

**Press  
RELEASE**



## **The CMF applies sanction against Aurus Capital S.A., General Fund Administrator and its former executives and former directors**

**May 3<sup>rd</sup>, 2018.** - The Financial Market Commission (CMF) reports that, through Exempt Resolution N°1653 dated April 27<sup>th</sup>, 2018, Aurus Capital S.A General Fund Administration (AGF), and directors and executives who served in those positions between 2014 and 2016 were fined.

The aforementioned, within the framework of the closure of the administrative sanctioning procedures initiated in 2016 that sought to identify possible offenses related to the erroneous valuation, accounting, custody and registration of investments and assets of the Global and Insignia funds administrated by Aurus AGF.

Upon pressing charges, Aurus AGF had among its funds the "Aurus Insignia Investment Fund" and "Aurus Global Investment Fund", both objects of this sanction and defined as redeemable, which managed a total patrimony of MUS\$ 110,936 as of October 3<sup>rd</sup>, 2016.

Their portfolios were mainly made up of movable assets, such as stocks, bonds, shares of public and private investment funds, domestic or foreign, ETF and derivatives of forward type and options.

After analyzing the charges, depositions, pleas and evidence presented, the CMF was able to establish that in its capacity of investment manager of aforementioned funds, Mr. Mauricio Peña falsified information regarding the assessment of certain instruments overvaluing their prices, without adjusting to the current regulations, as well as manipulating the investment portfolios of the funds, incorporating non-existent instruments or for amounts greater than the true value, artificially increasing the value of the patrimonies of the funds.

For these purposes, Peña intentionally falsified reports relating to the custody and valuation of said instruments, which implied that the financial information provided to the contributors and this service contained in the financial statements, book share of securities, patrimony net worth and total assets were not true. Additionally, it carried out improper operations with resources from the fund, transferring resources to obtain direct or indirect benefits, and not in the interest of the fund and its participants.

This action represented a patrimonial detriment of 32% in the case of the "Aurus Insignia Investment Fund" and a patrimonial detriment of 26% in the case of the "Aurus Global Investment Fund", that is, an overvaluation of the investment held by the participants of these funds.

### **Sanctions**

The sanctions adopted by the Commission are based on the background information gathered in the research stage prior to arraignment on August 16<sup>th</sup>, 2017, as well as in the analysis of the deposition, pleas and evidence presented, guaranteeing those sanctioned the strict compliance with the due process established by the current legal framework.

Thus, the **Council of the Financial Market Commission**, made up of the commissioners Rosario Celedón Förster, Christian Larraín Pizarro, Kevin Cowan Logan and, Mauricio Larraín Errázuriz, **unanimously** resolved to sanction the following persons:

• **Mauricio Peña Merino**, who was director of Aurus AGF and investment manager of the Insignia and Global funds, **with a fiscal benefit fine of UF 10,000** for actions that the Council considered to be extremely serious. It is for the foregoing that the following offenses were committed:

- Infringement forbidding to carry out operations with the assets of the Insignia and Global investment funds to obtain direct or indirect undue benefits.
- Infringement to the duty to safeguard compliance with the internal regulation of the Insignia and Global investment funds.
- Infringement to the duty to ensure that the operations and transactions are carried out only in the best interest of the funds and for the exclusive benefit of the members.
- Infringement to the duty to ensure that the valuations of the funds are carried out in accordance with the Single Funds Law, its regulations,

the rules dictated by this service and the internal regulations of the Insignia and Global funds.

- Infringement to the duty to ensure that the financial information for the contributors is truthful, sufficient and timely.
- Infringement to the prohibition of maliciously providing false information to the Superintendence of Securities and Insurance, today the CMF and to the general public corresponding to financial statements, book share of securities, net patrimony and total assets.
- Infringement to the obligation to have a Risk Management and Internal Control Manual adjusted to the requirements of Circular N°1869 of this service that provides instructions on the implementation of measures related to risk management and internal control in the fund administrators.
- Infringement to the duty of having Contingency Plans adjusted to the requirements of Circular N° 1869 of this service.
- Infringement to the duty to submit reports from the Compliance and Internal Control Officer (ECCI) that comply with the requirements of Circular N° 1869.
- Non-compliance with the issuance of certifications on sufficiency and suitability of the risk management and internal control structure, in accordance with the provisions of Circular N° 1869.

