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Overseas Primary Listing: U.S. Stock Markets as a Global Hub for IPOs?

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Between 2007 and 2021, several South American companies carried out IPOs outside their home countries, with the subsequent overseas primary listing of their shares on U.S. stock exchanges. The acceleration of this trend from January 2018 (with the IPO of PagSeguro Digital Ltd. on the New York Stock Exchange—NYSE) is not explained solely by the possibility of adopting dual-class shares structure for companies listed on U.S. stock exchanges. In this sense, factors such as: (1) biases and subjectivities in the decision-making process; (2) cultural proximity and history of successful precedents; (3) better valuation in comparison with local markets; and (4) access to global markets, sophisticated investors, and reputation; were found to be key explanatory elements for this wave of IPOs and overseas primary listings on U.S. stock exchanges, especially Nasdaq. This Article concludes that this trend, which Brazilian companies mainly carried, can be replicated or accelerated in other specific sets of countries if more advanced conditions are fulfilled in their private equity and venture capital industry. The U.S. markets provide an attractive level of know-how for its participants and scale, resulting in a better valuation of technology companies. This is particularly important for companies that cannot rely on thriving capital markets where they concentrate their operations.

INTRODUCTION

The strategy of listing a company's shares on a foreign stock exchange is commonly known as foreign listing, overseas listing, or cross-listing.[1] Technically, the term cross-listing is usually applied when a company trades its shares both on a host market and on a foreign exchange.[2] Cross-listing has been widely discussed in the specialized literature. For example, several studies are attempting to pinpoint the reasons why companies whose headquarters are in one of the BRICS countries (China, Russia, India, Brazil, and South Africa) seek to list their shares abroad as well.[3]

Nevertheless, the trend analyzed in this Article differs slightly. Since the IPO of PagSeguro Digital Ltd.—which took place in January 2018 on the New York Stock Exchange ("NYSE")[4]—a wave of IPOs and subsequent listing of companies with mostly Brazilian operations invaded the American capital markets.[5] Until that point, South American companies that carried out an overseas primary listing were mostly Argentinean and did not have much in common with each other, acting in the most varied sectors of the economy.[6] It is worth noting that, unlike the classic cross-listing scenario, these companies did not list their shares on the local stock exchange. Instead, they simply carried out their primary listing in the United States.

This Article refers to such behavior as *overseas primary listing*. Companies with local operations have decided to make an IPO and the primary listing of their shares in the United States, despite reasonably solid local capital markets and all the costs and regulatory risks involved in going public abroad.[7] This Article explores the reasons that led to the multiplication of this trend.

Business unfriendliness of Brazilian legislation, which until recently did not allow dual class shares, is regarded as one of the main reasons for primary listing in the U.S. Other theories also attempt to justify this sort of strategy. Among these, greater propensity to obtain an adequate valuation when going public in the U.S. (*e.g.*, due to access to more

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[1]*See* Sergei Sarkissian & Michael J. Schill, *Cross-Listing Waves*, 51 J. FIN & QUANTITATIVE ANALYSIS 259, 259 (2016).

[2]*Id.*

[3]*See* Dariusz Wójcik & Csaba Burger, *Listing BRICs: Stock Issuers from Brazil, Russia, India, and China in New York, London, and Luxembourg,* 86 ECON. GEOGRAPHY 275, 276 (2010).

[4]*See generally Brazil's PagSeguro Raises $2.7 bln in IPO*, REUTERS (Jan. 23, 2018, 7:44 PM), https:// www.reuters.com/article/pagseguro-dig-ipo-idUSL2N1PI2IG.

[5]*See infra* Table 03.

[6]*See infra* Table 01 and Table 03.

[7]This Article considers companies that are incorporated in other jurisdictions but whose main business is in Brazil, as in the cases of Stone Co. and Xp Inc.

sophisticated investors) or the simple existence of increasingly successful precedents. This Article investigates the comparison with other similar operations of South American companies in relation to the movement of Brazilian companies from the IPO of Pagseguro onwards. Based on this reflection, probable future scenarios are outlined and considered, both for Brazilian companies and for companies from other countries with a similar profile concerning the option of making an overseas primary listing in the U.S.

Part I of this Article reviews the international literature on foreign listings and overseas IPOs. This Section assesses the reasons that usually motivate cross-listings or overseas IPOs, to build a baseline for the analysis of the subsequent items; this Article specifically will investigate the motivation for the trend of primary listings of Brazilian companies in the U.S.

Part II analyzes the profiles of South American companies that made IPOs and listed their shares abroad between 2007 and 2021 to verify the differences in patterns of Brazilian companies' operations from typical companies from the rest of South America that opt for the same type of strategy. To this end, data from companies' IPOs from all South American countries on American stock exchanges during such period were collected to evaluate factors such as the international footprint, economic sectors, and selected stock exchange to list on, in addition to the use or not of dual class shares.

Part III explains the trend of companies from South American countries that went public in the U.S. between 2007 and 2021 through an analysis of statements from company officers. The goal is to verify whether there were public motivations for the IPOs made during the examined period. This Article will draw a parallel between companies from other South American countries and Brazil in particular.

Part IV analyzes the weight of possibly adopting dual-class shares' corporate structures in the decision-making process of South American companies and Brazilian companies to make an IPO and list abroad.

Finally, Part V concludes by discussing whether the wave of overseas primary listing will tend to strengthen in the future for Brazilian companies and companies from other South American countries. The conclusion also attempts to determine whether this trend will continue with a focus on technology-related sectors.

I. WHY DO COMPANIES LIST ABROAD?

Literature usually references holding an IPO and listing a company's shares abroad for several reasons. A 2002 study sums up the possible reasons for listing abroad: (1) raising capital for investment; (2) sale of shares by current partners; (3) expansion of the shareholder base; (4) expertise of the analyst and investor base abroad; (5) commitment to disclosure and high governance standards; (6) liquidity; (7) relative mispricing in the local market; (8) capitalization of reputation in a relevant market for the issuer; (9) strengthening of the company's productive market; and (10) listing costs being relatively low when compared to the benefits.[8] The same study concluded that, in general, the decision to list shares in the U.S. seems to be motivated by the need for equity infusion by fast-growing companies with an international scope or that belong to the high-tech industry.[9]

The idea that accessing capital markets in the U.S. may be motivated by obtaining resources from relevant investors on the global stage intuitively seems sensible. Endorsing this perspective, a study on primary listings of Israeli companies in New York noted the prevalence of high-tech and export-oriented companies.[10] The same study also found that the U.S. capital markets would be better for valuing firms with few tangible assets.[11] This study drew this conclusion from the two following observations: (1) Israeli firms that opted for a primary listing in New York were mainly from the technology sector; and, (2) post-IPO returns were significantly higher in New York than in Tel-Aviv.[12]

Particularly regarding valuation, firms often cross-list their stocks in larger and more developed markets, with better information flow and liquidity, seeking to improve the pricing efficiency of their securities.[13] Moreover, the specialized analysts' coverage of high-tech companies is most likely more far-reaching in New York than in São Paulo, just as previous research indicated that this phenomenon occurred in relation to New York *versus* European stock exchanges.[14] Although these justifications supported listing shares abroad simultaneously with a local and less developed market, they would be a fair tentative hypothesis that would justify the strategy adopted by Brazilian companies to list primarily in the U.S. market.

Another frequent explanation for the strategy of listing abroad is the possible relationship between this type of decision and the educational

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[8]Marco Pagano et al., *The Geography of Equity Listing: Why Do Companies List Abroad?,* 57 J. FIN. 2651, 2661 (2002).
[9]*Id*. at 2652.
[10]Asher Blass & Yishay Yafeh, *Vagabond Shoes Longing to Stray: Why Foreign Firms List in the United States,* 25 J. BANKING & FIN. 555 (2001).
[11]*Id.*
[12]*See id.* at 557.
[13]*See* Stephen R. Foerster & George Andrew Karolyi, *The Effects of Market Segmentation and Investor Recognition on Asset Prices: Evidence from Foreign Stocks Listing in the United States,* 54 J. FIN. 981, 981 (1999).
[14]*See* Pagano et al., *supra* note 8, at 2669.

background of the companies' CEOs.[15] In other words, a subjective cultural factor may influence the decision of the company to list its shares in the U.S.

An additional reason for primarily listing on a foreign stock exchange could be the ability to go public while keeping control in the hands of the founding partners. This becomes achievable by adopting a dual class share structure with super-voting rights for a certain class of shares, which the U.S. regulations and the applicable rules of the American stock exchanges allow. Until recently, Brazilian corporate law prohibited the granting of super-voting rights for a given class of shares.[16] Thus, regulatory competition existed between the U.S. and Brazil on the friendliness towards dual class shares schemes, with the U.S. rules being clearly more flexible and generally viewed as business-friendly.[17]

This kind of competition between allowing *versus* prohibiting dual class shares with super-voting rights already occurred internally in the main American exchanges in the 1980s. At that point, NYSE did not allow this kind of corporate structure, while Nasdaq did not prohibit the listing of shares of companies with multiple classes of shares and different political rights between them.[18]

Although NYSE has historically been seen as more committed to the interests of shareholders in general, the directors of publicly listed companies have opted out.[19] These directors have instead listed companies increasingly on Nasdaq to protect themselves against hostile takeover attempts that were common at the time.[20]

Today, this dispute is no longer between NYSE and Nasdaq at the national level, but instead between different jurisdictions.[21] Technology companies typically value the dual class share structure.[22] The need to maintain control power with founding or strategic partners may be fundamental for technology companies to thrive in their relevant market,

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[15]*See* Xiaoou Bai et al., *The Effects of a CEO's Educational Background on the Choice of IPO Location*, 14907 ACAD. MGMT. PROC. 105(2017).
[16]*See* Tozzini Freire Advogados, *infra* note 176.
[17]*See id*.
[18]*See* James D. Cox, *Rethinking U.S. Securities Laws in the Shadow of Int'l Regul. Competition*, 55 L. & CONTEMP. PROBS. 157, 162-63 (1992).
[19]*Id*. at 163.
[20]*Id*.
[21]*Id.* at 164 n. 26 (citing David Charny, *Competition among Jurisdictions in Formulating Corporate Law Rules: An American Perspective on the "Race to the Bottom" in the European Communities*, 32 HARV. INT'L L.J. 423 (1991)) (noting that the EC member states engaged in a race to the bottom on a range of corporate and securities issues).
[22]*See* Lerong Lu & Ningyao Ye, Promoting High-Tech Innovations through Capital Markets Law Reform: Deciphering the Sci-Tech Innovation Board of the Shanghai Stock Exchange, 35 J. INT'L BANKING & FIN. L. 140, 142 (2020).

maintaining control over the business even after a public offering.[23] Therefore, some argue the dual class share structure could protect innovation and visionaries by allowing founding partners to retain rights to run the company even after the entry of sophisticated or institutional investors.[24]

The sharp increase in the use of dual class shares by the controllers of listed technology companies that took place in the American capital markets after Google's (Alphabet) IPO in 2004 reinforces this view.[25] Since then, this has been a very common governance structure among companies in this sector listed on U.S. stock exchanges.[26] Furthermore, this structure could diminish the power of institutional or activist investors more concerned with short-term profits than with the long-term viability of the company.[27]

Studies found that some companies adopting dual class share structures perform better after an IPO.[28] They can retain corporate power in the hands of the same pre-IPO[29] management, unlike companies that have only one class of shares. But such a positive view is not unanimous among academics. For instance, some defend that dual class share firms tend to generate lower post-IPO prices.[30]

II. WHICH COMPANIES FROM SOUTH AMERICAN COUNTRIES MADE AN IPO AND PRIMARY LISTING OF THEIR SHARES IN THE U.S.?

United States stock exchanges are distinctly attractive for companies seeking a dual class share structure with super-voting rights for key shareholders, whether such shareholders are founders or not. As noted

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[23] *Id*.

[24] Joanna Xu, *Dual-Class Share Structure - A Viable Approach to Shareholder Value Creation*, 16 NYU J. L. & BUS. 801, 810 (2020). *See also* Lu & Ye, *supra* note 22.

[25] Lucian A. Bebchuk & Kobi Kastiel*, The Untenable Case for Perpetual Dual-Class Stock*, 103 VA. L. REV. 585, 594 (2017).

[26] *See id*. at 594-95.

[27] *See* Xu, *supra* note 24, at 810-11.

[28] *See generally* Thomas J. Chemmanur & Yawen Jiao, *Dual class IPOs: A theoretical analysis,* 36 J. BANK FINANC 305 (2012) (discussing when dual class IPO firms are likely to outperform single class IPO firms and concluding that generally happens when the reputation of the incumbent is high and the firm is operating in an industry where the difference in intrinsic values).

[29] *See generally* Ekkehart Boehmer et al., *The Effect of Share Structure and Consolidated Control on Firm Performance: The Case of Dual-Class IPOs, in* EMPIRICAL ISSUES IN RAISING EQUITY CAP. (M. Levis, ed., 1996).

