

CMF PUBLISHES NEW REGULATION REGARDING GENERAL HABITUAL POLICIES AND REPORTING OF OPERATIONS WITH RELATED PARTIES

On January 8, 2024, the Financial Market Commission (“CMF”) published General Applicable Rule No. 501 (“NCG No. 501”) which establishes the minimum mentions that general habitual policies must contain (“General Habitual Policies”) and regulates the public disclosure of operations with related parties (“OPR”).

The NCG No. 501 is imparted by the CMF by virtue of the legal modifications made to article 147 of Law No. 18,046 on Corporations (“Corporations Law”) by [Law No. 21,314 on Market Agents, of 2021](#).

General Habitual Policies are relevant in the context of the formalities and procedures that listed and special corporations must comply with to approve an OPR. In this regard, Corporations Law establishes that, prior to authorization from the board of directors, certain OPRs may be executed without complying with the requirements and procedures established in numbers 1 to 7 of article 147 of the Corporations Law, to the extent that they are operations that are not of relevant amount, or involving a counterparty of which the company owns more than 95% of its property, or that are ordinary or habitual in consideration of the business purpose and comply with a general habitual policy approved by the board of directors.

General Habitual Policies and the other exceptions permitted by the Corporations Law aim to rationalize the activity of the board of directors and reserve to their knowledge those operations with related parties that are more relevant and that are not recurrent or ordinary, without prejudice that the board of directors is able to know any of them when it deems it convenient.

Content of General Habitual Policies.

Among other minimum mentions, NCG No. 501 sets forth that companies must (i) justify the need of having a General Habitual Policy and (ii) detail the characteristics and conditions that

Esta alerta legal es proporcionada por Carey y Cía. Ltda. con fines educativos e informativos únicamente y no pretende ni debe interpretarse como asesoría legal.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, Piso 43.
Las Condes, Santiago, Chile.
www.carey.cl

operations must meet to be carried out under the General Habitual Policy, with at least the following mentions:

- Counterparties to the operations: each type of counterparty must be indicated in accordance with the nature of the relationship with the respective entity, its controller or its administration, and the subtypes of operation that will be considered habitual with each type of counterparty.
- Maximum amount per operation: it must be expressed as a proportion of the income, expenses, equity, assets or liabilities of the respective entity, individual or consolidated, and comply with the limits of letter b) of article 147 of the Corporations Law (that is, General Habitual Policies cannot authorize acts or contracts that commit more than 10% of the assets of the company). Different maximum amounts can be established by type of operation, similar or complementary operations or those in which there is identity of parties or object, or that are materialized in a period of time.
- Ordinary nature of the operation in consideration of the business purpose: only operations which are ordinary in consideration of the business purpose of the respective entity may be included in the General Habitual Policy, without prejudice to the fact that, in order to be considered ordinary, the operations must have terms and conditions that are market-based and similar to analogous operations previously entered into, be recurrent and shall not have a relevant effect on the economic, financial or legal situation of the entity.

In addition, General Habitual Policies shall include control mechanisms for the operations contained in the General Habitual Policy, a person or body responsible for compliance of the control mechanisms of the General Habitual Policy and the mechanisms for the disclosure of the complete and updated General Habitual Policy, which must include at least, an available copy of the General Habitual Policy in the corporate offices and, if the entity has such means, inform the URL where the full text of the policy can be accessed on the entity's website.

Report of Operations with Related Parties.

NCG No. 501 also requires the preparation and disclosure of a semestral report on the OPRs that have actually been entered into by listed corporations, and special corporations that have issued securities listed in the registry maintained by the CMF during the respective semester (whether or not they have been made under the

General Habitual Policy) (the “Report”).

The Report must comply with the content specified in the Annex to NCG No. 501 and, among other information, the rule states that the Report must contain grouped per operation or operations of the same type, the counterparty to the operations and the nature of the relationship with the reporting entity, the total amount involved in each operation -which may be subject to confidentiality by unanimous agreement of the board-, and the number of operations of the same type carried out with the same counterparty.

The Report must be published through the respective entity’s website and made available for consultation to any shareholder at its corporate offices within the month following the semester it reports, remaining available for at least 24 months from its publication.

The obligation to disclose the Report: (i) does not exempt from the obligation to disclose the corresponding operations as a material event (hecho esencial) in accordance with the rules of the Security Market Law; and (ii) does not extend to operations that are legally reserved, which must be incorporated in the report of the semester immediately following the semester in which they lose such nature.

In our belief, the obligation to prepare the Report will require the referred listed and special corporations to be especially strict in the registration of information on the OPRs that they celebrate each semester. In this context, it may be advisable for each company to designate a person within the institution (fiscal, comptroller, or other) to whom all the executed OPRs are informed for its proper registration and reporting.

Validity

NCG No. 501 will come into effect as of September 1, 2024. Entities that have approved General Habitual Policies shall adapt them to the provisions of the new rule and make them available to the public no later than August 30, 2024.

In this regard, it is useful to remember that the Corporations Law establishes that the board resolution establishing the General Habitual Policies, or its modification, must have the pronouncement of the Board Committee -in those cases where the company has such committee- and must be reported to the CMF as a material event when applicable.

General Applicable Rule No. 501 is available at the following [link](#).

Autores: Francisco Ugarte; Cristián Figueroa; Alejandra Daroch; Pablo Bauer