

**Challenges in enforcing the insider trading regulation:
The Brazilian perspective**

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Insider trading regulation

Law 6.404, 1976

Article 155. (...)

Paragraph 1. An **officer or director** of a publicly traded corporation shall also treat in confidence any **information not yet disclosed** to the public, which he/she obtained by virtue of his/her position and which **may significantly affect the pricing of securities**, and **shall not use of such information to obtain any advantages to himself/herself or to third parties by purchasing or selling securities.**

Insider trading regulation

Law 6.404, 1976 (2001 reform)

Article 155. (...)

Paragraph 4. It is forbidden to use relevant information not yet disclosed to the market, by any person with the goal of retaining an advantage in the securities market for the person in question or for others.

Insider trading regulation

Law 6.404, 1976

Article 155. An officer shall serve the corporation with loyalty, shall treat its affairs with confidence and shall not:

Paragraph 1. An officer of a publicly held corporation shall also treat in confidence any information not yet revealed to the public, which he obtained by virtue of his position and which may significantly affect the quotation of securities, and shall not make use of such information to obtain any advantages for himself or for third parties by purchasing or selling securities.

Law 6.385, 1976 (2001 reform)

Article 27-D. To use relevant information not yet disclosed to the market, which one may know and which must remain confidential, so as to create undue advantages, for oneself or others, through the negotiation of securities, in one's behalf or on behalf of others:

Penalty – imprisonment of one (1) to five (5) years and fine of up to three (3) times the amount of the undue advantage obtained as a result of the crime.

Insider trading. Theory



Fiduciary-duty

**Misappropriation
theory**



**Equal access to
information theory**



**Administrative/civil
sphere: equal access to
information**

**Criminal sphere:
fiduciary-duty**

Regulated parties subjected to insider trading prohibition



- **Corporate insiders**
(“traditional” insiders)
- **“Constructive” insiders**
(e.g. Underwriters / attorneys)