[30] *See* Paul A. Gompers et al., *Extreme Governance: An Analysis of Dual-Class Firms in the United States*, 23 REV. FIN. STUD. 1051, 1062 (2010).

above, the literature and articles published in the press indicate that technology companies are more likely to have founding partners who want to retain control of the company even after the IPO.[31] The retention of control allows the founding partners to continue deciding the business's direction even after important institutional or strategic investors enter. In fact, some have dubbed this philosophy the *Ayn Rand Theory of Corporate Governance* because it dominates in Silicon Valley.[32]

But does this sort of company profile match the kind of South American company that goes for IPOs abroad and overseas primary listings? A comparison of South American countries (ex-Brazil) and Brazil seek to answer this question. Isolating Brazil from the other jointly considered South American countries is justified to the extent that, if we hypothetically take the South American region (except Brazil) as one, some similarities will stand out. Such a group of countries has, roughly speaking, a single same official language (Spanish) and a population similar in size to the Brazilian population.[33] Consider also that Brazil and the rest of South America display similarities in territorial area[34] and gross domestic product.[35]

A. Profile of companies from South American countries (Ex-Brazil) that made IPOs in the U.S. between 2007 and 2021

A select group of nine South American companies (excluding Brazil) between 2007 and 2021 have carried out IPOs and primary listings of their shares in the U.S.

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[31]*See, e.g.,* Lucian A. Bebchuk & Kobi Kastiel, *supra* note 25. *See also* Lerong Lu & Ningyao Ye, *supra* note 22.

[32]In the sense that the founders would have a super-human vision that deserves deference from mere mortals. *See* Jerry Davis, *The Simple Reason Tech CEOs Have So Much Power*, FAST CO. (Apr. 3, 2021), https://www.fastcompany.com/90620747/dual-class-voting-tech-ceo-power.

[33]Brazil has about 212 million inhabitants, while all the Spanish-speaking member countries of Mercosur (object of the group we call in this Article the "rest of South America") have about 201 million inhabitants. *See Population, Total*, THE WORLD BANK: DATA, https://data.worldbank.org/indicator/SP.POP.TOTL (last visited Jan 5, 2022).

[34]Brazil has 8,358,140.0 km² of land area, while the other South American countries have a combined land area of 8,655,752 km². *See Land Area (Sq. km)*, World Bank: Data, https://data.worldbank.org/ indicator/AG.LND.TOTL.K2?view=chart (last visited Jan 5, 2022).

[35]Brazil has a GDP of US$ 1,444,733,260, while the rest of South America has a combined GDP of US$ 1,822,719,260. *See GDP (Current US$)*, World Bank: Data, https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?name_desc=false (last visited Jan. 5, 2022). The data from other South American countries combined was collected on the same World Bank website.

Table 01 - South American companies (except Brazil) that made IPOs and primary listings abroad between 2007-2021:[36]

Company	Country	Main Operations in Issuer's country?	Operations in more than a country?	DCS?	IPO Date	Stock Exchange	Sector
Adecoagro S.A.	Argentina	Yes	Yes	Yes	01/28/11	NYSE	Agriculture
Arcos Dorados Holding Inc	Argentina	No	Yes	Yes	04/14/11	NYSE	Food
Tecnoglass Inc	Colombia	No	Yes	No	03/22/12	Nasdaq	Construction
Geopark Ltd.	Argentina	No	Yes	No	02/07/14	NYSE	Oil & Gas
Globant S.A.	Argentina	No	Yes	No	07/18/14	NYSE	Technology
Despegar.com, Corp	Argentina	No	Yes	No	09/20/17	NYSE	Technology
Corporación América Airports S.A.	Argentina	Yes	Yes	Yes	02/01/18	NYSE	Transportation
Bioceres Crop Solutions Corp.	Argentina	Yes	Yes	No	03/03/18	Nasdaq	Agriculture
Dlocal Limited	Uruguay	No	Yes	Yes	06/07/21	Nasdaq	Financial

Table 1 shows that the Argentinian companies account for approximately 80% of the group analyzed and about 70% of these companies have their main operations outside their country of origin. All of them—without exception—operate in more than one country. In fact, the diversity of the companies' location of operations helps explain the choice of going public outside their country of origin, given that the operational cost of being in more than one country[37] is in the nature of the company. Furthermore, no preference exists for the dual class share structure, considering that 55% of this group of companies do not have dual class shares.

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[36]The data reflect the authors' research. The source is publicly available information on the relevant companies' websites (*e.g.*, SEC Forms 20-F, Prospectuses).

[37]These costs include the regulatory cost of adhering to capital markets rules of the American stock exchanges.

Consider that the laws of Argentina,[38] Uruguay,[39] and Colombia[40] each allow some use of dual class shares to a greater or lesser extent, unlike the Brazilian legislation in force at the time of all the operations examined in this Article. This particularity helps to explain why the possibility of dual class shares has not been the main reason for going public outside the country of origin.

Colombian legislation, for example, does not allow the listing of shares of companies featuring two share classes with distinct voting rights.[41] However, Colombia's streamlined regulations allow the possibility of private funding by accessing up to ninety-nine investors.[42] Those regulations enable access to diversified institutional capital without bureaucratic procedures with the local regulator.[43] The legislation in

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[38]According to Article 216 of the Argentine Company Act, each common share is entitled to one vote, as a rule, but the companies' bylaws may create classes of shares that grant up to five votes per common share to their holders. *See FAQS*, BOLSAS Y MERCADOS ARGENTINOS, https://www.byma.com.ar/relacion-con-inversores/faqs/ (last visited Oct. 25, 2022). *See, e.g., Gobierno Corporativo [Corporate Governance],* TERNIUM, https://investors.ternium.com/Spanish/centro-de-inversores-ternium-argentina-bymatxar/gobierno-corporativo/default.aspx (last visited Aug. 26, 2021). Argentine corporate law does not permit new shares with plural voting rights to be issued after the company is authorized to make a public offering of its shares. *Id.* In addition, Argentina's main stock exchange does not accept the listing of shares with preferred or plural voting rights, regardless of whether they were issued before or after the IPO. *Id.* Despite this, a company may have common shares listed on BYMA and preferred shares unlisted, as in the case of Ternium Argentina S.A. *Id.*

[39]In Uruguay, Law 19,820 of 2019 created a new legal category called *Sociedad por Acciones Simplificada* (S.A.S), which aims to simplify Article 17 of Law 19,820, setting forth that the bylaws of companies may assign singular or plural voting rights for each class of shares and may also provide for the existence of non-voting shares. *See El Mercado Hoy [The Market Today]*, BOLSA DE VALORES MONTEVIDEO, https://www.bvm.com.uy/ (last visited Jan. 11, 2022). It is quite true that Law 16,060, which regulates corporations in general in the country, is still in force and does not allow the establishment of plural voting. *Id.* According to Article 37 of this law, any commercial company, except corporations, can become a S.A.S, provided its partners or shareholders decide to do so in an assembly or shareholders' meeting, with the quorum required by law and the bylaws. *Id.* In the relevant rules for issuers of the Montevideo Stock Exchange, we found no prohibition for S.A.S to be listed as issuers, but it was not possible to find issuers that were incorporated under Law 19,820. *Id.*

[40]Juan Camilo Franco, *La Sociedad por Acciones Simplificada en el Mercado Público de Valores [The Simplified Company in the Public Markets],* OCH GRP. (June 7, 2021), https://www.ochgroup.co/la-sociedad-por-acciones-simplificada-en-el-mercado-publico-de-valores/.

[41]*Id*.

[42]*Id*.

[43]Article 4 of Law 1,258 sets forth that shares issued by *Sociedad por Acciones Simplificada (S.A.S)* cannot be offered to the public or traded on a stock exchange. Despite this legal provision, the Colombian government has adopted measures to relax these rules.

Argentina permits dual-class structure with differentiated voting rights in closely held companies.[44] For public companies, the issuance of shares with privileged voting rights is not allowed after the company has been authorized to issue its shares publicly.[45] However, this does not prevent differentiated voting structures from being set up prior to the IPO, eventually ensuring that the control of the company is held even after the company goes public.[46]

B. Profile of the Brazilian companies that made IPOs in the U.S. between 2007 and 2021

Similar to the case of companies from other South American countries that have made IPOs and primary listings abroad, no clear profile of Brazilian companies that carried out IPOs and primary listings abroad between 2007 and 2017 exists.[47] This group is heterogeneous and small, consisting of only three companies: (1) Cosan S.A.; (2) Nexa Resources S.A.; and (3) Atento S.A. Although the latter was listed on NYSE's roster of Brazilian companies, it can be considered a European company, given its headquarters in Luxembourg, as well as the profile of its main shareholders and directors.[48]

In any case, only Cosan S.A. provides dual class shares with distinct voting rights between share classes, and all have operations in more than one country. The economic sectors in which these companies operate are diversified: (1) Cosan S.A. is in the energy sector; (2) Atento S.A. is in the

See Id. For example, Decree 817 (2020) now allows S.A.S to register the debt securities they issue in the national registry of securities and issuers. *Id.* Additionally, through Decree 1,235 (2020), the Colombian government established statutory and corporate governance conditions for S.A.S. to access public markets (still limited to debt securities). *Id.* Since 2009 it has been defined that S.A.S. can make private offerings of securities, understood as such those aimed at a maximum of ninety-nine determined persons or solely the shareholders of the company (when the number is less than five hundred). *Id.* This is a very flexible standard for making a private offering, which makes it possible to raise funds from a reasonably broad investor base without the need for any regulatory filing. *Id.*

[44] Law No. 19550 §216, Mar. 30, 1984, B.O. 25397 (Arg.), http://servicios.infoleg.gob.ar/infolegInternet /anexos/25000-29999/25553/texact.htm.

[45] *Id*.

[46] *See, e.g.,* Havanna Holding S.A, *Oferta Pública de hasta 4.270.558 de nuevas acciones ordinarias escriturales [Public Offering of up to 4,270,558 New Ordinary Shares]*, Boletín Diario de la Bolsa de Comercio de Buenos Aires, May 30, 2016, at 2 (Havanna Holding S.A. is an example of this type of case. Class A and Class B shares after the IPO had the same rights to receive dividends, but Class A shares had five votes per share, while Class B shares had one vote per share. Only Class B shares were offered to the public at the time).

[47] *See supra* Table 01 (for more information about the group of companies from other South American countries mentioned above).

[48] Atento S.A., *Annual Report (Form 20-F)* at 73-75, 81-82 (Mar. 22, 2021). https://www.sec.gov/Archives/edgar/data/1606457/000129281421001085/attoform20f_2020.htm (last visited Jan. 12, 2022).

communications sector; and finally (3) Nexa Resources S.A. is in the mining sector.[49] Also note that these companies went public on NYSE, and not on Nasdaq.[50] This may be because they did not have a viable tech profile for listing on the latter exchange.[51] Their respective activities were focused on more traditional sectors of the economy.[52]

By contrast, a sample of eleven Brazilian companies conducted IPOs and primary listings abroad between 2018 and 2021. All eleven companies have their principal place of business in Brazil: (1) ten have a dual class share structure with voting rights differentiated by class; and (2) six operate only locally in Brazil. Upon examination of the operational sector of the Brazilian companies that held IPOs abroad between 2018 and 2021, it is worth noting that all companies belong to only three sectors: financial, education, and technology, with some level of interaction between them.[53] In other words, the education and financial companies in this group also portrayed themselves as technology companies,[54] so they could be viable for Nasdaq.[55] As a result, they match the profile of Israeli companies going public on Nasdaq as shown by the research of Asher Blass and Yishay Yafeh. These scholars concluded that Israeli companies going public in New York were young and innovative, seeking proof of their qualities.[56] The differences between the two cycles covering Brazilian listings in the U.S. (2007/2017 vs. 2018/2021) can be well summarized by the tables below:

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[49]*See infra* Table 02.
[50]*Id*.
[51]*Id*.
[52]*Id*.
[53]*See infra* Table 03.
[54]*See, e.g.,* Renaissance Cap., *Brazilian Ed-Tech Company Arco Platform Sets Terms for $183 Million US IPO*, NASDAQ (Sep. 12, 2018, 4:39 AM), https://www.nasdaq.com/articles/brazilian-ed-tech-company-arco-platform-sets-terms-183-million-usipo-2018-09-12. *See also*, AFYA EDUCACIONAL, https://afya.com.br/sobre/abertura-de-capital (last visited Sept. 12, 2021); Renaissance Cap., *Brazilian Digital Education Spin-off Vasta Platform Files for a $100 Million US IPO,* NASDAQ (July 6, 2020, 8:51 AM), https://www.nasdaq.com/articles/brazilian-digital-education-spin-off-vasta-platform-files-for-a%24100-million-us-ipo-2020.
[55]In this sense, the CEO of Afya Educação, Mr. Virgílio Gibbon, pointed out in an interview that he chose Nasdaq because the company's value proposition is based on the trinomial education, health, and technology; as well, Nasdaq contained other companies with similar business dynamics. Karla Mamona, *Brazilian Afya, idealizada por Paulo Guedes, dispara em estreia na Nasdaq [Brazilian Afya]*, *Designed by Paulo Guedes, Makes Its Debut on Nasdaq],* EXAME INVEST (July 19, 2019, 4:17 PM), https://invest.exame.com/me/brasileira-afya-dispara-em-estreia-na-nasdaq.
[56]Blass & Yafeh, *supra* note 10, at 570.

