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‹SPAN› EFFECTS ON THE REGULATION OF CORPORATIONS AND THE SECURITIES MARKET ‹/SPAN› OF LAW NO. 21,314 THAT REGULATES THE MARKET AGENTS AND SOCIAL SECURITY ADVISORS

On Tuesday, April 13th of 2021, a law was published in the Official Gazette that establishes **new demands for transparency and strengthens the responsibilities of market agents, regulates the social security advice and other matters indicated therein** , reforming, among other regulations, Law No. 18,045, on the Stock Market and Law No. 18,046 on Corporations (going forward, referred as the " **Law** ").

The Law regulates multiple topics and introduces different modifications to the rules governing stock and insurance market agents. Some of the most relevant and innovative topics are those that refer to (i) the integration and interconnection in real time between stock exchanges; (ii) the reform of the reporting and sanctioning regime that applies to market agents in general; (iii) the reinforcement of the supervisory attributions of the Financial Market Commission (Comisión para el Mercado Financiero) (" **CMF** "); (iv) the prohibition to carry out securities transactions by the managers of securities issuers within a legal period prior to the disclosure of their financial statements; (v) the presumption of liability of directors of a corporation who approve transactions with related parties in contravention of the law; (vi) the amendment to the regulation on the independent director and directors committee (comité de directores), including the duty to vote on the policy of regular operations; and (vii) the creation of the figure of the "Anonymous Whistleblower" ("Denunciante Anónimo").

Concerning the integration between stock exchanges, the Law states that **interconnection should be carried out in real time, with binding and automatic connection, between the different stock exchanges of the country** , in a way that allows the best possible execution of investor's orders, including those that come from third-party exchanges. The regulation of the stock exchanges shall tend to a

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competitive and transparent market and the CMF may reject it otherwise.

Regarding the disclosure of information, the companies registered in the Securities Registry shall implement control policies, procedures and systems intended to timely disclose essential information and avoid any leakage. In connection with the sanctioning regime that applies to securities issuers and other entities of the securities market, the Law considers an **increase in the range of penalties, in addition to introducing new sanctions and expanding the universe of people that are affected by these rules** . Likewise, the Law **strengthens the attributions of the CMF in its supervisory role,** establishing, among others, greater faculties to request information from certain companies which form part of the same group of a listed corporation.

On the other hand, **the Law prohibits directors, managers, administrators and chief executives, as well as some of their related persons** , from carrying out transactions of securities issued by the relevant company, within 30 days prior to the disclosure of its financial statements. Accordingly, the companies registered in the Securities Registry shall consider an additional blocking period, and shall adjust their Operating Manuals on Information of Interest to the Market. In order to ensure the compliance with these rules, the companies will be obliged to publish, at least 30 days in advance, the date on which their next financial statements will be disclosed.

As regards to **transactions with related parties** regulated by the Law No. 18,046, on Corporations, the Law includes a **new presumption of liability of directors** in the event that they approve such operations in contravention of the rules set by the law for closed or listed corporations, as applicable.

Also, the Law grants **the CMF the authority to determine the requirements that a director must satisfy in order to be considered independent** . Therefore, the list of article 50 bis will be only a minimum, being able the CMF to impose other requirements or conditions to be considered independent director. The Law grants the directors committee the faculty to propose a general policy to handle conflicts of interests and the general policy on regular operations (política de habitualidad), which shall contain the minimum requirements set by the CMF by means of a general rule (norma de carácter general) and may not authorize the signing of acts or

contracts involving more than 10% of the company's assets. Hence, limitations are included in order to give a higher control to the directors committee, and avoiding the possibility that transactions that are material and which are not regular operations -considering their amounts- may be executed based on the regular operation policy.

Concerning the last topic, one of the most innovative aspects of the Law is related to the creation of the institution of the anonymous whistleblower, **which refers to those who, voluntarily and complying with the requirements of the CMF, collaborate with investigations providing substantial, precise, truthful, verifiable and previously unknown information to the CMF,** which would allow detecting, confirming or proving law infractions pertinent to the supervision of said regulatory agency or the participation of the alleged perpetrator in said infractions.

To be declared an anonymous whistleblower, the legal requisites shall be fulfilled and the CMF shall issue a resolution stating that the person meets the requirements; and **both the resolution granting said status, as well as the identity of the anonymous whistleblower, shall be confidential.**

The Law, in order to encourage the use of this institution, grants **the anonymous whistleblower the right to receive a percentage of the fine imposed** as a result of the investigation and the procedure in which the informer collaborates. The amount of the reward will be defined by the CMF in the sanctioning resolution, according to objective parameters, and cannot be less than 10% nor greater than 30% of said amount.

To review the publication of the Law in the Official Gazette, click here.

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