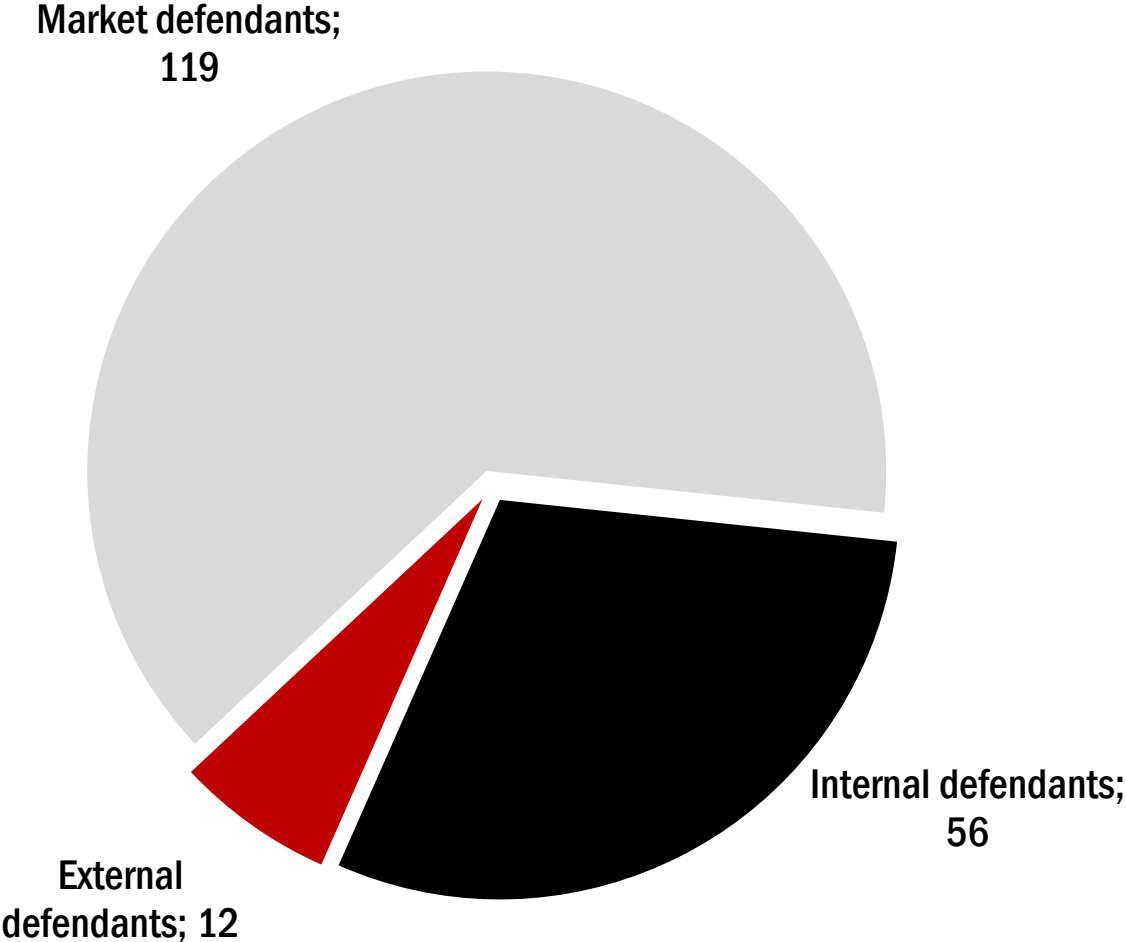


- **Primary insider trading**
- **Secondary insider trading**

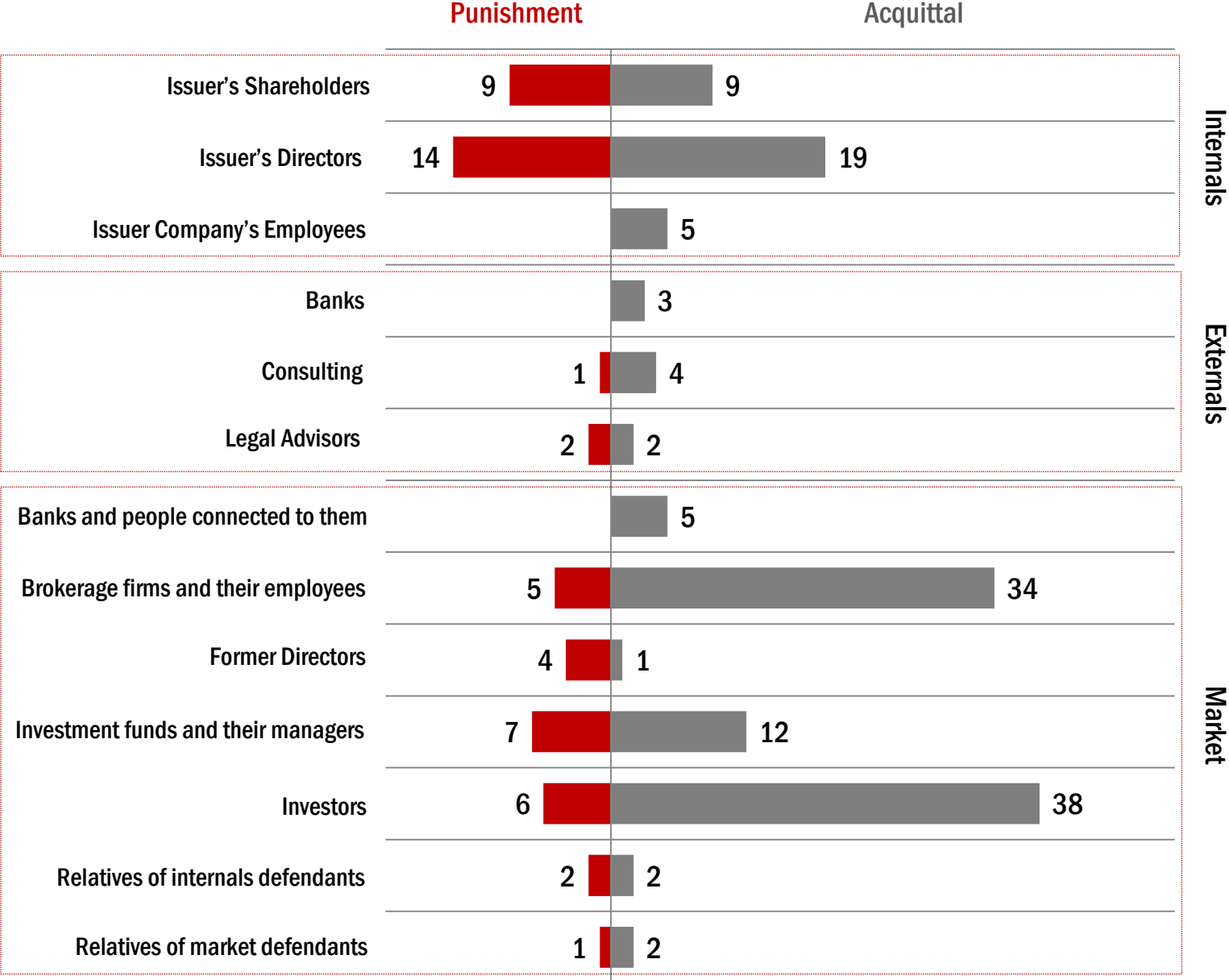


- **Administrative/civil spheres: primary and secondary insiders**
- **Criminal sphere: just primary (“traditional and constructive” insiders)**