Table 02 - Brazilian companies that made IPOs and primary listings abroad between 2007-2017:[57]

Company	Main Operations in Brazil?	Operations in more than a country?	DCS?	IPO Date	Stock Exchange	Sector
Cosan S.A.	Yes	Yes	Yes	08/16/07	NYSE	Energy
Atento S.A.	Yes	Yes	No	10/02/14	NYSE	Communications
Nexa Resources S.A.	Yes	Yes	No	10/27/17	NYSE	Mining

Table 03 - Brazilian companies that made IPOs and primary listing abroad between 2018-2021:[58]

Company	Main Operations in Brazil?	Operations in more than a country?	DCS?	IPO Date	Stock Exchange	Sector
PagSeguro Digital Ltd.	Yes	No	Yes	01/24/18	NYSE	Financial
Arco Plataform Limited	Yes	No	Yes	09/25/18	Nasdaq	Education
StoneCo Ltd	Yes	No	Yes	10/25/18	Nasdaq	Financial
Afya Limited	Yes	No	Yes	07/18/19	Nasdaq	Education
XP Inc	Yes	Yes	Yes	12/13/19	Nasdaq	Financial
Vasta Platform Limited	Yes	No	Yes	07/31/20	Nasdaq	Financial
Vitru Limited	Yes	No	No	09/22/20	Nasdaq	Education
Vinci Partners Investments Ltd	Yes	Yes	Yes	01/15/21	Nasdaq	Financial
Patria Investment Limited	Yes	Yes	Yes	01/21/21	Nasdaq	Financial
Zenvia Inc	Yes	Yes	Yes	07/22/21	Nasdaq	Technology
VTEX	Yes	Yes	Yes	07/21/21	NYSE	Technology

[57]The data reflect the authors' research. The source is publicly available information on the relevant companies' websites (*e.g.*, SEC Forms 20-F, Prospectuses).
[58]*Id*.

As seen above, the IPO of Pagseguro Digital Ltd. represents the beginning of a new wave of IPOs in the U.S. by Brazilian companies, given some of the main characteristics of this episode.

First, it was the first Brazilian company in the financial sector, with a clear technological bias, to go public and list its shares primarily on an American stock exchange.[59]

Second, after that IPO, most of the other Brazilian companies that would go on to make the same move had similar characteristics in terms of the industry in which they operated. They all belonged to the financial, education, or technology sectors, always with significant technology processes embedded in their business strategies. Bear in mind that the financial services, education, and information technology sectors have received many investments from Brazilian private equity and venture capital firms, together accounting for 52% of total investments in this industry in 2020, 41% in 2019, and 38% in 2018.[60]

Third, Pagseguro Ltd. had operations only in Brazil when the IPO took place in 2018, in addition to adopting a dual class share structure with super-voting rights for the controlling class.

In short, Pagseguro Ltd. faithfully represents the average profile of Brazilian companies that have participated in the new wave of IPOs and primary listings abroad since 2018.[61] The only unchecked box is having chosen to go public on NYSE and not on Nasdaq.

III. PUBLIC STATEMENTS ON PRIMARY LISTING ON AMERICAN EXCHANGES

This Section examines the causes for this primary listing on American exchanges by South American companies based on the public statements

[59] Tatiana Bautzer, *Brazil's PagSeguro Considers IPO in* New York: Sources, REUTERS (Dec. 4, 2017, 4:48 PM), https://www.reuters.com/article/us-pagseguro-ipo-idUSKBN1DY2PJ.

[60] The combined percentage value of this group of sectors (IT, financial services, and education), as recipients of venture capital and private equity fund investments, has been increasing more rapidly after 2018 but was already significant before. *See* KPMG & ABVCAP, CONSOLIDAÇÃO DE DADOS 2021: INDÚSTRIA DE PRIVATE EQUITY E VENTURE CAPITAL NO BRASIL [DATA CONSOLIDATION 2021: INDUSTRY OF PRIVATE EQUITY AND VENTURE CAPITAL IN BRAZIL] 21-23 (2021), https://www.abvcap.com.br/pesquisas/estudos.aspx. In 2017, for example, they represented 22% of total investments in the Brazilian venture capital and private equity industry; in 2016, 21%; and in 2015, 17%. *Id.* Overall, the Brazilian PE and venture capital industry has been reasonably robust (especially compared to neighboring countries), at least since 2011, when it recorded BRL 11.8 billion in realized investments. *Id.*

[61] *See supra* Table 03.

of the corresponding CEOs. Interviews, reports, and documents were collected for all twenty-three South American companies in our focus group by searching for the names of the CEOs of these companies in digital search engines and on Youtube. This Article analyzes materials from Brazilian, American, and other South American media outlets to find out what the main players of this wave of South American companies' IPO abroad had to say about their decisions.

A. What do officers of companies from South American countries (Ex-Brazil) say?

Between 2007 and 2021, nine companies from other South American countries went public and listed their shares primarily in the United States.[62] Two of these transactions took place in 2011, with Adecoagro S.A. and Arco Dorados Holdings, which went public in January and April, respectively.[63] Few public statements are available about Adecoagro S.A.'s IPO from its management. However, the CEO of the company, Mr. Mariano Bosch, stated at the time that he was pleased that the company would be able to continue to grow its activities and develop sustainable production projects in South America.[64] In addition, the CEO highlighted his satisfaction in "show[ing] the good conditions that South America offers in terms of personnel, technological development, and natural resources."[65]

In the case of the Argentina-based Arcos Dorados Holdings Inc., the IPO raised $1.25 billion.[66] The first interesting piece of information concerns the company's main shareholder and CEO at the time of the IPO, Mr. Woods Staton. Although he has no educational background in the United States, Mr. Staton has an American grandfather on his father's side,

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[62]*See supra* Tables 01, 02, and 03.
[63]Rodrigo Orihuela, *Soros-Backed Adecoagro Raises $314 Million in IPO*, BLOOMBERG (Jan. 28, 2011, 9:10 PM). https://www.bloomberg.com/news/articles/2011-01-28/soros-backed-farmland-venture-adecoagro-cuts-price-of-planned-new-york-ipo. *See also* Alina Selyukh, *McDonald's LatAm Franchisee IPO Raises $1.25 Billion*, REUTERS (Apr. 13, 2011, 8:33 PM), https://www.reuters.com/article/us-arcosdorados-ipo-idUSTRE73C84S 20110413.
[64]*Adecoagro is Listed in New York,* LA NACIÓN: CAMPO (Feb. 5, 2011), https://www.lana cion.com.ar/economia/campo/adecoagro-se-cotiza-en-nueva-york-nid1347134/.
[65]*Id*.
[66]Alina Selyukh, *McDonald's LatAm Franchisee IPO Raises $1.25 Billion*, REUTERS (Apr. 13, 2011, 5:33 PM), https://www.reuters.com/article/us-arcosdorados-ipo-idUSTRE73C8 4S20110413.

named Albert Staton.[67] As mentioned, literature suggests that educational background can influence the location of an IPO.[68]

It is reasonable to assume that Mr. Woods Staton has an above-average interest and knowledge about the United States compared to his Colombian compatriots. Some studies have already demonstrated, at least preliminarily, that the existence of pre-IPO shareholders from the IPO host country is beneficial for the results of the IPO itself and the development of activities in the IPO host country.[69] Furthermore, this type of shareholder can reduce the effects of the natural cross-border informational asymmetry in relation to the IPO host country.[70] This may facilitate the process of adapting to the applicable regulations in the post-IPO period. Despite these considerations, interviews were lacking with Mr. Staton or other members of the board of directors commenting on the reasons that led the company to opt for the IPO abroad.

In 2012 Tecnoglass Inc., a Colombian-based company, decided to go public in the United States.[71] Tecnoglass differs from most of the companies examined in this Article since, at the time of the IPO, it already counted the United States as one of its largest markets.[72] As its business evolved over the years, Tecnoglass chose to delist its shares from the Colombian stock exchange.[73] The COO of Tecnoglass, at the time of its decision, argued that the sales of Tecnoglass Inc. in the year 2019 reached the level of 85% of the company's total sales.[74] Thus, delisting from the Colombian stock exchange helped Tecnoglass Inc. to focus more efficiently on expanding operations in the United States, as well as save

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[67]Kerry A. Dolan, *Arcos Dorados IPO Creates First MacDonald's Billionaire*, FORBES (Apr. 28, 2011), https://www.forbes.com/sites/kerryadolan/2011/04/28/arcos-dorados-ipo-creates-first-mcdonalds-billionaire/.

[68]*See generally* Xiaoou Bai et al., *supra* note 15.

[69]Ning Jia, *Diversification of Pre-IPO Ownership and Foreign IPO Performance*, 48 REV. QUANTITATIVE FIN. & ACCT. 1031, 1058 (2017) (explaining her study presented evidence suggesting that the presence of pre-IPO shareholders from the host country is beneficial to foreign issuer's future IPO and corporate development activities in that country).

[70]*Id*.

[71]Tecnoglass Inc., U.S. SEC Form 10-K Annual Report at 1 (Apr. 16, 2014), https://investors.tecnoglass.com/financials/sec-filings/default.aspx (explaining the company was originally formed under the name "Andina Acquisition Corporation" for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, recapitalization, reorganization, or other similar business combination with one or more businesses or entities. On March 22, 2012, the company consummated its initial public offering, and on December 20, 2013, the company consummated its initial business combination, whereby our wholly owned subsidiary merged with and into Tecnoglass Holding).

[72]*Id*.

[73]*Tecnoglass Announces Intent to Delist Shares from the Colombia Stock Exchange*, NASDAQ (Nov. 20, 2019, 4:15 PM), https://www.nasdaq.com/press-release/tecnoglass-announces-intent-to-delist-sharesfrom-the-colombia-stock-exchange-2019-11.

[74]*Id*.

time and money on administrative requirements associated with complying with the rules of more than one stock exchange.[75] Public statements from the directors of Tecnoglass Inc. at the time of the IPO in New York, on March 22, 2012, were not found.

In 2014, Geopark Ltd. and Globant S.A. went public on NYSE.[76] Geopark Ltd. is a Latin American oil and gas exploration, operation, and consolidation company.[77] The company has assets in Argentina, Brazil, Chile, and Colombia.[78] According to a letter to its shareholders, the company considered listing its shares on NYSE to create a public market for its shares in the United States and thereby facilitate future access to the international securities markets for the company,[79] as well as to raise additional capital and increase flexibility.[80]

Globant S.A. is a technology company based in Argentina with operations throughout the world, with a focus on Latin America.[81] In an interview, the CEO and one of the founders of the company, Mr. Martín Migoya, said that the operation was "a very important step for Argentina and the region."[82] The CEO highlighted the role of the "Endeavor" organization in the development of the company.[83] It is interesting to draw

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[75] *Id*.

[76] GEOPARK LTD., *NYSE Initial Public Offering and Cancellation of admission to trading on AIM* (07 Feb. 2014), https://www.cmfchile.cl/documentos/hes/hes_2014020014137.pdf. *See also* Shane Romig, *Argentina's Globant Shares Jump After NYSE IPO*, THE WALL ST. J. (July 18, 2014, 5:06 PM), https://www.wsj.com/articles/argentinas-globant-shares-jump-after-nyse-ipo-1405717580.

[77] GEOPARK LTD., *Corporate Overview*, https://ir.geo-park.com/overview/default.aspx.

[78] GEOPARK LTD., *Certified Reserves Evaluation Year-End 2021* (Jan. 31, 2022), https://ir.geo-park.com/financial-info/annual-reserves/default.aspx.

[79] *Geopark hopes to list on the New York Stock Exchange in the First Semester of 2014*, LA TERCERA (Oct. 22, 2013), https://www.latercera.com/pulso/geopark-espera-cotizar-en-la-bolsa-de-valores-de-nueva-york-durante-el-primer-semestre-de-2014//.

[80] *See* Letter to Shareholders, Geopark Ltd. (Jan. 24, 2014), https://www.investegate.co.uk/geopark-limited-0mdp-/rns/nyse-listing-and-aim-cancellation/201401211127461593Y/. ("The Company is pleased to announce that it has commenced an initial public offering in the United States of America ("US") in connection with its proposed listing on the New York Stock Exchange ("NYSE"). As previously announced on 10 September 2013 and 22 October 2013, GeoPark is seeking to list on NYSE in order to create a public market for its common shares ("Shares") in the United States and to facilitate future access by the Company to the international equity markets, as well as to obtain additional capital and financial flexibility."). *Id.*

[81] Globant S.A., *Overview*, https://investors.globant.com/overview.

[82] Clarissa Herrera, *Martín Migoya from Globant, After the IPO: "I lead a Team of Magicians"*, PULSO SOC. (July 21, 2014), https://pulsosocial.com/2014/07/21/martin-migoya-de-globant-luego-de-la-ipo-lidero-un-equipo-de-magos/.

