

ACT No. 21,000 CREATES THE FINANCIAL MARKET COMMISSION

On February 23, 2017 Act N° 21,000 (the "Act") was published in the Official Gazette. It creates the Financial Market Commission (the "Commission"), which replaces the current Superintendency of Securities and Insurance ("SVS").

- The Commission is a decentralized technical public service, having legal personality and its own resources. The Commission will communicate with the President of the Republic through the Ministry of Finance.

- In accordance with the Act, the following persons and entities will be subject to the Commission's surveillance:

1. Persons who issue or intermediate publicly offered securities;
2. Stock exchanges and stock exchange operations;
3. Associations of securities brokers and their securities transactions;
4. Funds and their managing companies as determined by law;
5. Corporations (sociedades anónimas) and limited partnerships by shares (comandita por acciones) as determined by the Act;
6. Insurance and reinsurance companies of any type and their transactions, as well insurance agents;
7. The Financial Self-Regulation Committee; and
8. Any other entity or natural or legal person as determined by the Act or any other law.

The Pension Fund Administrators (AFPs) as well as all other individuals and legal entities expressly exempted by the Act remain outside the scope of the Commission's supervision.

- The Commission shall be responsible for guaranteeing the proper functioning, development and stability of the financial market (the "Market"), contributing to its improvement, stability and operation, enabling the suitable participation of market agents and the protection of the public faith accordingly. Furthermore, the Commission must also ensure that all the entities supervised comply with all the laws, regulations from their initiation until their final liquidation. All the powers vested in the Commission must be exercised in accordance with the rules and quorum determined by the Act.

- The Commission's inquiry procedures will be developed by an investigative unit created by the Act, headed by a prosecutor (the "Prosecutor") specially appointed by its Council. This unit will be responsible for carrying out or instructing the investigations necessary to verify infringements to the Act and regulations subject to the Commission's audit; determining possible liabilities of the examined conducts; and enforcement of the sanctions imposed by the Commission; among others.

- In addition to the SVS's current powers (such as the investigation of claims and the auditing of all operations, assets and documents of the entities and activities under its supervision), the Act confers new powers to the Commission. Among them, the Commission is empowered to authorize the Prosecutor (through the issuance of a founded resolution, and the prior authorization by a judge of the Court of Appeals of Santiago, inter alia) to request information on banking operations of specific individuals or entities, including those operations subject to secrecy or confidentiality, necessary to verify whether crimes under the Securities Act have been committed or not. Also, the Prosecutor, in serious and qualified cases that meet other set of requirements and conditions set forth by the Act, may request the police forces to enter private premises, including the search, registration and seizure of all kinds of documents and personal property as well as the interception of all kinds of communications; among others.

- The Board of Directors of the Commission for the Financial Market (the "Council") will be a 5-member entity of commissioners (the "Commissioners") which will determine the Commission's internal operating rules. The Commissioners shall be prominent professional or academic individuals in Market related fields. The

The President of the Republic shall appoint the chairman of the Council, who shall be the head of the service and shall remain in office until the end of the period of its appointment, unless otherwise determined by the Act. The 4 other Commissioners shall be appointed by the President of the Republic, upon the Senate's approval by the 4/7 members in office for a period of 6 years, and may be reelected once for a new consecutive period. The position of Commissioner is exclusive and incompatible with any other position whether in the private or public sector, whether or not compensated, save for academic commitments. In addition, the Act sets forth illegal incapacities and rules regarding possible conflicts of interest.

- The Act provides for two different sanctioning procedures. Most cases to be reviewed by the Council will follow a general procedure. On the other hand, the Council shall issue a general rule that will define the cases in which the simplified procedure will be applicable. Notwithstanding, conducts classified as criminal offenses will not be subject to the simplified procedure. It is important to emphasize the possibility of filing an administrative recourse against the resolutions issued by the Prosecutor and the Commission, as well as the submission of an illegality claim before the Court of Appeals of Santiago. If this claim is denied, an appeal may be filed before the Supreme Court. In both cases, when the appeal is submitted, suspension of the appealed decision may proceed.

- In order to achieve a more effective enforcement of the Act, a leniency and self-report mechanism has been included in the Act. Hence, if the responsible party of an offense under the terms of the Act self-reports it, provided he submits evidence enough to prove such offense, he may obtain a reduction of up to 100% of the applicable monetary penalty. This mechanism is applicable in cases where there are two or more parties involved in the offense and the party mentioned earlier is the first to self-report. The remaining parties may only have a reduction of up to 30% of the applicable pecuniary sanction by providing substantial and additional background evidence to those submitted by the first self-reporting party.

- In addition, the Act provides for a Financial Self-Regulatory Committee (the "Committee") whose sole purpose will be to issue

rules that allow market players under the Commission's purview to self-regulate through good corporate governance practices, business ethics, transparency and fair competition within the Market. In addition to the above, these market players as well as any other entity that the Committee will determine, such as trade associations, may also be part of the Committee. The Committee will be a non-profit body and will be directed by 5 independent directors appointed by its own members and its actions will be subject to internal regulation. Also, among others, the Committee must ensure compliance of such good practices and resolve disputes between market players.

- Finally, it is important to mention that the Act will come into full force and effect 18 months after its publication (or earlier in the event the Commission begins its operations before such date).

To view the complete Act, click on:

<https://www.leychile.cl/Navegar?idNorma=1100517>

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