Enforcement at CVM



Enforcement at CVM



Penalties: criteria to define the pecuniary sanction



“up to **treble** the profits gained through insider trading activities”



“... any profit gained or loss avoided, up to **twice** these amounts”



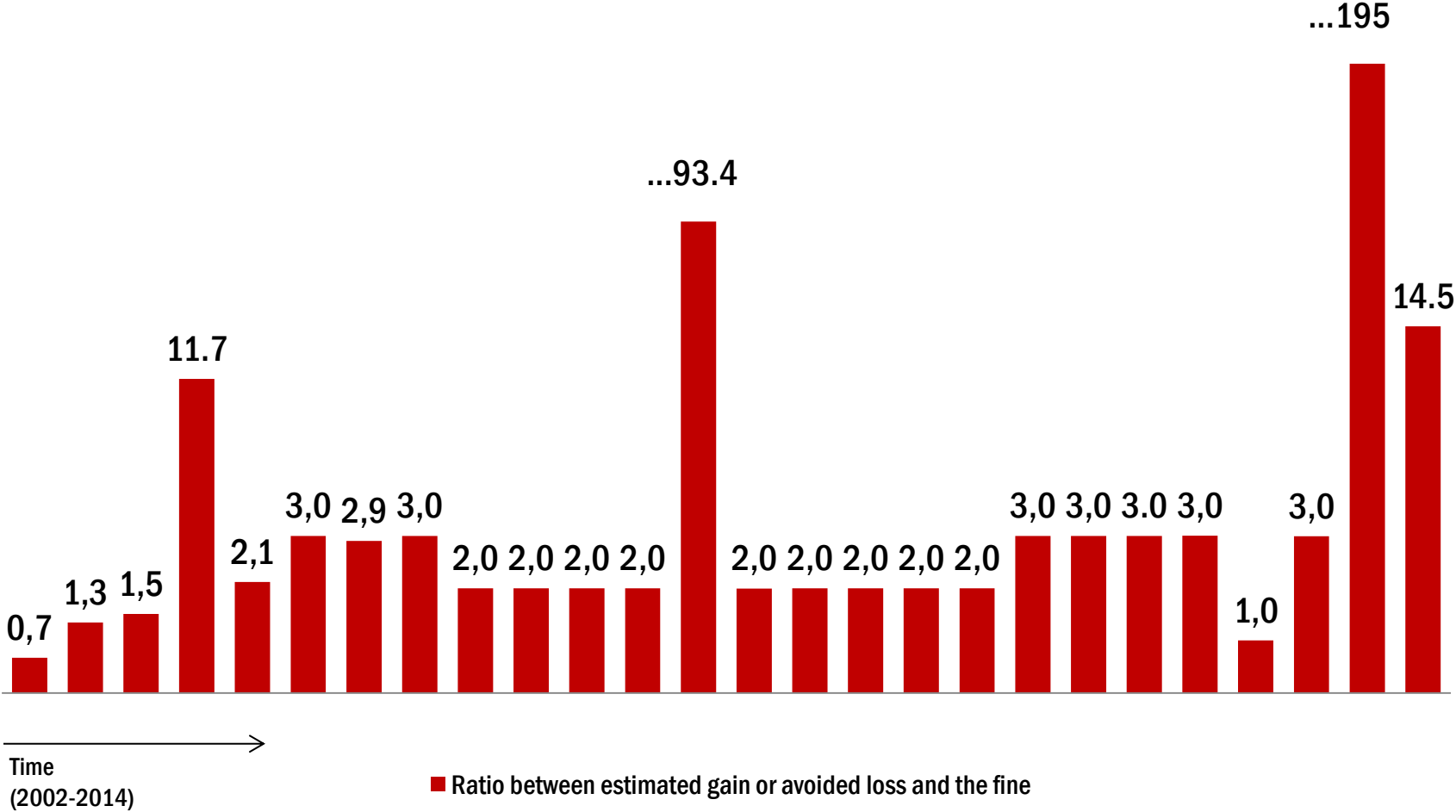
Administrative sphere:

"**500,000 BRL, 50% of the amount of securities or irregular transaction or 3 times the economic benefit derived or loss avoided as a result of the offense**"

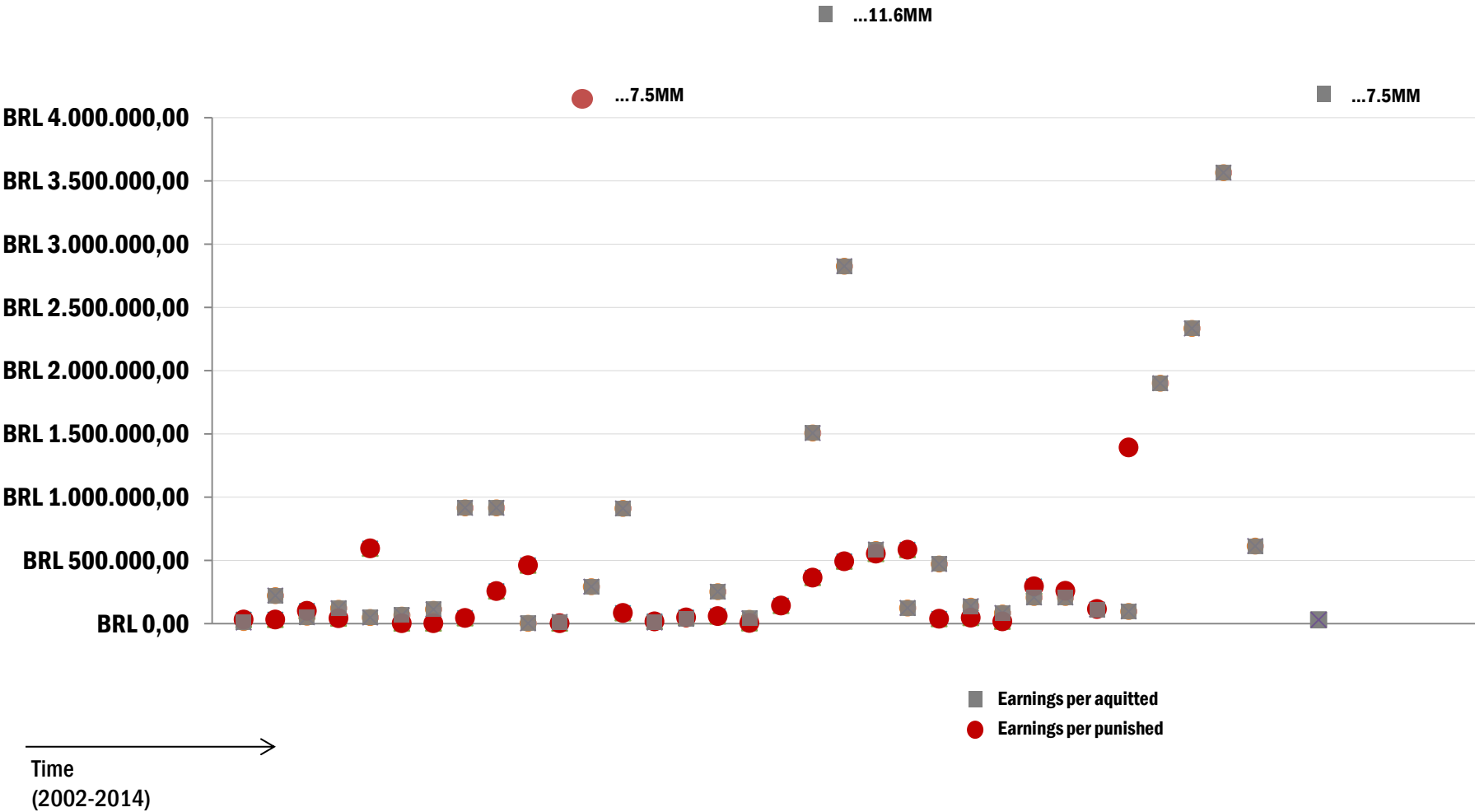
Criminal sphere:

imprisonment; fine of up to 3 times the amount of the illegal advantage

Fines applied by CVM



Gain obtained or loss avoided in insider trading cases



Administrative and criminal sanction: bis in idem?