[83] Forbes, *What Four Friends have Done to Transform a Small Firm into the Most Innovative Argentinean Company of the Last Decade?* UNIVERSIDAD DE PALERMO (May 25, 2014), https://www.palermo.edu/economicas/up-en-los-medios/nota_globant.html.

a parallel with the case of Zenvia, a Brazilian company that went public on Nasdaq in 2021 and has received support from Endeavor since 2020.[84] In the same interview, Mr. Migoya also informed that 97% of Globant's revenue comes from U.S. and Europe clients.[85]

It took roughly three years until the next South American (ex-Brazil) foreign IPO, conducted by Despegar.com, Corp. in 2017.[86] Despegar is a technology company that markets travel packages, airline tickets, hotel reservations, car rentals, cruises, bus tickets, tickets to parks and other attractions and activities, as well as vacation rentals and travel insurance.[87] Despegar is a company with solid Argentinean roots, but its largest operation is concentrated in Brazil.[88] The company made its debut on NYSE on 20 September 2017.[89] At the time, the CEO, Mr. Damián Scokin, stated that the company had so many growth opportunities in the markets where it was already operating that it did not see the need to expand.[90] On the decision to list the company's shares in the United States, he explained that the motivation for the decision to IPO abroad lay in the investor base the company was seeking, which consisted of sophisticated investment funds that would help develop the company's technological capabilities.[91] The CEO of the company at that time also pointed out that the timing was chosen given the increased appetite for Argentinean assets.[92]

A few months later, in early January 2018, Corporación America Airports S.A. also went public in the United States.[93] In an interview at Bloomberg headquarters in New York, the then CEO of the company, Mr. Martín Eurnekian, explained that although the IPO was not motivated by succession within a family company, it would be important to increase the

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[84]*About the Company*, ENDEAVOR, https://endeavor.org.br/empresa/zenvia/ (last visited Sep. 5, 2021).

[85]Forbes, *supra* note 83.

[86]*See supra* Table 01.

[87]DESPEGAR, *About Despegar*, https://investor.despegar.com/about-despegar/corporate-profile/default.aspx (last visited Sep. 5, 2021).

[88]*See, e.g., U.S. SEC Form 20-F* at 27, DESPEGAR.COM, CORP. (Apr. 30, 2021), https://d18rn0p25nwr6d.cloudfront.net/CIK-0001703141/7d3f8809-6b1a-47e4-a9b0-d51c1ab9020d.pdf (asserting Brazil is the most significant market of the company).

[89]Annabella Quiroga, *Despegar Raises More than US$ 300 Million in its NYSE Debut*, CLARÍN: ECONOMIA (Sep. 20, 2017, 14:07), https://www.clarin.com/economia/despegar-recaudo-us-300-millones-salida-bolsa-nueva-york_0_HyBpGzeoZ.html.

[90]*Id*.

[91]*Id.*

[92]*Id.*

[93]Rodrigo Campos, Luc Cohen, *Argentina Airport Operator's New York IPO fizzles*, REUTERS (Feb. 1, 2018, 18:32), https://www.reuters.com/article/us-corporacionamerica-ipo-idUSKBN1FL6F1.

standard of governance, investors, and compliance.[94] The CEO pointed out that Corporación America Airports S.A. is, in fact, a global company based in Latin America, with a presence in other regions, such as Europe.[95]

After the IPO of Corporación America Airports S.A., only two other South American companies (ex-Brazil) have chosen to go public abroad. The first of them was Bioceres Crop. Solutions Crop in 2018.[96] This is an agricultural production company based in Argentina, described by some as an "Ag Biotech."[97] Although the listing was initially on NYSE, Bioceres recently moved to Nasdaq. Bioceres' CFO, Mr. Enrique Lopez Lecube, stated that a global stock exchange such as Nasdaq is ideal for Bioceres, given that it hosts some of the most developed biotech and Ag Tech companies in the world.[98] Additionally, the idea that Nasdaq's ESG platform would be in line with Bioceres' policies in this regard was highlighted.[99] In an interview with Federico Tessore's channel, the CEO of the company, Mr. Federico Trucco, stated that since 2014 or 2015, the company's management started to consider the possibility of going public.[100] Mr. Trucco emphasized that the very fractionalized share capital, as well as the possibility of improving governance, and allowing free entry and exit of investors, were taken into account for the decision to enter the capital markets.[101] Mr. Trucco added that in 2014 when the administration noticed similar companies were able to get listed in the U.S.A. and were achieving good valuations, the possibility of going public began to be considered more seriously.[102]

The last non-Brazilian South American company to make an IPO and list its shares primarily in the United States was Dlocal Limited, an Uruguayan company in the financial sector, which listed its shares on

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[94]Tom Metcalf & Pablo Gonzales, *Corporación América Deals with Succession and Conflicts*, UOL (May 22, 2018, 3:24 PM), https://economia.uol.com.br/noticias/bloomberg/2018/05/22/corporacion-america-lida-com-sucessao-e-conflitos.htm.

[95]Bloomberg Markets & Finance, *Corp. America CEO Sees 'Room to Grow' in Emerging Markets*, YOUTUBE (Mar. 21, 2018), https://www.youtube.com/watch?v=t6kQenXzLk4.

[96]Louisa Burwood-Taylor, *Argentina's Top Agritech Startup Bioceres to List on NYSE Raising $100m+ in SPAC Listing* (Nov. 19, 2018), https://agfundernews.com/argentinas-top-agritech-startup-bioceres-to-list-on-nyse-raising-100m-in-reverse-ipo.

[97] *See*, *e.g.*, BIOCERES CROP SOLUTIONS, https://investors.biocerescrops.com/governance/board-of-directors/default.aspx, (last visited Feb. 27, 2023).

[98]*Bioceres Crop Solutions Announces Transfer to Nasdaq Stock Market*, BUS. WIRE (Apr. 14, 2021, 8:30 AM), https://www.businesswire.com/news/home/20210414005147/en/Bioceres-Crop-Solutions-Announces-Transfer-to-Nasdaq-Stock-Market.

[99]*Id*.

[100]Federico Tessore, *Interview with Federico Trucco - CEO Bioceres*, YOUTUBE (May 6, 2021), https://www.youtube.com/watch?v=co8mYoCo4vA.

[101]*Id*.

[102]*Id*. at 22:20.

Nasdaq in June 2021.[103] Mr. Rodrigo Sánchez Prandi, SVP of Product, pointed out that listing shares on Nasdaq "has more of a recognition and visibility side, it's starting to play in the major league, and it can bring us closer to the clients we want. On the other hand, we must meet goals and yield the most in the execution of the plans."[104]

From the statements above, one can infer that some of the companies had an already established link with the U.S.A. (*e.g.*, Tecnoglass and Globant, which have a large part of their sales to American clients or in American territory) or were seeking to establish this link (*e.g.*, DLocal Limited). It was also possible to identify companies seeking higher governance standards (*e.g.*, Corporación America Airports S.A or Bioceres Crop Solutions) to give greater support to their operations abroad. Results also show that access to the American stock market may be motivated by the search for Smart Money, as in the case of Despegar.com, which sought investors not only for capitalization but to assist in the technological development of the company. [105]

B. What do the officers of Brazilian companies say?

As demonstrated, PagSeguro Digital Ltd. marked the beginning of a second wave of Brazilian IPOs on American stock exchanges. To corroborate the importance of this event, fellow executives from other companies sent congratulations to the then-CEO of the company, Mr. Ricardo Dutra da Silva, commenting that it would be much easier for other Brazilian companies to "follow the same path."[106] Pagseguro's IPO demonstrates a clear change in the profile of companies beginning to carry out this type of operation. From then on, Brazilian companies carrying out public offerings and the primary listing of their shares abroad became increasingly linked to technology, along with dual class shares and mostly local operations. [107]

Therefore, considering the size and relevance of PagSeguro's IPO on NYSE, the current section commences with the analysis of executives' statements regarding this case. Then the examination will focus on

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[103]Sohini Podder, *Uruguay's DLocal Valued at Nearly $9 Bln in Nasdaq Debut*, REUTERS (June 3, 2021, 2:17 PM), https://www.reuters.com/technology/uruguays-dlocal-valued-nearly-45-bln-nasdaq-debut-2021-06-03/.

[104]*Historical: a Uruguayan Company is Valued in More than US$ 11,000 Million*, EL PAÍS: NEGOCIOS (June 19, 2021, 04:00), https://www.elpais.com.uy/negocios/noticias/historico-empresa-uruguaya-vale-us-millones.html.

[105]Annabella Quiroga, *supra* note 89.

[106]Sam Worley, *UVA Darden Alumnus Brings Big Changes to Brazilian Fintech - And One Really Big IPO to NYSE* (June 25, 2018), THE UNIV. OF VIRGINIA: THE DARDEN REPORT, https://news.darden.virginia.edu/2018/06/25/pagseguroricardo-dutra-da-silva/.

[107]*See e.g., supra* Table 03.

declarations from other officers of Brazilian companies that opted for primary listing in the U.S.A.

1. The very Beginning of the Second Wave: PagSeguro, Arco, and Stone (2018)

Possibly because PagSeguro Digital Ltd. currently lists its shares on Nasdaq,[108] official interviews with the company's management on the official NYSE channels were inaccessible. However, an interview with the company's CEO at the time, Mr. Ricardo Dutra, and *The Darden Report* began revealing some clues as to what went on behind the decision for the IPO and listing on NYSE. First, it demonstrates a closeness to the American business culture.[109] Mr. Dutra da Silva even states that his education at the Darden School of Business (University of Virginia) was crucial to his business success and the success of the IPO.[110] He added that his increased confidence from business school enabled him to take three hundred to four hundred meetings with investors and understand the big picture.[111] No further direct public statements from the management of PagSeguro Digital Ltd. concerning the IPO were accessed.[112] But a study by Ace Governance on plurality voting in Brazil categorically mentions that PagSeguro chose to list its shares on NYSE because of the possibility of access to U.S. investors specialized in technology and means of payment.[113]

After PagSeguro's IPO, two additional IPOs of Brazilian companies with primary listings on U.S. exchanges occurred in 2018.[114] One of Arco Platform Limited, an educational solutions company, and the other one of StoneCo Ltd, a competitor of PagSeguro Digital Ltd. in the payments processing industry.[115]

In an interview granted to *Valor Econômico* newspaper, the company's CEO, Mr. Ari de Sá Calvancante Neto, said that Arco

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[108]*See generally PagSeguro Digital Ltd. Class A Common Shares*, NASDAQ, https:// www.nasdaq.com /marketactivity/stocks/pags (last visited Aug. 28, 2021).
[109]Sam Worley, *supra* note 106.
[110]*Id*.
[111]*Id.*
[112]*Id.*
[113]B3 S.A. - BRASIL, BOLSA, BALCÃO. *Ace Governance Super Voting Rights Study*, https://www.b3.com.br/data/files/45/02/1F/3D/16ECF6107DF7ACF6AC094EA8/EXTRATO_DA_ANALISE_VOTO_PLURAL.pdf (last visited Aug. 27, 2021).
[114]*See* Carolina Mandl, *Brazil's Arco Platform Raises $220 mln in IPO*, REUTERS (Sep. 25, 2018), https://www.reuters.com/article/arco-platform-ipo-idLTAL2N1WB2B3?edition-redirect=in. *See also* Carolina Mandl, *Brazil's StoneCo IPO Raises $1.5 bln, Prices Above Range – source*, REUTERS (Oct. 24, 2018), https://www.reuters.com/article/stone-ipo-pricing-idUSL2N1X5015.
[115]*Id*.

Platform's IPO intended not only to raise funds, but also to bring in smart money.[116] The executive pointed out that investors in the technology markets, who are already part of this ecosystem, can contribute with their experience to the future of the company.[117] In another interview, granted in April 2018 to *Exame*, Ari de Sá Cavalcante Neto stressed that the goal of the funding was to raise capital to expand the range of courses offered and invest in technology.[118] He also publicly stated the IPO's original goal to take place in 2019, five years after the entry of the partner General Atlantic.[119] Mr. Neto underlined that the company had always targeted Nasdaq to be close to the most developed ecosystem in the world.[120]

Stone's successful IPO occurred in October of the same year, raising about $1.5 billion.[121] The demand from investors of the caliber of Warren Buffet and Jack Ma demonstrated the consistency of Stone's business model at the time.[122] Valor Capital Group, one of Stone's investors, mentioned that an important part of the rationale for the IPO on Nasdaq was the opportunity to arbitrage the disparities in valuation multiples seen in Brazil and the U.S.[123] Valor highlighted the opportunity to access a diverse set of long-term, high-profile investors, as well as confirming the company's success and a validation of Valor's cross border strategy.[124] Despite Valor Capital Group's statement, interviews and public statements from the company's main directors at the time could not be found.

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[116] *Brazilian Arco Educação Goes Public on the U.S. Stock Exchange and Shares are up 35%,* GAZETA DO POVO: ECON. (Sep. 27, 2018, 12:38), https://www.gazetadopovo.com.br/economia/brasileira-arcoeducacao-abrecapital-na-bolsa-dos-eua-e-acoes-tem-alta-de-35-ar8dn80ylbgrza8o5zc0g1b6n/.

[117] *Id*.

[118] Naiara Bertão, *Group from Ceará does "secret" IPO in New York*, EXAME INVEST (Sep. 26, 2018, 6:35 AM), https://exame.com/invest/mercados/grupo-cearense-faz-ipo-secreto-em-nova-york/.

[119] Ari de Sá, *Stay Under the Radar to Always Surprise*, ENDEAVOR, https://endeavor.org.br/historia-de-empreendedores/day1-ari-de-sa/ (last visited Aug. 18, 2021).

[120] *Id*.

[121] Carolina Mandl, *UPDATE 2-Brazil's StoneCo IPO Raises $1.5 Bln, Prices Above Range*, REUTERS (Oct. 24, 2018, 8:57 PM), https://www.reuters.com/article/stone-ipo-pricing/update-2-brazils-stoneco-ipo-raises-1-5-bln-prices-above-range-source-idUSL2N1X5015.

