

## SVS ESTABLISHES NEW INSTITUTIONAL INVESTORS

On July 27, 2016, the **Securities and Insurance Superintendence ("SVS") issued the general rule 410 ("NCG 410"), which supplements the list of entities that qualify as "institutional investors"** according to article 4(e) of the Securities Market Law N°18,045 ("LMV"). The published version of the rule was preceded by three different drafts proposed by the SVS and submitted for comment to the market (in November of 2015 and in January and February of 2016), undergoing several changes in comparison to its first draft.

The **relevance of the concept of "institutional investor"** is principally related to **rules applicable to funds and portfolio management** (Law 20.712, also referred to as "LUF"). In the event that one of the shareholders of an investment fund is an institutional investor, the LUF grants certain flexibility in relation to the requirements of organization and structure of such fund, for both publicly traded investment funds and private investment funds. For example, publicly traded investment funds may have less than 50 shareholders if at least one of them is an institutional investor. Likewise, institutional investors are the only type of investors allowed to own more than 35% of the net equity of a publicly traded investment fund.

The concept of institutional investor is also important for other purposes. **Institutional investors are considered "qualified investors"** and, as such, they may be a **target for the public offering of securities aimed exclusively to qualified investors**, as well as addressees of **private offers of securities regulated by SVS general rule 336**. Likewise, the information about the decisions made by institutional investors regarding the acquisition or disposition of securities (or the acceptance or refusal of specific offers of securities), will be deemed as "insider trading information" (información privilegiada).

Pursuant to LMV, the following **investors are deemed institutional:** banks, financial corporations, insurance companies, national reinsurers, fund managers authorized by law (for example, pension fund managers –AFP– and general asset managers) and also the entities established by the SVS by means of a general rule, provided

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that their main line of business is investing with the resources and on behalf of third parties and that their participation in the market is deemed relevant.

Although the SVS has addressed specific cases in the past, NCG 410 sets out general parameters that define which entities qualify as institutional investors. Notably, the new rule includes specific references regarding foreign entities, private investment funds and portfolio managers. The entities that qualify as institutional investors under NCG 410 are the following:

- a. **Foreign entities whose main business is subject to the regulation of banks, insurance companies or reinsurance** in accordance with the legal framework of their home country;
- b. **Foreign funds or other foreign collective investment vehicles**, provided that their entity responsible for its investment decisions or its own managers are supervised by a regulator with similar authority as the SVS or Chilean Pensions Superintendence, or that the fund itself is supervised by these regulators;
- c. **Chilean private investment funds regulated by the LUF** as long as they meet certain requirements regarding the number of years they have been operating and dispersion of property;
- d. **Entities registered in the portfolio managers registry of the SVS**, provided that the manager manages (i) a minimum amount of UF 500,000 (approximately USD 20 million) and with at least 50 unrelated portfolio clients, or (ii) one or more portfolio clients for an amount equal to or higher than UF 1 million (approximately USD 40 million);
- e. **Governmental or state institutions and sovereign funds authorized** to invest in financial instruments of the capital markets, and
- f. **Multilateral or supranational entities created by several states** whose resources are intended to promote the development of capital markets.

Finally, NCG 410 confirms what has already been stated by the SVS in some of its particular rulings which indicate that fund managers and portfolio managers shall be deemed as institutional investors only when their investments are made on behalf of their clients or the portfolios they administer and not with their own resources or those of related persons.

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