**Possibility of
administrative and criminal
sanctions**



**No bis in idem (European
Court of Human Rights,
“Grand Steven v. Italy
Case”)**



**Possibility of
administrative and criminal
sanctions**

Enforcement in number



“between 2001 and 2006 the SEC brought over 300 insider trading enforcement actions against over 600 individuals and entities” (Coffe, apud Ventoruzzo, p. 27)

“in the same period of time, (...)it has been involved in an average of roughly 55 insider trading cases a year prosecuted by the Department of Justice, resulting in 88 convictions in the six years considered.” (idem)

Enforcement

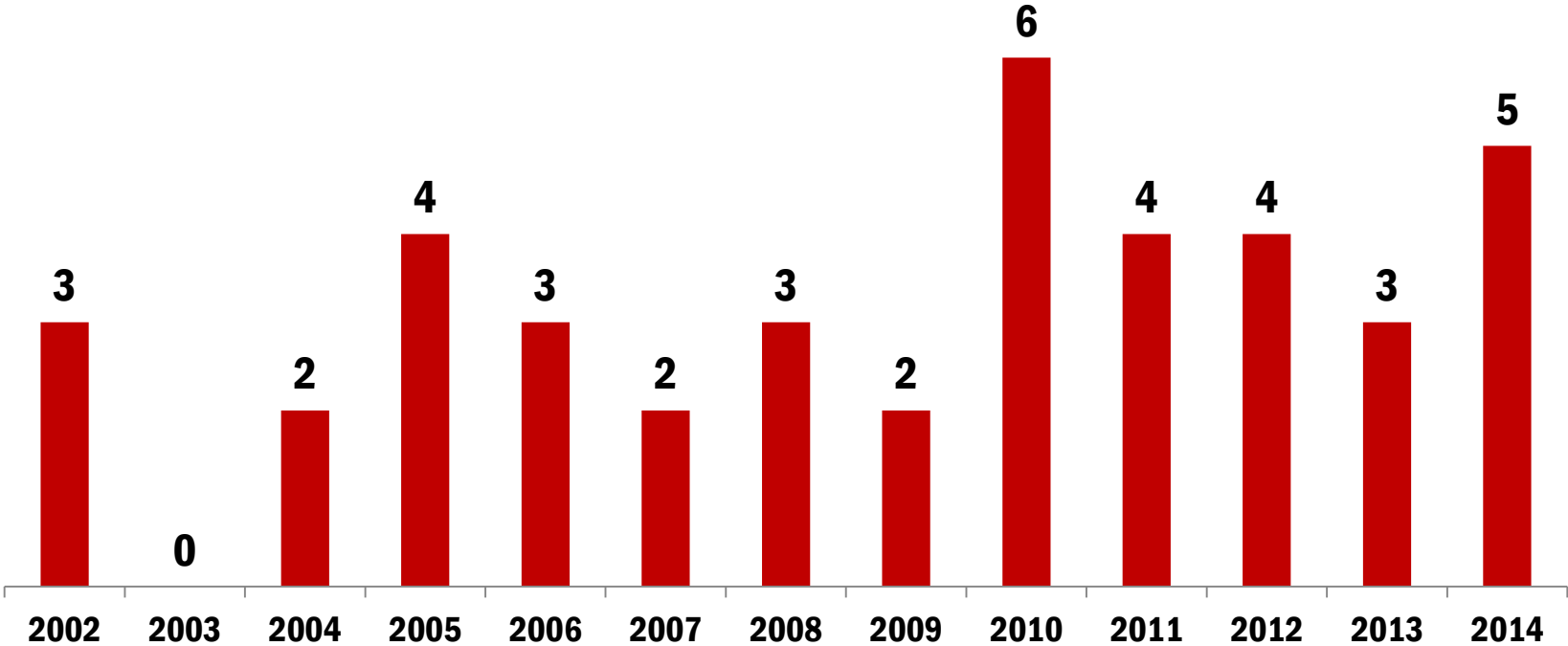


“from 2001 to 2007 **the U.K.** Regulator, the Financial Securities Agency (FSA) has successfully brought only 8 cases”

“From 2005 and 2012 Consob, the **Italian** Securities and Exchange Commission, has investigated 25 insider trading cases, an average of approximately 3 cases a year. In 2007 (...) it joined as a private party 12 criminal cases alleging insider trading; of these 12, only 4 resulted in a conviction.”