[122] Priscilla Arroyo & Valéria Bretas, *A Stone of $7 Billion*, ISTOÉ DINHEIRO (Oct. 26, 2018, 20:09), https://www.istoedinheiro.com.br/uma-pedra-de-us-7-bilhoes/.

[123] *StoneCo is Enabling the Digital Economy Through Payments*, VALOR CAPITAL GRP., https://valorcapitalgroup.com/case-studies/how-stoneco-became-a-major-player-in-the-brazilianacquiring-market/ (last visited Aug. 28, 2021).

[124] *Id*.

2. Consolidation of the Second Wave: Afya, XP Inc, Vasta, and Vitru (2019/2020)

In 2019, two additional Brazilian companies made their IPOs in the United States on Nasdaq: (1) Afya Educational; and (2) XP Inc.[125] Afya operates in the educational services sector, with a business model somewhat similar to Arco Platform, acting as an Ed-Tech.[126] Arco had accessed the U.S. public markets in the previous year.[127] XP Inc. is a prestigious new giant in the financial services sector in Brazil; its IPO attracted a lot of local media attention.[128]

In an interview Afya CEO, Mr. Virgílio Gibbon, stated that the company chose Nasdaq due to its value propositions' bases in the trinomial education, health, and technology sectors and because companies exist on this stock exchange with similar propositions.[129] The director pointed out that the company worked on creating a disruptive medical education connected to the present, and it focused on learning and all phases of the medical career.[130] Still, note that the asset manager, Crescera Capital, sold its stake in the company in 2021, ending its longstanding investment in Afya.[131]

Regarding XP Inc. ("XP Inc."), Mr. Guilherme Benchimol—the then-CEO and a founding member of the company—explicitly mentioned the restriction on super-voting stocks in Brazil as a justification for the IPO abroad and primary listing of shares on a stock exchange in the United States.[132] Mr. Benchimol noted that this legal restriction in Brazil

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[125]*See e.g.,* Paula Moura, *XP's Stocks up More Than 20% in Debut on the U.S. Stock Exchange Debut*, FOLHA DE S. PAULO (Dec. 11, 2019, 2:21 PM), https://www1.folha.uol.com.br/mercado/2019/12/acoes-da-xp-iniciam-negociacao-com-forte-altade-213.shtml. (as Folha de São Paulo is not a business newspaper, the news coverage and dedicated attention demonstrate the importance of XP's operation). *See also* Karla Mamona, *Brazilian Afya, Designed by Paulo Guedes, Shoots on Nasdaq's debut*, INVEST EXAME (July 19, 2019, 1:11 PM), https://invest.exame.com/me/brasileira-afya-dispara-em-estreia-na-nasdaq.

[126]*Id*.

[127]*See* Carolina Mandl, *supra* note 114.

[128]*See* Paula Moura, *supra* note 125.

[129]Karla Mamona, *Brazilian Afya, designed by Paulo Guedes, Shoots on Nasdaq's Debut*, INVEST EXAME (July 19, 2019, 1:11 PM), https://invest.exame.com/me/brasileira-afya-dispara-em-estreia-na-nasdaq.

[130]*Id*.

[131]*See Crescera Exits from Afya via Sale to Bertelsmann*, LAVCA VENTURE INVESTORS (June 7, 2021), https://lavca.org/2021/06/07/crescera-investimentos-completes-exit-from-afya-in-a-share-sale-tobertelsmann/.

[132]Isabel Filgueiras, *XP will Become a Full-Service bank with the Smaller Interest Rates of the Market, assures Benchimol*, VALOR INVESTE (Nov. 25, 2020, 20:27), https://valorinveste.Globo.com/produtos/servicosfinanceiros/noticia/2020/11/25/xp-vai-ser-um-banco-completo-com-a-menor-taxa-de-juros-do-mercadogarante-benchimol.ghtml.

effectively led XP Inc. to prefer the American capital markets.[133] In a very direct statement, Mr. Benchimol clarified if XP Inc. could conduct its IPO in Brazil.[134] However, in that case, if XP Inc. ever needed to issue new shares, the control could be lost.[135] As a result, the controlling shareholders decided to go public abroad.[136]

In 2020, Vasta Platform Limited and Vitru Limited went public on Nasdaq.[137] Vasta provides digital solutions for the K-12 educational segment.[138] Vasta's CEO, Mr. Mario Ghio Junior, gave an interview for *Nasdaq Trade Talks* when the company went public, but the subject of the IPO was not addressed.[139] Despite the little information about the reasons that led Vasta's partners and directors to opt for an IPO abroad, the case is curious for another reason. In October 2020, it became public in Brazil the news that lawyers were accusing Vasta of having omitted information that would have misled American investors.[140] This further proves that, as in the cases of Petrobras[141] and Netshoes,[142] Brazilian companies must be prepared to deal with the regulatory compliance risk of the foreign jurisdiction in which their shares were publicly offered and currently listed on the stock exchange, which is never simple.

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[133] *Id*.

[134] Guilherme Guilherme, *XP Stock Soars on IPO Day and Benchimol does not Rule out Double Listing*, EXAME INVEST (Dec. 11, 2019, 19:37), https://invest.exame.com/me/acao-da-xp-dispara-em-dia-de-ipo-e-benchimol-nao-descarta-dupla-listagem.

[135] *Id*.

[136] *Id*.

[137] Renaissance Capital, *Brazilian Digital Education spin-off Vasta Platform Prices IPO at $19, above the range*, NASDAQ (July 31, 2020), https://www.nasdaq.com/articles/brazilian-digital-education-spin-off-vasta-platform-prices-ipo-at-$19-above-the-range-2020. *See also* Renaisssance Capital, *Brazilian Digital Education Provider Vitru Prices U.S. IPO at $16, the low end of the Downwardly Revised Range*, NASDAQ (Sep. 18, 2020), https://www.nasdaq.com/articles/brazilian-digital-education-provider-vitru-prices-us-ipo-at-$16-the-low-end-of-the.

[138] VASTA PLATFORM LTD., *About Vasta*, https://www.vastaedu.com.br/about-vasta (last visited Feb. 27, 2023).

[139] Vasta Platform Limited Rings the Nasdaq Stock Market Opening Bell in Celebration of its IPO, NASDAQ (July 31, 2020), https://www.nasdaq.com/videos/vasta-platform-limited-rings-the-nasdaq-stock-market-opening-bell-in-celebration-of-its-ipo.

[140] *See* Machado da Costa, *Brazilian Education IPO is Investigated in the United States*, VEJA (Oct. 22, 2020, 7:52 PM), https://veja.abril.com.br/blog/radar-economico/ipo-de-empresa-brasileira-de-educacao-e-investigado-nosestados-unidos/. *See also* Johnson Fistel, LLP, *VSTA Alert: Johnson Fistel Continues its Investigation of Securities Claims Against Vasta Platform; Investors Suffering Losses Encouraged to Contact Firm*, PRNEWSWIRE (June 10, 2021, 6:07 PM), https://www.prnewswire.com/news-releases/vsta-alert-johnson-fistel-continues-its-investigation-ofsecurities-claims-against-vasta-platform-investors-suffering-losses-encouraged-to-contact-firm301309928.html.

[141] *See*, *e.g.*, In re Petrobras Securities v. Brasileiro, 862 F.3d 250, 256 (2d Cir. 2017).

[142] *See, e.g.*, Netshoes Sec. Litig. V. XXX, 126 N.Y.S.3d 856, 860 (N.Y. App. Div. 2020).

Vitru is also an educational services provider based in the Brazilian state of Santa Catarina.[143] Its IPO raised $96 million, which was well below the level of previous IPOs, such as those of XP Inc. and StoneCo Ltd.[144] The controlling shareholders of Vitru Limited, Carlyle and Vinci Partners, had a shareholders' agreement terminated shortly before the transaction.[145] Interestingly, Vitru is the only one of the ten Brazilian companies that went public in the second wave of IPOs abroad not to have a dual class share structure with super-voting rights.[146] In an interview with Bob McCooey, Nasdaq's Global Head of Capital Markets, Vitru's CEO, Mr. Carlos Freitas, declared the following: (1) the opportunity to attract and connect with the world's most sophisticated investors; and (2) the need for funds to carry out the local expansion that the company intends to undertake; led the company to the IPO on Nasdaq.[147]

3. The Second Wave diversifies: Vinci Partners, Patria Invest, Zenvia, and Vtex (2021)

In 2021, four Brazilian companies listed primarily on American stock exchanges.[148] The first among them, Vinci Partners ("Vinci"), is a third-party asset manager of recognized relevance and expertise in the Brazilian market.[149] Vinci is not a technology company.[150] Its core business—at least so far—relates more to the traditional capital markets.[151] Even so, Vinci opted to go public on Nasdaq.[152] Co-Founder and CEO Alessandro Horta explained that the listing of Vinci represented an opportunity for

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[143]*See U.S. SEC Form 20-F*, VITRU (Apr. 8, 2021), https://investors.vitru.com.br/static-files/120eea6f-8332-4c92-9314-f07c7b524738 (noting that principal executive offices of Vitru Limited are located at Rodovia José Carlos Daux, 5055, Torre Jurerê A, 2nd floor, Saco Grande, Florianópolis, in Santa Catarina, Brazil).

[144]*See* Renaissance Capital, *supra* note 137. For information about the amount of capital raised in XP's and Stone's IPOs, *see*, *e.g.*, Carolina Mandl, C Nivedita, *Brazil's XP to Boost Banking Unit After IPO; Shares pop in U.S. Debut* (Dec. 11, 2019), https://www.reuters.com/article/us-xp-inc-ipo-idUKKBN1YF26E and Carolina Mandl, *Brazil's StoneCo IPO Raises $1.5 bln, Prices Above Range- Source* (Oct. 24, 2018), https://www.reuters.com/article/stone-ipo-pricing-idUSL2N1X5015.

[145]*U.S. SEC Form F-20*, VITRU (Apr. 8, 2021), https://investors.vitru.com.br/static-files /120eea6f-8332-4c92-9314-f07c7b524738.

[146]*See supra* Table 03.

[147]Nasdaq, *Behind the Bell: Vitru Education*, YOUTUBE (Sep. 18, 2020), https://www.you tube.com/watch ?v=iKw0FyN8xHs.

[148]*See supra* Table 03.

[149]Vinci Partners Investments Ltd., https://ir.vincipartners.com/ir-resources/investor-faqs/. (see answer to the question 'what is Vinci?').

[150]*Id*.

[151]*Id*.

[152]*Vinci Partners Rings the Nasdaq Stock Market Opening Bell in Celebration of its IPO*, NASDAQ (Jan. 29, 2021), https://www.nasdaq.com/videos/vinci-partners-rings-the-nasdaq-stock-market-opening-bell-in-celebration-of-its-ipo.

growth.[153] It would enable Vinci to acquire additional capital to invest more in the business and create new products and strategies for its clients with a focus on long-term value generation.[154] Vinci, like most other Brazilian companies in the second wave, adopted dual class share structure with super-voting rights assigned to one of its share classes.[155]

The second company in the 2021 class was Patria Investment Ltd. ("Patria"). Patria, like Vinci, is also a fairly traditional third-party asset manager in the Brazilian capital markets.[156] Patria does not invest solely in tech companies, although it incorporates processes and software into its day-to-day operations.[157] One of Patria's most important partners was Blackstone Group Inc.[158] Blackstone saw the IPO as an opportunity to sell its stake in the company after the Brazilian founding partners refused to sell control.[159] The CEO and co-founder of Patria, Mr. Alexandre Saigh, declared that the choice to go public in the United States relates to the high development of the alternative investment industry in the country.[160] Mr. Saigh highlighted that the largest companies dedicated to this sector are Americans.[161] Mr. Saigh also stressed Patria's goal of internationalization as one of the reasons for listing outside Brazil.[162]

The third Brazilian company to go public in the United States in 2021 was Zenvia Inc. ("Zenvia"), a company founded in 2004 as a family startup. It currently serves more than 10,000 companies throughout Latin America, with operating companies established in Brazil, Mexico, and Argentina.[163] Zenvia works with technological solutions, especially in B2C communication, in channels such as Whatsapp, SMS, and voice.[164] Zenvia's CEO, Cassio Bobsin, informed the Nasdaq Closing Bell of his

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153*Id*.
154*Id*.
155*See supra* Table 03.
156Patria Investments Ltd., https://www.patria.com/the-firm (last visited Feb. 27, 2023).
157*U.S. SEC Form F-20*, PATRIA INV. LTD. (May 27, 2021), https://ir.patria.com/static-files/51b8fe5c-ac8b-4f48-98be-4782a2f1a0ed.
158*Id*. (*see*, *e.g.*, "Item 4. Information on the Company", page 63)
159Carolina Mandl & Tatiana Bautzer, *Blackstone-Backed Patria eyes Expansion in Latam, Asia*. REUTERS (Jan. 22, 2021, 7:39 AM), https://www.reuters.com/article/us-patria-ipo-blackstone-group-idUSKBN 29R1IC.
160Fernanda Guimarães, *Brazilian Asset-Manager Raises more than BRL 3.2 Billion by Going Public in the U.S.A.* O ESTADO DE S. PAULO (Jan. 22, 2021, 9:19 PM), https://www.estadao.com.br/economia/gestora-brasileira-patria-levanta-mais-de-r-3-2-bi-ao-abrir-capital-nos-eua/.
161*Id*.
162*Id*.
163*See Zenvia and Startup D1 Unite Creating a Business worth BRL 500 Million in Revenues*, Zenvia, https://www.zenvia.com/blog/zenvia-e-startup-d1-se-unem-criando-negocio-de-r-500-milhoes-de-receita/ (last visited Jan 5, 2022).
164*See* Zenvia, *Form 20-F, Annual and Transition Report of Foreign Private Issuers*. Item 3, Key Information, page 7 (Mar. 31, 2022), https://investors.zenvia.com/sec-filings/#.

pride in announcing that Zenvia was the first Latin American-based enterprise software company to list on Nasdaq, but he did not explain the reasons for doing so.[165] Zenvia's main shareholders are Cassio Bobsin himself and Oria Capital, a private equity asset manager focused on technology companies.[166]

In an article on the Endeavor website, however, Fernando Wosniak Steler, founder of the company D1, said that Cassio Bobsin proposed that instead of going public on B3 at the end of the 2020 year, they should go public on Nasdaq.[167] Steler's first answer was negative.[168] Steler opted to carry out the IPO process in Brazil himself with D1.[169] Mr. Steler was eventually convinced to go public on Nasdaq.[170] D1 and B3 joined together in March 2021, and finally, the IPO of Zenvia began to take shape.[171]

On the same day as Zenvia's IPO, the software company VTEX's IPO on NYSE took place.[172] The VTEX IPO was the first IPO of a Brazilian company on the NYSE since PagSeguro's IPO in 2018. The Co-CEO of the company, Mr. Geraldo Thomaz, justified choosing NYSE because of VTEX's regional and global expansion ambitions.[173] The CEO stated that

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[165] *See* Nasdaq, *Zenvia Rings the Nasdaq Closing Bell in Honor of Its IPO*, YOUTUBE (July 22, 2021), https://www.youtube.com/watch?v=jWq54y0Di70.

