual) or based on accounting profit adjusted for cash basis.

The results found in this study indicate an economic impact on the minimum values to be distributed to the shareholders, considering the two different methods as a result of the two understandings issued by the CVM's contradictory decisions. The findings show that if the minimum income is calculated based on the accrual basis, there would be periods when the income distribution to the shareholders would not even occur since the profit subject to distribution, according to the CVM, meaning the sum of the profit for the year and the accumulated profits of the previous period, presented a negative result.

The findings confirm previous research, such as Tres and Victor (2016), which indicated that the fair value measurement of REITs is one of the main components of the differences between the two methods (cash and accrual) and, according to Martins and Galdi (2022), it brings economic impacts on the income distribution, verified in the simulations in this study given the recent CVM's decisions related to the object of study, the Maxi Renda Trust.

However, no significant effects were identified between the price variations of the shares of the Maxi Renda Trust that could be associated with the impacts of the decisions of 12/21/2021 and 05/17/2022 of the regulatory body.

Regarding the possibility that the theory of regulation explains the change in understanding of the entity, elements that may indicate the action of the regulatory body in favor of the defense of public interests were identified, in this case, represented by the shareholders of the trusts. In the first decision, when it makes clear the intention to protect the investor and to provide a better risk perspective, as well as in the review of the understanding, which also has the intention of protecting the investor, however, in order to avoid the effects that the change would cause, such as the decapitalization of the trust and the impact on individuals, the largest investing public of the real estate investment trusts since the income distribution is exempt from income tax; however, the return of capital is taxed.

Also, the market could be interpreted in the sense of decapitalization of the trust combined with the possibility of questioning by shareholders and the market itself regarding the devaluation of the trust and the change in the frequency of dividend distribution, as mentioned by Martins and Galdi (2022).

One can see CVM's work in the case studied as a regulatory body in order to protect investors is in line with its legal attribution and with the results of previous research, such as that of Torres (2007), which concluded a relevant and positive link between the agency's performance and the efficiency of the capital market.

Still regarding the position reformed by the CVM, after the manifestation of the BTG Pactual, reinforced with legal and accounting opinions, the regulatory body recognized that the initial decision lacked clarity regarding the operational aspects and other practical consequences of such understanding, which may represent having acted under pressure exerted by the interest groups or having been captured by those regulated, especially the change in the Collegiate members between the first and second decisions issued.

The research sought to contribute to understanding the economic impacts of fair value measurement in real estate investment trusts since it demonstrated that the measurement methodology (cash or accrual basis) can affect the minimum income distributed by REITs. This can have important implications for investors in these trusts and the institutions regulating the sector.

This study is not free of limitations. One relates to the study of a single real estate investment trust, which was the subject of recent discussions and decisions by the CVM. The other

refers to the authors' inferences made based on the analysis of CVM's decisions on the case and BTG Pactual's manifestations regarding the possibility of the theory of regulation explaining the contradictory decisions of the regulatory body.

For future research, it is recommended that the work be expanded to a larger database of investment trusts and that income distribution behavior be evaluated in the two scenarios simulated in this research.

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AUTHOR CONTRIBUTIONS

Roles	1st author	2nd author	3rd author	4nd author
Conceptualization	◆	◆		
Data curation	◆	◆		
Formal analysis	◆	◆	◆	◆
Funding acquisition			◆	
Investigation	◆	◆		◆
Methodology	◆	◆	◆	
Project administration			◆	
Resources	◆	◆		

Software	◆	◆		
Supervision			◆	
Validation			◆	◆
Visualization	◆	◆		
Writing – original draft	◆	◆		
Writing – review & editing			◆	◆

CONFLICT OF INTEREST

The authors assert that there is no conflict of interest related to this submitted work.