• To **Mr. Antonio Cruz Zabala, Mr. Alejandro Furman Sihman, Mr. Sergio Furman Sihman and Mr. José Miguel Musalem Sarquis**, with a fiscal benefit fine of **UF 1,000 each** and to **Mr. Raimundo Cerda Lecaros**, with a fiscal benefit fine of **UF 200**, in their capacity of directors of Aurus AGF, for having committed the following offenses in consideration of the period in which each of them served on the Administrator Board:

- Infringement to the duty to have Risk Management and Internal Control Manual adjusted to the requirements of Circular N° 1869 of this Service.
- Infringement to the duty to have Contingency Plans adjusted to the requirements of Circular N° 1869 of this service.
- Infringement to the duty to submit reports from the Compliance and Internal Control Officer (ECCI) that comply with the requirements of Circular N° 1869.
- Non-compliance with the issuance of certifications on sufficiency and suitability of the risk manager and internal control, in accordance with the provisions of Circular N° 1869.
- Infringement to the duty to ensure that the valuations of the funds are carried out in accordance with the Single Funds Act, its regulations,

the rules dictated by this service and the internal regulations of the Insignia and Global funds.

- Infringement to the duty to ensure that the financial information for contributors is truthful, sufficient and timely.

• To **Mr. Juan Carlos Dèlano Valenzuela**, general manager of Aurus, with a fiscal benefit fine of **UF 900**, for having committed the following offenses:

- Infringement to the obligation to have a Risk Management and Internal Control Manual adjusted to the requirements of Circular N°1869 of this service.
- Infringement to the duty to have Contingency Plans adjusted to the requirement of Circular N° 1869 of this service.
- Infringement to the duty to submit reports from the Compliance and Internal Control Officer (ECCI) that comply with the requirements of Circular N° 1869.
- Non-compliance with the issuance of certifications on sufficiency and suitability of the risk management and international control structure, in accordance with the provisions of Circular N° 1869.
- Infringement to the duty to ensure that the financial information for contributors is truthful, sufficient and timely.

• To **Aurus AGF**, with a fiscal benefit fine of **UF 10,000**, for having committed the following offenses:

- Infringement to the obligation to have a Risk Management and Internal Control Manual adjusted to the requirements of Circular N° 1869 of this service.
- Infringement to the duty to have Contingency Plans adjusted to the requirements of Circular N° 1869 of this service.
- Infringement to the duty to submit report of the Compliance and Internal Control Officer (ECCI) that comply with the requirements of Circular N°1869.

It should be noted that the amounts of the sanctions imposed consider, among other factors, the seriousness of the conduct and its impact on the financial market, as well as the actions taken to mitigate the damage to the harmed persons in the case of directors and the AGF.

### **Considerations regarding the Aurus case**

The third-party funds administration industry is one of the main actors of our Equity Market, according to the high and increasing volume of resources and of the large number of investors. In this context, the public interest involved in this economic activity, lies both in the protection of the resources that are administered and in the maintenance of the trust that the participants and contributors place in the system.

The General Fund Administrators play a crucial role in this industry, being the entities that according to the current regulation develop this activity. That is why the regulation framework establishes a series of requirements that must be met, in terms of capital adequacy and guarantees, among others. Additionally, the regulation also requires from the administrators, their directors and managers, a duty of diligence in order to ensure and exercise the administration of the resources of the investors attending exclusively to the best interest of the fund and, therefore, of the investors. Within the legal framework, the adequate valuation of the assets of the fund and the quotas, as well as the safeguarding of said assets against undue uses play a central role.

In this context, the current regulations instruct them to have risk management and internal control systems consistent with their size and the complexity of their business. The same regulation determines the critical activities or processes in the administration of third parties' resources and, therefore, requires the establishment of the policies, procedures and control mechanisms. Among them is the valuation of the instruments included in the portfolios of the funds and the custody and safeguard their ownership. Throughout this process, the role of senior management and the effective involvement of the board is fundamental.

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