[166] *See* Zenvia, *Form 20-F*, *Annual and Transition Report of Foreign Private Issuers*. Major Shareholders and Related Party Transactions, page 95, *supra* note 164.

[167] *See* Fernando Wosniak Steler, Do zero até o IPO na NASDAQ, Endeavor (July 26, 2021),https://endeavor.org.br/historia-de-empreendedores/d1-do-zero-ate-o-ipo-na-nasdaq/.

[168] *Id*.

[169] *Id*.

[170] *Id*.

[171] Giovanna Wolf, *Zenvia, Customer Service Company, Announces Operational Merger with Startup D1,* O ESTADO DE S. PAULO (Mar. 25, 2021), https://link.estadao.com.br/noticias/inovacao,zenvia-de
-atendimento-ao-cliente-anuncia-uniao-de-operacao-com-startup-d1,70003659337.

[172] *See* Ari Levy, *Nasdaq is Poised to Underperform S&P 500 for First Time Since 2016 as Investors Shun Tech* Stocks, CNBC (Dec. 28, 2021, 8:00 AM), https://www.cnbc.com/2021/12/28/nasdaq-ispoised-to-underperform-sp-500-for-first-time-since-2016.html. It is curious that a technology company would choose to go public on the NYSE instead of the Nasdaq. *Id.* The explanation may be related to the fact that there were predictions that Nasdaq would slow down at the expense of the NYSE. *Id.* It is important to remember that despite this prediction, Nasdaq ended 2021 ahead of the NYSE in total IPO volumes—191bn *versus* 109bn, USD. *See* Sohini Podder, *Nasdaq to Eclipse NYSE in Record Year for IPOs*, REUTERS (Dec. 6, 2021, 3:43 PM), https://www.reuters.com/markets/us/nasdaqeclipse-nyse-record-year-ipos-2021-12-06/.

[173] Matheus Prado, *With IPO, VTEX Wants to be the Backbone of e-Commerce in Latin America,* CNN BRAZIL (July 22, 2021, 4:30 AM), https://pipelinevalor.globo.com/negocios/noticia/vtex-ja-e-mais-global-do-que-brasileira-e-estreia-em-alta-de-25percent-na-nyse.ghtml.

the listing was key to giving visibility and reliability to the business.[174] Although the company's operations are still fairly dependent on Brazil, some investors and the press has described VTEX as "more global than Brazilian."[175] Some data corroborate VTEX's global expansion trend. During the first three months of 2021, and throughout 2020, purchases originating from customers in Brazil represented 56.1% and 57.2% of VTEX's total revenue, compared to 72.8% and 70.8% in the same periods in 2019.[176]

IV. IS DUAL CLASS SHARES THE MAIN EXPLANATION FOR THE SECOND WAVE?

During the cycle of these primary listings, Brazil had strict corporate legislation that did not allow the use of the dual class share structure with super-voting rights under any circumstances, even for private companies.[177] These restrictions were comparatively more severe than in other South American countries.[178] Since 2018, the profile of Brazilian companies that have opted for an IPO and primary listing abroad is somewhat geared towards the technology sector.[179] This finding is consistent with previous research finding evidence that technology companies tend to adopt this corporate structure because multiple voting allows the founding partners to maintain control of the company even after an IPO.[180]

During the second wave of IPOs and primary listing of Brazilian companies abroad, except Vitru Ltd., all Brazilian companies adopted a dual class share structure with differentiated voting rights.[181] That said,

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[174] *Id*.

[175] Maria Luiza Filgueiras, *Vtex is Already More Global Than Brazilian - and Debuts Going 25% up on NYSE,* VALOR (July 21, 2021), https://pipelinevalor.globo.com/negocios/noticia/vtex-ja-e-mais-global-do-quebrasileira-e-estreia-em-alta-de-25percent-na-nyse.ghtml.

[176] *See* VTEX, Prospectus (Rule 424(b)(4)) (July 22, 2021).

[177] About the modifications promoted by Law 14,195/2021 and the relevant regulation enacted by CVM in 2022, *see*, *e.g.*, Tozzini Freire Advogados, *Dual-class share is now permitted in* Brazil (Sep. 10, 2021), https://tozzinifreire.com.br/en/boletins/dual-class-share-is-now-permitted-in-brazil; Moreira, Menezes, Martins Advogados, *CVM issues rule to Regulate Voting Rights of Dual-Class Common Stocks and Composition of the Board of Directors of Publicly-Held Companies* (Sep. 21, 2022), https://moreiramenezes.com.br/en/news/cvm-issues-rule-to-regulate-voting-rights-of-dual-class-common-stocks-and-composition-of-the-board-of-directors-of-publicly-held-companies/.

[178] *See*, *e.g.*, *supra* notes 38 to 46.

[179] *See supra* Table 03.

[180] *See* Zohar Goshen & Richard Squire, *Principal Costs: A New Theory for Corporate Law and Governance*, 117 COLUM. L. REV. 767, 807 (2017).

[181] *See supra* Table 03.

this Section will investigate the dual class share structure as an important, but not unique or necessary, explanatory factor for the second wave of IPOs and overseas primary listings by Brazilian companies.

A. Dual Class Shares were indeed relevant for primary listing in the U.S.A.

Most public companies in the United States do not adopt the dual class share structure with different voting rights.[182] Broadly speaking, nine out of ten U.S. public companies apply the "one share, one vote" rule.[183] In 2020, only 17 out of all companies that made an IPO in America adopted the dual-class structure, which is 15% of the total.[184] Even with only selected tech companies, companies that adopt dual class shares at the time of IPO still represent a minority: specifically, thirteen out of thirty-seven companies in 2019 (35.1%) and nineteen out of forty-four companies in 2020 (43.2%).[185] When the group of analysis comprises only South American companies (including or not including Brazil), results show very different figures.

Seven out of nine South American companies that went public in the United States between 2018 and 2020 adopted dual class share structures, or about 77.77% of the total.[186] To put that into perspective, these seven IPOs would represent 12.96% of all IPOs carried out with dual-class structures in the United States in such a period (considering the data from the Council of Institutional Investors). This discrepancy between the standard voting structure adopted by American companies (and those from other regions of the world) that makes their shares public in the United States,[187] compared to the group of companies from South America—particularly from Brazil—is quite significant and deserves further investigation.

At least in the case of Brazilian companies that have chosen to go public abroad, note the value of the possibility of adopting a corporate structure with dual class shares. In the second wave of IPOs and primary

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[182]*Dual-Class IPO Snapshot: 2017-2020 Statistics*, COUNCIL OF INST. INVESTORS, https://www.cii.org/files/2020%20IPO%20Update%20Graphs%20.pdf (last visited Aug. 28, 2021).
[183]*Id.*
[184]*Id.* (excluding foreign private issuers, special purpose acquisition companies, and real estate investment trusts from the group of issuers).
[185]Jay R. Ritter, *Initial Public Offerings: Technology Stock IPOs*, U. OF FL. (May 8, 2022), https://site.warrington.ufl.edu/ritter/files/IPOs-Tech.pdf.
[186]*See supra* Table 01 and Table 03 (South American companies that went public during this time span are PagSeguro, Arco Platform, StoneCo, Afya Limited, XP Inc., Vasta Platform Limited, Vitru Limited, Corporacion América Airports S.A., Bioceres Crop Solutions Corporation).
[187]*Id.*

listings of Brazilian companies abroad, ten out of eleven companies that carried out IPOs and primary listing abroad adopted dual class shares with differentiated voting rights.[188] This represents more than 90% of the sample, which is almost the inverse of the proportion identified in the group of all companies going public every year in the United States.[189]

Although the numbers speak for themselves, public statements from partners and administrators of the companies were not found, except for XP Inc.[190] In other words, even if the figures above shed light on the importance of such corporate structure, the possibility of adopting dual class shares alone is not enough to explain the decision of Brazilian and other South American companies to conduct IPOs and overseas primary listings in the United States, especially since 2018. Research supports the perspective that other factors, such as access to global markets, better company valuation than in the local market, and access to strategic investors, were also quite significant, as discussed below.[191]

B. The motivation for primary listing in the U.S.A. is multifactorial

The São Paulo stock exchange, for example, rejected the possibility of adopting dual class shares with super-voting rights as a primary cause for the choice of companies to list on NYSE or Nasdaq, although it recognized that the feasibility of this type of structure had some weight in the decision.[192] B3 recalled that, in the last fifteen years, less than 5% of the IPOs of Brazilian companies were held outside the country.[193] B3 also stressed that one hundred and seventy-two companies held their initial public offering during this period.[194] In relation to IPOs of Brazilian companies on Nasdaq, such as PagSeguro, Stone, and Arco Educação, executives portrayed the corporate structure as an additional advantage, but not a determining factor.[195] One factor cited repeatedly as decisive was the company's pricing at the IPO, considered superior in the United

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[188]*See supra* Table 03.
[189]*Dual-Class IPO Snapshot: 2017-2020 Statistics*, *supra* note 182.
[190]Guilherme, *supra* note 134.
[191]Brasil, Bolsa, Balcão, *supra* note 113, at 47. *See also* Craig Doidge et al., *Why are Foreign Firms Listed in the U.S. Worth More?* 71 J. OF FIN. ECON., 205, 208 (2004). *See also* PWC & BAKER & MCKENZIE, 'EQUITY SANS FRONTIÈRES' TRENDS IN CROSS-BORDER IPOS AND OUTLOOK FOR THE FUTURE 18 (2012) (this is one of the drivers of cross-border IPOs mentioned by PwC and Baker & McKenzie in a study on this matter published in 2012).
[192]Brasil, Bolsa, Balcão, *supra* note 113, at 47.
[193]*See Study Assesses Impact of Dual Class Shares on Corporate Governance*, BRASIL, BOLSA, BALCÃO (Dec. 12, 2019), http://www.b3.com.br/pt_br/noticias/governanca-8AE490C96EF7F6F5016EFB4D90405993.htm.
[194]*Id*.
[195]*Id*.

States.[196] Several technology companies held their IPOs at B3 between 2020 and 2021, among which we can mention Bemobi (02/09/2021), Mobly (02/04/2021), Mosaico (02/04/2021), Enjoei (11/06/2020), Neogrid (12/16/2020), Méliuz (11/04/2020), Locaweb (02/05/2020).[197]

However, the size of these IPOs is generally still smaller compared to those of IPOs held on U.S. exchanges. For example, the IPO of PagSeguro on NYSE raised $2.3 billion in 2018,[198] the IPO of XP Inc. about was $2 billion in 2019,[199] and the IPO of StoneCo Ltd. raised $1.5 billion.[200] Compare these results to public offerings settled on B3, like Mosaico's IPO, which raised $224 million,[201] or Méliuz's IPO, which raised $123 million.[202] [203]

So, again, although the impossibility of dual class shares may have catalyzed this entire process, other factors can explain the primary listing of foreign companies in the United States, which indicates this option will continue occurring in the coming years.

