



CMF issues regulation establishing parameters and procedures to qualify as an anonymous whistleblower

- *This complies with the provisions of Law No. 21,314, which established new transparency requirements and reinforced responsibilities for market agents.*

July 5, 2021 – The Financial Market Commission (CMF) has issued General Rule No. 456, a regulation establishing parameters and procedures to qualify as an anonymous whistleblower. This is pursuant to Law No. 21,314 on Transparency and Accountability of Market Agents. According to said law, parties who provide background information to detect, verify, or accredit violations falling within the Commission's scope of competence may receive such qualification through a well-founded resolution by the CMF.

Law 21.314 added a new Title VII to Decree Law No. 3,538, which established that the Commission shall issue a new regulation setting the parameters to determine the substantial, accurate, truthful, verifiable, and unknown nature of background information submitted by complainants who cooperate with investigations and opt for the qualification of anonymous whistleblowers according to the requirements set by the law. Furthermore, the reward anonymous whistleblowers shall be entitled to receive (regarding the investigatory procedure in which they cooperated) may not be neither below 10 percent of the fine applied, nor higher than the lesser amount between 30 percent of said fine and UF 25,000. Such percentage shall be defined by the CMF in the corresponding sanctioning resolution in accordance with objective parameters to be determined through a General Rule.

Individuals who provide the Prosecutor of the CMF's Investigation Unit with background information for the detection, verification or accreditation of violations that fall within the Commission's scope of competence, or regarding the involvement of a third party in such violations, may voluntarily and expressly request to be granted the status of anonymous whistleblower. Applicants can submit their requests through a form provided on the Commission's website. The identity of the person making the report will be secret from the date of the request, regardless of whether they are granted the status of anonymous whistleblower or not.

Pursuant to Articles 23 and 24 of Decree Law No. 3,538, information provided by complainants must refer to violations that will probably trigger an investigation and

subsequent sanctioning process by the Commission due to their relevance, seriousness, or involved entities. Complaints dealing with infractions that have lapsed, whose sanctioning authority has expired, or which are unlikely to result in an investigation process due to the CMF's supervising and sanctioning policies, shall not be considered anonymous. In any case, the identity of anonymous whistleblowers shall always remain secret.

Background Information

The new regulation states that the anonymous whistleblower status may be granted to whoever cooperates with an investigation by providing relevant information fulfilling the following terms:

- **Substantial.** Information related to the conduct in question and which, due to its content and nature, would allow to prove irregular actions by alleged infringers with a reasonable degree of certainty.
- **Precise.** Background information must refer to concrete, specific facts allowing to determine an infringement and who might be responsible for it.
- **Truthful.** Background information must be real, not mere speculation. Whistleblowers must keep in mind the provisions of Article 82 of Decree Law No. 3,538; its third paragraph refers to sanctions for providing false or fraudulent information.
- **Verifiable.** Background information must refer to facts that can be corroborated by any means of evidence. It doesn't matter if the evidence is provided by the party making a formal submission or obtained by the Prosecutor of the CMF's Investigation Unit.
- **Unknown.** Information provided by applicants must be unknown to the Commission at the time their requests are submitted. Information that merely replicates public sources like media or any other obtained/maintained/provided by a civil servant on duty, whether at the Commission or any other government agency, shall not be considered unknown.

As mentioned earlier, the percentage of applied fines that anonymous whistleblowers are eligible to receive shall be defined by the Board of the Financial Market Commission in the respective sanctioning resolution. The following factors shall be considered for such a purpose:

- **Relevance.** Considers the completeness of background information submitted to detect, establish, or prove infringements of the Commission's regulatory framework within its scope of competence.
- **Opportunity.** Considers whether the background information was timely submitted to the Commission's Investigation Unit to start, complement, or resume a sanctioning procedure; and whether the anonymous whistleblower

noticed the Investigation Unit as soon as possible. It also considers that there were no unjustified delays in filing the complaint.

- **Cooperation.** Considers whether anonymous whistleblowers cooperated with the Investigation Unit when requested, either by including explanations or complementary information to the one already presented in their submissions that contributed to the investigation and subsequent sanctioning process. It also considers whether whistleblowers voluntarily waive their anonymity to testify in investigations.
- **Seriousness.** Considers the impact that reported conducts have on the proper functioning of the activities or entities supervised by the Commission or on the development, operation, or stability of the financial market.

If two or more people request the anonymous whistleblower status regarding facts leading to the same sanctioning procedure, the percentage of the fine given as a reward shall be split between the complainants as follows: directly proportional to the relevance of information submitted and how the complainant cooperated, and inversely proportional to the number of days elapsed since the complaint was filed and the date of the sanctioning resolution.

Interested parties can access the [Rules and Norms section](#) of the CMF website to check the details of the new General Rule. The Commission also makes available a [Frequently Asked Questions](#) document, a [Presentation](#), and a [Regulatory Brochure](#) with the regulation's core elements.

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