

July 9, 2024

LEGAL ALERT

CMF outlines when sharing content on social media constitutes investment advice

On July 5, 2024, the Financial Market Commission ("CMF") updated its "Frequently Asked Questions" document related to General Rule No. 502 ("**NCG 502**"). The NCG 502 regulates the registration, authorization, and obligations of financial service providers under Law No. 21.521, known as the "Fintech Law**." The update aims to establish guidelines on how the creation and dissemination of financial and/or investment content through media and social platforms may constitute investment advice under the Fintech Law.

The document clarifies that individuals or entities involved in producing and sharing financial and investment content, targeting the general public or a specific group, will fall under the regulatory scope of the Fintech Law if two conditions are met:

The communication of an evaluation or recommendation is capable of and/or intended to influence the audience's decision regarding the advisability of a particular investment

To illustrate, the CMF provides examples of activities that it considers as investment advice under this criterion:

- Recommending or evaluating the advisability of investing in publicly offered securities, financial instruments, or investment projects (as defined by the Fintech Law).
- Offering investment recommendations or evaluations concerning a specific market, indicating whether it is advisable to invest using the assets mentioned in letter (a).
- Promoting referral programs and/or offering discounts that serve as an invitation or incentive to engage in investment transactions involving publicly offered securities, financial instruments, or investment projects.
- Making and sharing general or specific profitability projections for certain publicly offered securities, financial instruments, or investment projects.

To avoid falling under this criterion, communications should be purely informative or educational, providing objective and neutral information. Such communications should aim solely to inform about specific, verifiable facts and/or provide conceptual financial content.

****The communication is conducted regularly****

Investment advisory services are deemed to exist when communications via media and/or social platforms are carried out professionally, habitually, and consistently over time. The "Frequently Asked Questions" document provides as example the managing, producing, publishing, and disseminating of content on a social media profile, through a podcast, or an audiovisual channel, primarily focused on making recommendations or offering investment advice as previously described.

Authors: Diego Peralta; Fernando Noriega