1. Biases and subjectivities in the decision-making process

A first explanation lies within biases in the decision-making process. Such biases hardly relate to concrete, objective factors of doing business in a company. For example, this category includes cases such as Arcos Dorados, whose CEO and founder, Mr. Woods Staton, is the grandson of an American businessman.[204] This category also includes PagSeguro because the then-CEO, Mr. Ricardo Dutra da Silva, studied at the Darden

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[196]*Id*. See *also* Federico Tessore, *supra* note 100; VALOR CAPITAL GRP., *supra* note 123.
[197]Luisa Purchio, *The Technology Companies' Phenomena in Brazilian Stock Exchange*, VEJA (Feb. 19, 2021), https://veja.abril.com.br/economia/o-fenomeno-das-empresas-de-tecnologia-na-bolsa-brasileira/. Carolina Mandl; Editing by Tom Brown and Rosalba O'Brien, *Brazil's PagSeguro raises $2.7 Bln in IPO,* REUTERS *(*Jan. 23, 2018), https://finance.yahoo.com/news/brazils-pagseguro-raises-2-7-004308296.html.
[198]Carolina Mandl; Editing by Tom Brown and Rosalba O'Brien, *Brazil's PagSeguro Raises $2.7 Bln in IPO,* REUTERS *(*Jan. 23, 2018), https://finance.yahoo.com/news/brazils-pagseguro-raises-2-7-004308296. html.
[199]Fredrik Karlsson, *Brazil's XP raises US$2.25 billion in New York IPO*, LATIN LAWYER (Jan. 13, 2020), https://latinlawyer.com/brazils-xp-raises-us225-billion-in-new-york-ipo.
[200]Carolina Mandl, *supra* note 144.
[201]Maria Luiza Filgueiras, *Startup Méliuz Makes IPO and Raises BRL 661.7 Million,* (Nov. 03, 2020), VALOR*,* https://valor.globo.com/financas/noticia/2020/11/03/startup-mliuz-emplaca-ipo-e-levanta-r-6617milhes.ghtml.
[202]Kaype Abreu, *With Mosaico, Méliuz and Enjoei, Investor Sends a Message: There is Room for Techs at* B3 (Feb. 08, 2021), SEU DINHEIRO, https://www.seudinheiro.com/2021 /empresas/com-alta-de-mosai-comeliuz-e-enjoei-investidor-manda-recado-tem-espaco-para-as-techs-na-b3/.
[203]Figures were adjusted by the February 2021 exchange rate for comparison purposes.
[204]Kerry A. Dolan, *supra* note 67.

Business School (University of Virginia).[205] These factors, although subjective, may impact the decision to go public and list abroad in similar contexts.[206]

The results are consistent with this hypothesis. In several speeches of CEOs and founding partners of the companies, some remarks endorse the notion that going public on NYSE or Nasdaq would be an immense honor, even for the *countries* in which such companies are headquartered. An example of this type of category would be Mr. Cassio Bobsin's approach toward Mr. Fernando Steler.[207] He convinced the latter that instead of going public at B3, it would be something much bigger to go public at Nasdaq, being the first Brazilian technology company to conquer this space.[208] The CEO and founding partner of Globant S.A., Mr. Martín Migoya, expressed a similar idea.[209] Mr. Migoya stated that the IPO operation abroad was a significant step for Argentina and the region.[210]

The achievement of this milestone is often regarded as a symbol of prestige by the executive officers of the businesses engaged in these transactions. The act of going public in the U.S. in that way was expected, given that preferring the foreign over the domestic is a pattern of social behavior in South America, especially in Brazil.[211] Of course, considering this type of cultural characteristic as the sole catalyst for the boom in Brazilian IPOs abroad would be an oversimplification of the phenomenon.[212] After all, key business decisions are expected to be thoughtful and time-consuming. But this trait helps explain collective subjectivities that may drive this choice, particularly in scenarios where it would be financially and organizationally reasonable to go public at B3. Note that previous research indicated that factors such as geographic, economic, and cultural proximity reasonably explained similar overseas listing strategies.[213]

In addition, an overconfidence bias may have influenced some recent IPO decisions made by Brazilian companies, especially those companies

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[205]Sam Worley, *supra* note 106.
[206]*See generally* Xiaoou et al., *supra* note 15.
[207]Fernando Wosniak Steler, *supra* note 167.
[208]*Id.*
[209]*See* Clarissa Herrera, *supra* note 82.
[210]*Id.* Also, according to Cassio's LinkedIn profile, he attended executive business programs at both Harvard Business School and Stanford University School of Business before Zenvia's IPO at Nasdaq. LINKEDIN, https://www.linkedin.com/in/cassiobobsin/.
[211]*See*, *e.g.*, Fernando C. Prestes Motta et al., A Valorização do Estrangeiro Como Segregação nas Organizações *[The Valorization of the Foreign as Discriminability within Organizations]*, 5 J. CONTEMP. ADMIN. 59 (2001).
[212]*Id*.
[213]Sergei Sarkissian & Michael J. Schill, *The Overseas Listing Decision: New Evidence of Proximity Preference*. 17 REV. FIN. STUD. 769, 772-774 (2004).

with solely local operations. Business decisions, although expected to be made in a balanced and rational manner, may be influenced by biases and heuristics.[214] Irrational biases in the behavior of a company's management can cause problems in M&A decisions[215] or influence the valuation of a stock.[216] Moreover, research has indicated that the overconfident director is more likely to become CEO in a company that adopts value-maximizing corporate governance.[217] Therefore, some of the cases enumerated in this Article reasonably demonstrate that companies subjected to two different legal and regulatory regimes may face exposure to risks that were underestimated because of overconfident management and shareholders.[218]

Still, the behavioral economic theory literature helps explain what may have occurred. For instance, Daniel Kahneman argues that humans tend to be overconfident and believe fallacious stories about the past to shape the future.[219] Practically speaking, does the data really show that going public abroad, more specifically in the United States, is worth it because of the success stories? Moreover, do success stories really contain characteristics analogous to companies currently opting for this type of venture? After all, not every company is Spotify or XP Inc. Even if companies have similar characteristics to those in success stories, is a past trend a sufficient demonstration that the same pattern will be maintained? This kind of questioning could correct the illusion of understanding. The central point of the argument is that events in the complex and concrete real world are very difficult to predict, and the past is less understandable than humans tend to think.[220]

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[214] DANIEL KAHNEMAN, THINKING, FAST AND SLOW 199 (2011).

[215] *See* Richard Roll, *The Hubris Hypothesis of Corporate Takeovers*, 59 J. BUS. 197, 199-200 (1986).

[216] Gregory Brown & Michael Cliff. *Investor Sentiment and Asset Valuation*. 78 J. BUS. 405, 407-408 (2005).

[217] Anand M. Goel & Anjan V. Thakor, *Overconfidence, CEO Selection, and Corporate Governance*, 63 J. FIN. 2737 (2008).

[218] Regarding XP Inc., litigation questioned the precision of financial data released in the prospectus of the IPO. *See*, *e.g.*, *Securities Litigation Victory for XP*, DAVISPOLK (Mar. 15, 2021), https://www.davispolk.com/experience/securities-litigation-victory-xp.

Nonetheless, XP Inc. secured a victory in the courts, and the case was dismissed once the plaintiff could not allege damages. *Id.* Albeit XP Inc. is not part of a group of Brazilian companies that decided to go public in the U.S. despite having solely local operations, this case is another indication of litigation risks and costs arising from the decision to go public in the United States. *Id.*

[219] Daniel Kahneman, *supra* note 213, at 199.

[220] *Id.* at 201-02.

2. Cultural proximity and history of successful precedents

The examples of Brazilian companies that have made IPOs and overseas primary listings in the United States have been accumulating since the IPO of Pagseguro in January 2018.[221] Cultural proximity may facilitate the decision to go public abroad and list shares on a foreign stock exchange. The Vienna exchange is a common destination for cross-listings of German companies and vice versa (Frankfurt as a destination for Austrian companies), just as there is a large cross-listing exchange between London and New York.[222]

Of course, the cultural proximity between the United States and South America is less obvious in the cases mentioned by Pagano, Röell, and Zechner.[223] However, it is important to consider that 50% of the immigrant population in the United States comes from Mexico or other Latin American countries.[224] In the case of Brazil, by 2020, the Ministry of Foreign Affairs estimated that about 1.7 million Brazilians lived in the United States, which was also the most common destination for Brazilians living abroad.[225] This trend illustrates the relevance of the United States as a destination for the emigration of Brazilians, especially since the second most common destination for Brazilian expatriates is Portugal, where 276,200 Brazilians reside.[226] Furthermore, a recent survey observed that about 42% of the CFOs of the largest Brazilian companies have experience abroad;[227] and, among this group, the most common destination was the United States (38%).[228]

Besides the not-so-obvious cultural proximity, successful precedents accumulate and ease the way for new IPO operations with subsequent overseas listing, lowering transaction costs.[229] Transaction costs may be

[221] *See supra* Table 02 and Table 03.
[222] Marco Pagano et al., *supra* note 8.
[223] Marco Pagano, et al., *supra* note 8.
[224] Abby Budiman et al., *Facts on U.S. immigrants, 2018*, PEW RSCH. CTR. (Aug. 20, 2020), https://www.pewresearch.org/hispanic/2020/08/20/facts-on-u-s-immigrants/.
[225] MINISTÉRIO DAS RELAÇÕES EXTERIORES, COMUNIDADE BRASILEIRA NO EXTERIOR [BRAZILIAN COMMUNITIES ABROAD] 3 (2021).
[226] *Id*.
[227] The selection criteria required that the company be ranked among the 500 largest companies in Brazil according to Exame magazine and have at least R$1 billion in annual revenues.
[228] INSPER, O PERFIL DO CFO NO BRASIL 2021 [WHAT IS THE PROFILE OF A BRAZILIAN CFO IN 2021*?* | INSPER, Insper: Higher Education in Business, Law and Engineering (2021), https://www.insper.edu.br/noticias/perfil-do-cfo-brasileiro-2021/ (last visited Jan 5, 2022).
[229] *See*, *e.g.*, Florencia Pulla, *Despegar in Wall Street: how much is has raised and what it plans to do*, https://www.cronista.com/infotechnology/it-business/Despegar-recauda-US-300-millones-en-su-IPO-No-vendemos-petroleo-vendemos-talento-20170920-0004.html (Sep. 20, 2017) (Mr. Damián Scokin commenting about how the fact that Mercado Libre

broken down into the following: (1) search costs; (2) contracting costs; (3) monitoring costs; and (4) enforcement costs.[230] Search costs and contracting costs in selecting service providers required for this type of operation decrease to the extent that management and shareholders contemplating the operation can seek information and talk behind the scenes with various South American peers about past experiences.[231] In other words, the more precedents there are, the more knowledge there is about the costs and contingencies. Thus, the risks when carrying out the IPO and maintaining the listing in the United States tend to decrease.[232]

3. Better valuation (especially for high-tech companies)

The thesis that IPOs conducted in American markets deliver good valuations to foreign companies, especially technology companies,[233] is one of the most frequently mentioned causes for the IPOs of Brazilian companies abroad.[234] This factor played a significant role in the decision of Brazilian and other South American companies that chose to go public in the United States.[235] The significance of the "valuation variable" is reinforced by the public statements of some of the officers of these companies, like StoneCo.'s Valor Capital Group. One of Stone's main investors mentioned that an important part of the rationale for the IPO on Nasdaq was the opportunity to arbitrage the disparities in valuation multiples seen in Brazil and the United States.[236] Some studies mention

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and Globant had already listed their shares in New York helped Argentinean companies to take the same path).

[230] Jeffrey H. Dyer, *Effective Interim Collaboration: How Firms Minimize Transaction Costs and Maximize Transaction Value*, 18 STRATEGIC MGMT. J. 535, 536 n.2 (1997).

[231] *See*, *e.g.*, Fernando Wosniak Steler *supra* note 167.

[232] Some of the literature used to mention compliance with U.S. GAAP as an observance cost capable of deterring many foreign companies from listing in the U.S. *See*, *e.g.*, James A Fanto & Roberta S. Karmel, *A Report on the Attitudes of Foreign Companies Regarding a U.S. Listing*, 3 STAN. J. L. BUS. & FIN. 51, 72 (1997). In that sense, there are logical reasons to believe high costs associated with compliance with local statutory laws and regulations, in addition to the risk of lawsuits, would be capable of deterring companies from making this decision nowadays, at least in some cases. *Id.* Nevertheless, as more South American companies know how to navigate through this scenario, it is reasonable to infer similar costs of complying with relevant regulations would diminish accordingly. *Id.*

[233] *See* Blass & Yafeh, *supra* note 10, at 567-68.

[234] ACE GOVERNANCE, Extrato da Análise Internacional e Repercussão no Mercado Brasileiro da Expansão da Adoção de Estruturas com Duas ou Mais Classes de Ações com Direitos de Voto Diferenciados [ACE GOVERNANCE SUPER VOTING RIGHTS STUDY] 47, (2020). The survey found that a great majority of interviewees thought that the main motivating factor for a Brazilian company to have its IPO abroad was the superior valuation compared to levels practiced in the Brazilian market. *Id.*

[235] *See, e.g.,* Federico Tessore, *supra* note 100; VALOR, *supra* note 104.

[236] *See* VALOR, *supra* note 104.

valuation as an explanatory factor for the adoption of similar strategies, such as cross-border listing.[237]

The relevance of a more robust valuation can be even greater when the IPO operations abroad function as a liquidity event for a private equity firm that wants to deliver good returns for its investors. A particular private equity firm with the ability to influence the timing of the IPO, if investing in a South American company, will certainly favor valuation criteria over any other long-term regulatory risk. Companies such as Stone, Zenvia, Afya, Pátria Investimentos, Vitru Ltd., and VTEX, had or have investments from private equity or venture capital funds.[238] Such investment vehicles are naturally interested in an IPO as a strategy to realize profits.[239] Note that the venture capital market is much larger in Brazil than in the other South American countries analyzed.[240]

Furthermore, the number of deals by Brazilian private equity and venture capital firms in the local tech sector has been higher than non-tech investments since 2012.[241] If these firms with private equity investors ever

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[237] *See* Marco Pagano et al., *supra* note 8. *See also* Olga Dodd, *Why do Firms Cross-list Their Shares on Foreign Exchanges? A Review of Cross-Listing Theories and Empirical Evidence*, 5 REV. OF BEHAV. FIN. 77, 99 (2013).

