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Ministry of Finance highlights the approval of the bill that raises market standards for participants in the financial market

Santiago, March 4th, 2021. Earlier this week, Congress approved a bill that seeks to further strengthen market confidence, in order to improve market functioning within a transparent and competitive framework, along with fair and ethical behavior among market participants. The main objective of the bill is to raise market standards of market agents to favor financial development and, at the same time, indirectly strengthens the competitiveness of Chile's financial sector.

This bill is one of many initiatives led by the Ministry of Finance to enhance competition in the financial market. Last year, the Government approved the Financial Portability Law, that facilitates switching between financial institutions for individuals and micro-small businesses, and the Law that improves financial market functioning and facilitates access of large firms to financing in the local capital market. Several bills are currently being discussed in Congress, including the regulation of interchange fees in the payment card industry, the regulation of changes in the investment strategies of individual pension savings accounts, a bill that creates a registry of consolidated debt obligations, as well as a bill that addresses the Fintech industry, among others.

The Main Characteristics of the bill

- I. Increase jail sentences, fines and broadens definitions of crimes related to the stock market.
 - It increases the minimum jail sentence from 61 days to 541 days, and the maximum jail sentence from 5 years to 10 years, for a group of crimes among which is the **use of privileged information**.
 - Regarding the sanctions that the local financial regulator - **Financial Market Commission** (CMF for its acronym in Spanish) - may impose by general criteria, from 15,000 UF (~USD 600,000) to 100,000 UF (~USD 4,000,000).
 - It also facilitates the application of fines equivalent to "twice the benefit obtained", to be applied by the CMF to entities and people that infringe the bill, including rules that prohibit the **use of privileged information**.
 - The crime of price manipulation is expanded, now establishing that any action (and not just the "transaction") that is carried out with the purpose of stabilizing, fixing or artificially varying the prices of public offering securities, constitutes a crime.

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- New prohibitions are created for auditing firms, directors or administrators who maliciously deliver false information. Likewise, it increases the minimum jail sentence from 541 days to 3 years for a series of crimes associated with the delivery of maliciously false certifications and the carrying out of fictitious transactions.
- II. The **anonymous whistleblower** role is created, in order to protect and safeguard the identity of those who collaborate with the CMF through the provision of substantial information for detection, verification or proof of infringements of the laws that are subject to the jurisdiction of the CMF. Additional details are provided below:
- The anonymous whistleblower will be protected, safeguarding his identity in secret and prohibiting the termination of service provision contracts or suspending the start of these only because he has collaborated as an anonymous whistleblower.
 - The anonymous whistleblower will be given part of the fine that the sanctioned person must pay (between 10% and 30%, with a maximum of 25,000 UF, not constituting income).
 - The person who deliberately gives false information to the CMF, requesting the status of anonymous whistleblower, will be sanctioned with imprisonment and a fine.
- III. Notwithstanding internal control policies adopted by each issuer of publicly offered securities, directors, managers and senior executives of an issuer of publicly offered securities, as well as their spouses, cohabitants and relatives to the second degree of consanguinity or affinity, will not be able to carry out, directly or indirectly, transactions on the securities issued by the issuer, within the thirty days prior to the disclosure of the quarterly or annual financial statements of the latter (blackout period of 30 days in the purchase and sale of securities for directors and senior executives) .
- IV. Transparency and competition in the insurance market are increased, creating a digital system so that each person can know online, in real time and automatically, all the insurance services contracted. In addition, the tender insurance process associated with mortgages is improved, banning replacement of companies that have previously been adjudicated through a tender process, prohibiting the requirement that companies should participate in the tender through a broker, among other measures to improve competition recommended by the Free Market Regulator (Tribunal de la Libre Competencia).
- V. The regulatory perimeter of the CMF is expanded with respect to investment advisory services.
- VI. Pension advisers, which will be called "Social Security Financial Advisors" and "Social Security Advisory Entities", are incorporated into the regulatory perimeter of the Superintendency of Pensions ("SP") and the CMF, who will regulate them jointly. For such purposes:

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- A new registry called "Registry of Social Security Financial Advisors" is created, jointly managed by the SP and the CMF, in which the "Social Security Financial Advisors" and "Social Security Financial Advisory Entities" will be registered.
- The advisers must constitute a guarantee to respond to the correct and complete fulfillment of all the obligations emanating from their activity and, especially, of the damages that they may cause to the affiliates, beneficiaries or pensioners who hire their pension advisory services. The amount of the guarantee may not be less than 500 UF (~USD 20,000) nor greater than 60,000 UF (~USD 2,400,000), and will be determined by the SP and the CMF.
- The "traditional" pension consultancies will be regulated only by the SP, and not jointly by the SP and the CMF as is the case today. This is because although they are advisers, their nature is only social security.

Other measures

- VII. Interconnection of stock exchanges is facilitated by providing tools to the CMF to force interconnection, determining conditions and requirements.
- VIII. Corporate Governance standards are modified, specifying the conditions to be an independent director, directors are presumed guilty in the event of approval of operations with related parties without complying with the requirements of the law and it is established an obligation to propose to the Board management policies to deal with conflicts of interest.
- IX. The CMF is given the power to define the concept of "omission", limiting the possibility of avoiding the Maximum Conventional Rate through the collection of commissions that do not correspond.
- X. The law that creates the Unit of Financial Analysis ("UAF") is modified, allowing for the risk assessment related to money laundering and financing of the terrorism, as well as to impart instructions to correct deficiencies observed.
- XI. It is specified that interest cannot be charged on the capital already paid in money credit operations.
- XII. It is established that the insurances associated with credit, which were different from those to assure the payment of debt or the protection of assets given as collateral (which will be determined by the CMF), will be void unless they are ratified by the contractor within a specified period. In this case, the contractor will only be insured from the ratification or from the date established by policy.