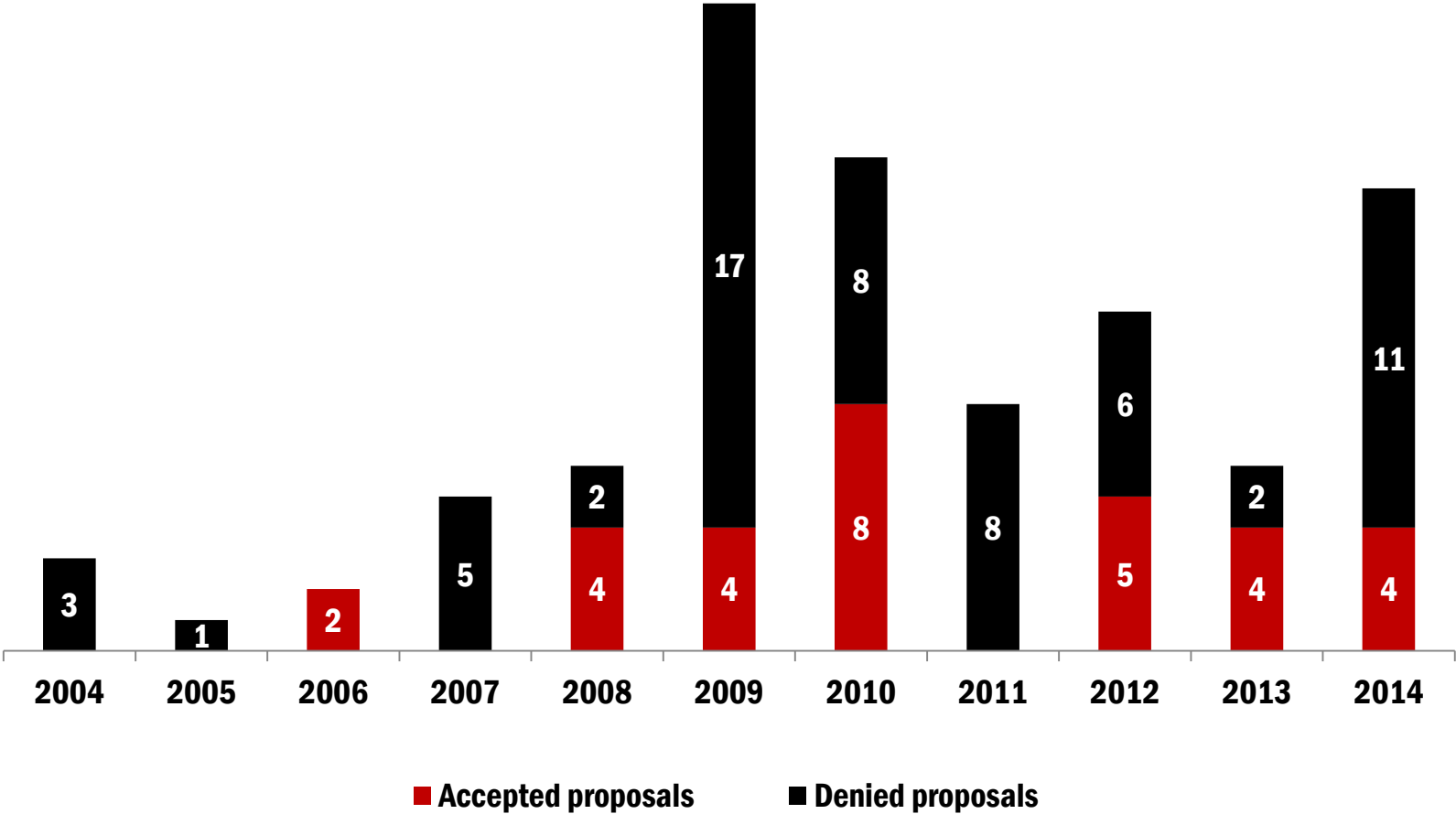
“The **German** financial supervisory authority, the BanFin, seems more active in prosecuting insider trading: in 2005 it started 54 new investigation, referring 23 cases to prosecutors.”

Enforcement



■ Number of insider trading cases

Enforcement (Settlements – Termos de Compromisso)



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