[238] *See* Stone Prospectus. Principal and Selling Shareholders, at 157 (some of the PE/VC funds include, *e.g.*, HR Holdings LLC, Madrone Partners L.P., Actis 4 PCC, T. Rowe Price Funds) (Oct. 24, 2018), https://investors.stone.co/static-files/8f22df94-ea76-435b-9c5e-ddfb5dd951c9; Zenvia Prospectus. Principal Shareholders, at 174 (some of the PE/VC funds include, *e.g.*, PE/VC Funds managed by Oria Gestão de Recursos Ltda) (July 21, 2021); Afya Preliminary Prospectus. Principal and Selling Shareholders, at 213 (some of the PE/VC funds include, *e.g.*, *Bozano Educacional II Fundo de Investimento em Participações Multiestratégia*, *JC Joint Fundo de Investimento em Participações Multiestratégia*, Agile Century Limited) (July 9, 2019), https://www.sec.gov/Archives/edgar/data/1771007/000104746919004047/a2239191zf-1a.htm#ec76501_principal_and_selling_shareholders. Pátria Prospectus. Principal and Selling Shareholders, at 199 (Blackstone PAT Holdings IV, L.L.C.) (Jan. 21, 2021), https://ir.patria.com/static-files/918f1084-1de1-4213-be45-a36cac3b14f6; Vitru Prospectus. Principal Shareholders, at 194 (explaining that some PE/VC funds include entities connected to Carlyle Group Management LLC, Vinci Partners, and Neuberger Berman Funds) (Sep. 17, 2020), https://dd7pmep5szm19.cloudfront.net/2806/0001104659-20-106836.pdf; VTEX Prospectus. Schedule 13G (demonstrating Tiger Global Private Investment Partners XII, L.P. reported owning 15.2% of Class A common shares) (July 23, 2021), https://d18rn0p25nwr6d.cloudfront.net/CIK-0001793663/296a8c88-1bac-4d91-9316-b6d8578f5220.pdf.

[239] *See, e.g.,* Armin Schwienbacher, *An Empirical Analysis of Venture Capital Exits in Europe and the United States*, (EFA 2002 Berlin Meetings Discussion Paper), https://ssrn.com/abstract=302001.

[240] David Feliba, *VC Investments in LatAm shoot for $10B in 2021, Already Outpacing FY 2020*, S&P GLOBAL (Sep. 24, 2021), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/vc-investments-inlatam-shoot-for-10b-in-2021-already-outpacing-fy-2020-66553406.

[241] ABVCAP ET AL., PERFORMANCE OF BRAZILIAN PRIVATE EQUITY AND VENTURE CAPITAL DEALS, (2021).

go public on a stock exchange, investors are usually willing to pay a fair premium for these shares in the United States.[242] On this point, an interesting assessment by Barry Libert, Yram Wind, and Megan Beck concluded that "technology creators" and "network orchestrators" have the highest average multiplier (price-to-revenue ratio) among S&P500 companies.[243] Companies classified as "network orchestrators" and "technology creators" had price-to-revenue ratios of 8.2 and 4.8, respectively, while "asset builders" and "service providers" had average price-to-revenue ratios of 2.0 and 2.6, respectively.[244]

This phenomenon among technology companies has become more pronounced over the years. In 2021, the median price-to-sale ratio was 15.2, using the price at the time of the offer, and 17.8, using the first closing market price of the stock.[245] Even if the sale of shares is not made during the IPO, having investments in a well-priced public company facilitates the subsequent sale of the shares when the investment matures.

4. Access to global markets, sophisticated investors, and reputation

Access to global markets, sophisticated investors, and reputation was certainly the most usual justification in the public statements of South American companies' officers to conduct an IPO and the primary listing of such companies' shares abroad. For example, Vitru's CEO stated that one of the reasons that led the company to the IPO abroad was the opportunity to attract and relate to the most sophisticated investors in the world.[246] VTEX's CEO declared that the company was more global than Brazilian.[247] Additionally, the CEO of Despegar.com, Mr. Damián Scokin, asserted that the company was interested in seeking an investor base consisting of sophisticated investment funds that would help develop the company's technological capabilities.[248]

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[242] *See, e.g.,* Barry Libert et al., *What Airbnb, Uber, and Alibaba Have in Common*, HARV. BUS. REV. (Nov. 20, 2014) https://hbr.org/2014/11/what-airbnb-uber-and-alibaba-have-in-common (finding that researchers classified as Network Orchestrators those companies that create a network of peers in which participants interact and share in value creation (e.g., Uber and E-bay); "technology creators" are companies that develop and sell intellectual property such as software, analytics, pharmaceuticals, and biotechnology (e.g., Microsoft and Oracle); "service providers" and "asset builders" are companies from more traditional sectors of the economy (e.g., Walmart, Accenture, and JP Morgan).

[243] *Id*.

[244] *Id*.

[245] Ritter, *supra* note 184, at 5.

[246] *See* Nasdaq, *supra* note 147.

[247] *See* Filgueiras, *supra* note 175.

[248] *See* Annabella Quiroga, *supra* note 89.

These findings are consistent with the study by Asher Blass and Yishay Yafeh, which observed that the listing of Israeli firms in the U.S. markets could be encouraged by an expectation of increased recognition of the firm by investors and potential clients.[249] In other words, if a firm wishes to obtain new qualified investors for its shareholder base or new clients in the American market, listing its shares on one of the New York stock exchanges could be a good idea. Although Asher Blass and Yishay Yafeh wrote approximately two decades ago that Israeli regulators would try halting the flight of high-tech IPOs to the United States, this process has not been stopped.[250] Israeli tech firms continue to conduct IPOs by going public on New York stock exchanges frequently.[251]

Other studies highlight the importance of going public regarding firms' reputations and publicity.[252] The fact that Nasdaq and NYSE are seen as global exchanges can reinforce reputations that firms seek to build.[253] If a particular company has or intends to have global or regional operations, the primary listing in the U.S. may help build its reputation with its customer network. Besides, even if the company has a purely local presence—as in the case of most Brazilian firms that opted for an IPO in the "second wave"—an international listing can reinforce the reputation of a respectable or high-tech firm among local clients, for example.[254]

CONCLUSION

The trend of foreign IPOs and subsequent overseas primary listings of South American companies are divided into two main periods. In the first period, between 2007-2017, data shows a heterogeneous group of companies, with the prevalence of companies from South American countries other than Brazil. Regional or global operations were the only significant similarity among the companies in this group. Differences between the first sample of companies and those in the second wave

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[249] *See* Blass & Yafeh, *supra* note 10, at 570.

[250] *Id*. (for evidence of the continuation of this process, s*ee*, *e.g.*, *supra* Tables 01, 02, and 03).

[251] *See generally* James Spiro, *Meet the Newest Israeli Companies Trading on the NYSE and Nasdaq*, CTECH (Jan. 7, 2021, 3:56 PM), https://www.calcalistech.com/ctech/articles/0,7340,L-3910188,00.html.

[252] Neal M. Stoughton et al., *IPOs and Product Quality*, 74 J. BUS. 375, 376-377 (2001).

[253] *See*, *e.g.*, *Bioceres Crop Solutions Announces Transfer to Nasdaq Stock Market supra* note 98 (mentioning Nasdaq as a "global exchange"). *See also* Matheus Prado, *supra* note 173 (connecting VTEX's global ambitions with the decision to list on NYSE).

[254] The fact that most Brazilian firms of the "second wave" are primarily local contrasts with the case studied by Asher Blass & Yishay Yafeh, where the propensity of a company to cross-list its shares increased with the percentage of export sales. *See* Blass & Yafeh, *supra* note 10, at 569-70.

appeared because of the absence of dual class shares with plural voting rights and dissimilarities between the economic sectors in which the companies operated.

The second period, between 2018-2021, beginning with the IPO of PagSeguro Digital Ltd. in January 2018, is quite different. Eleven out of fourteen South American companies that went public abroad were Brazilian, indicating that this was a Brazilian wave. The IPO of PagSeguro Digital Ltd. is significant enough to represent this new trend since the following companies maintained similar characteristics, such as the use of dual class structures, conducting businesses in the financial, educational, or purely technological industries, and maintaining either an innovative or tech vein. Most of these companies listed their shares on Nasdaq. The data also indicates that these companies were motivated by the possibility of adopting dual class structures, with voting rights differentiated by share class.

Although no public statements of the companies' officers openly speaking about dual-class shares could be found, except for statements by XP Inc.'s CEO, the analysis in Part II demonstrated an extremely significant variation between the likelihood of adoption of dual class structures between Brazilian companies comprising of the second wave of IPOs abroad and the total set of companies that made IPOs and listed their shares in the United States. In fact, companies that adopt dual class share structures with super-voting rights in both groups represent a minority in the general sample of U.S. companies but a majority of the Brazilian companies in the second wave. No clear preference for such a corporate structure seems to exist for the other South American companies.

Albeit important, super-voting rights in choosing to go public and primarily listing shares in the United States is certainly not the only explanation. The United States is not the only country allowing IPOs and listing of companies with this type of corporate governance structure. Thus, other factors may influence the final decision of Brazilian companies to go public on the NYSE or Nasdaq, including the following: access to global markets and sophisticated investors, achieving a more adequate valuation from a better stock market pricing than in local markets, the existence of successful precedents in increasing numbers, cultural proximities, the search for greater prestige or status, as well as biases and subjectivities of key people in the companies.[255]

The existence of numerous successful precedents tends to reduce transaction costs in hiring the necessary service providers, negotiating with the selected U.S. stock exchange, and complying with regulatory requirements abroad. Better valuations than could be achieved locally

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[255]*See*, *supra* Part IV.

were another key factor in Brazilian companies' choice for IPOs and primary listings in the United States after 2018. The valuation factor seems significant given the stage of development of the Brazilian venture capital and private equity market, which is clearly more advanced than in neighboring countries in South America. The IPO is a classic strategy for private equity and venture capital firms to generate liquidity for their investments and deliver good financial returns to their shareholders. The fact that technology companies' stock trade at magnified prices on U.S. markets also seems to be a considerably important feature to consider.

It is therefore reasonable that this phenomenon is not happening to the same extent in the rest of South America, which has a primary listing cycle more associated with a previous connection to the U.S. or a search for better governance for multi-country operations. The market capitalization of the domestic listed companies differs significantly between Brazil and the rest of South America. When comparing market capitalization as a percentage of GDP, the ratio in Brazil reaches 62.9%, while only 8.7% in Argentina, 39.2% in Colombia, and 43.1% in Peru.[256] In Chile, the index reaches 73%, while no recent data is available for countries like Ecuador, Bolivia, or Venezuela.[257] In absolute values, in U.S. dollars, Brazil reaches a market capitalization of $988,374,320, while Argentina has $39,393,540, Colombia reaches $106,315,200, Chile $184,549,420, and Peru $87,092,130.[258] Despite structural similarities, the differences highlighted in this Article demonstrate a robustness gap in the private equity and venture capital markets of Brazil and the rest of South America.

The U.S. advantageously maintains a friendly regime regarding the adoption of governance structures based on dual class shares and super-voting rights. However, this certainly significantly decreased in relation to Brazil due to recent legislative changes. Moreover, Brazilian companies will continue to see several other advantages, subjective or objective, in going public and listing their shares primarily in the U.S. market.[259] The precedent of the Brazilian trend may inspire, in the medium term, a future broader South American wave of foreign IPOs and an overseas primary listing in the U.S., provided both of the following: (1) the timid private equity and venture capital market develops more strongly in South

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[256]*Market Capitalization of Listed Domestic Companies (% of GDP) - Latin America & Caribbean*, WORLD BANK, https://data.worldbank.org/indicator/CM.MKT.LCAP.GD.ZS?locations=ZJ (last visited Jan 7, 2022).

[257]*Id.*

[258]*Market Capitalization of Listed Domestic Companies (current US$) - Latin America & Caribbean*, WORLD BANK, https://data.worldbank.org/indicator/CM.MKT.LCAP.CD?locations=ZJ (last visited Jan 7, 2022).

[259]What should occur is the subsequent launching of DR programs in Brazil, given the legislative changes that will occur in 2020 and 2021. Even after the reform, note that current Brazilian legislation is still more restrictive than American legislation.

America, with investments in companies in sectors linked to new technologies that attract the interest of American investors, and (2) the stocks of this type of company continue to offer an inviting price-to-revenue ratio at the time of the IPO and when trading on stock exchanges in the United States, since all other factors for this movement should continue to be present in the whole South American region.

Finally, more than signaling the continuity of this movement for Brazilian companies, it seems clear that this trend may gain velocity in other countries with more advanced private equity and venture capital industries, given that the U.S. markets gather broad scale and sophisticated know-how of its participants, which allows for efficient evaluation of technology companies. The Brazilian case is just an example of a trend that studies evaluating Israeli startups examined; this trend may spread to other countries for similar reasons.