



## CMF publishes Fintech Act proposal for the securities market

- *The Board of the CMF submitted the preliminary draft to the Ministry of Finance three months ago. Pursuant to Law No. 21,000, the Board may propose regulatory amendments within the scope of its powers to the executive branch.*
- *The Commission's preliminary draft aims, among other things, to provide a legal and regulatory framework for collective financing platforms (a.k.a. crowdfunding) and other Fintech activities related to the securities market.*

**February 9, 2021** –The Financial Market Commission (CMF) has made available to the general public [its proposal of a Fintech Act for the securities market](#), which was submitted to the Ministry of Finance in November 2020. This bill is the outcome of a process started by the CMF in 2018 that involved a series of consultations and discussions with the financial industry, as well as advice from the Inter-American Development Bank.

The Commission's preliminary draft aims, among other things, to provide a legal and regulatory framework for collective financing platforms (a.k.a. crowdfunding) and other Fintech activities related to said market. This is a set of business models that has become increasingly relevant due to the advance of technology applied to the financial market but operates without a specific financial regulation, limiting its development and opening breaches for potential user risks.

The preliminary draft also includes an update to some of the current legislation in other areas of the stock market under the CMF's jurisdiction. This is to adapt it and preserve regulatory consistency between the new Fintech players and the players operating today under the CMF's regulation and supervision.

### Five Pillars

The preliminary draft of the Fintech Act for the securities market is based on the following five pillars:

1. **Proportionality.** Requirements must be differentiated and proportional according to the risks inherent in the activities carried out by each entity.

2. **Neutrality.** Regulations should not generate regulatory asymmetries between entities that are technology-intensive and those using technology to a lesser extent.
3. **Integrity.** For the regulation applicable to crowdfunding to fulfill its purpose, it must not only address the aspects of the activity itself, but must also regulate the services and related aspects to allow companies to generate scale/scope economies, improving their competitiveness at both local and regional levels.
4. **Flexibility.** Regulations must allow different business models to coexist and change over time without needing to constantly adapt said regulations.
5. **Modularity.** Regulations must acknowledge that services traditionally provided in an integral manner can be decomposed through technology and, therefore, there may be service providers that only perform one component of the traditional service value chain. For this reason, the requirements that the entity must comply with will be directly related to the different components (modules) that it is to perform.

The Commission states its belief in a regulatory design that is proportional, technologically neutral, comprehensive, flexible, and modular in its legal framework. It will promote innovation, financial inclusion, development of new funding sources and small-size enterprises, and greater competition in the financial market.

## Regulatory Perimeter

The preliminary draft brings the following entities under supervision of the Financial Market Commission:

- **Collective Financing Platforms.** Physical or virtual spaces to find individuals or entities with investment projects or financing needs.
- **Alternative Trading Systems.** Physical or virtual spaces that allow their participants to quote, offer, or trade financial instruments. These are not authorized to act as stock exchanges.
- **Order Routers and Financial Instrument Intermediaries.** They receive and channel orders from third parties to buy or sell financial instruments to alternative trading systems, securities intermediaries, or commodity brokers.
- **Safekeepers of Financial Instruments.** Entities that are in possession of financial instruments in their own name on behalf of third parties, or hold money or foreign currency on behalf of third parties (including cash flows or disposals), or have been handed over to acquire such instruments or to guarantee transactions in such instruments.
- **Loan Advisors.** Individuals who provide evaluations or recommendations to third parties regarding the ability or likelihood of individuals or entities to pay.

All these entities must be registered in the Public Rolls to be maintained by the CMF. Before initiating their functions, they must demonstrate compliance with all

requirements related to the risk level of each service provided. As a result, the regulatory impact for each entity will depend on the services it intends to perform.

Furthermore, the preliminary draft includes a definition of financial instrument which includes, among others, securities not enrolled in the Securities Registry; derivatives; contracts for difference; invoices; and digital assets. It is worth noting that said draft does not include regulation of any digital assets that are used as a means of payment, a matter that CMF is working on alongside the Central Bank of Chile.

## **Regulatory Coherence**

The preliminary draft also considers amendments to Law No. 18,045 on the Securities Market; Law No. 18,046 on Corporations; and Law No. 20,712 on the Administration of Third-Party Funds and Individual Portfolios. This is to preserve regulatory consistency between the different markets under the CMF's jurisdiction and raise standards for the provision of certain already regulated services. In particular, the project strengthens the Commission's powers to regulate securities intermediaries.

Among these amendments, it is important to highlight a change in the conditions that require enrollment in the Securities Registry. While Law No. 18,045 sets forth a minimum of 500 shareholders for such an obligation, the preliminary draft increases the registration threshold to over 2,000 shareholders. In addition, the draft provides for a simplification of the enrollment process in the Securities Registry, eliminating the registration of issuers and leaving it limited solely to the registration of the securities themselves.

With the aim of ensuring regulatory symmetry and technological neutrality, there are also amendments to the rules and norms governing stock exchanges, securities intermediaries, general fund administrators, and portfolio managers. For example, the self-regulatory role of stock exchanges is abolished, and they will now be under the self-regulation framework stated by Law No. 21,000.

Finally, the preliminary draft also adds power to the Commission to require new regulated entities and other audited entities to enable an automated remote access interface (known as API) to facilitate the exchange of client information, subject to client authorization, between different financial service providers. This provision incorporates the so-called "open data" into the legal framework.

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