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CMF INVITES TO SUBMIT COMMENTS TO NEW RULE ON INVESTMENT ADVISORY SERVICES UNDER THE FINTECH LAW

On 16 January 2023, the Financial Market Commission ("CMF") published in its web site and invited to submit comments to a regulatory proposal involving the issuance of two rules: (i) the general rule that will regulate the requirements and procedures for registration in the Registry of Financial Services Providers (the "RPSF") and (ii) the general rule that will regulate the authorization to provide investment advisory services by persons registered in the RPSF (the "Proposed Rule"). The public consultation process will end on January 27, 2023, and both rules are expected to enter into force on February 3, 2023.

The regulatory proposal is the commencement of the implementation of Law No. 21.521 (the "Fintech Law"), which, among other things, establishes a regulatory framework for services based on Fintech technologies, including investment advisory services, and incorporates them into the regulatory perimeter of the CMF. For more information about the implementation process of the Fintech Law and the rule that will govern the registration in the RPSF, please refer to the following news alert .

Investment advisory services on the Fintech Law and Proposed Rule

Under the Fintech Law, those professionally engaged in providing investment advisory services, which are defined as "the provision of evaluations or recommendations services to third parties regarding the advisability of making certain investments or transactions in publicly offered securities, financial instruments or investment projects", must: (i) apply for registration in the RPSF, having to do so by organizing themselves as legal entities (unless they are individuals that comply with the requirements of the proposed rule on registration in the RPSF), whose exclusive corporate purpose must be to render investment advisory services and, (ii) together with the registration or afterwards, apply for authorization from the CMF to perform the service.

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In addition, Article 45 of the Fintech Law repeals Article 3 of Law No. 21.314, which required those who regularly provide investment advisory services to register with the CMF's Investment Advisors Registry, regulated by NCG No. 472 (which came into force on July 12, 2022).

In view of the above, the Proposed Rule is intended to give continuity to the regulation of investment advisors to those who are currently registered in the CMF's Investment Advisors Registry or have their applications pending resolution, being qualified as transitional rule for authorization to perform investment advisory services.

The Proposed Rule establishes the documents and information required to apply for authorization to provide investment advisory services and maintain most of the obligations and requirements for investment advisors currently in force in NCG No. 472, such as implementing policies, procedures and controls, including a code of conduct, in order to ensure the truthfulness and suitability of the evaluations or recommendations, the prioritization of the interests and needs of their clients, and the independence and knowledge of the advisors, among other aspects.

The requirement for accreditation of knowledge is also maintained for individuals registered as advisors in the RPSF and for individuals who make evaluations or recommendations on behalf of the legal person advisor registered in the RPSF.

Given its transitional nature, the CMF indicates that, in the future, the Proposed Rule will undergo amendments in order to improve the regulation in light of the new provisions of the Fintech Law that raise standards in different areas.

Finally, in compliance with transitional article 2 of the Fintech Law, the Proposed Rule establishes February 3, 2024, as the deadline for providing investment advisory services without being registered in the RPSF or having applied for authorization.

Other background information on the Proposed Rule, as well as the possibility to comment on it, are available at the following link .

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