

Legal Alert: CMF: New exceptions to the registration of public securities offerings



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On February 22, the Financial Market Commission ("FMC") published General Rule No. 452 ("GR 452"), which exempts certain public offerings of securities from the registration requirement and amends General Rule No. 336 of 2012, which establishes securities offerings that do not constitute public offerings ("GR 336").

GR 452 adds new exceptions to those already established by General Rule No. 345, seeking to reduce financing costs, providing smaller companies with new tools to obtain resources from the public, through the issuance and offering of securities.

GR 452 sets forth:

1. Excepted Public Offerings.

The following public offerings are exempted from the requirement of registration of the issuer or security:

- i. those securities that may only be acquired by Qualified Investors;
- ii. those offerings made in national stock markets, provided that the total accumulated amount to be raised by the issuer or offeror in the 12 months following the first offering made in the stock exchange does not exceed the equivalent of 100,000 UF (USD 4,000,000 approx.), and that the offeror or the issuer complies with the information requirements established by the corresponding stock exchange;
- iii. those that establish as a requirement to complete each transaction, that the investor acquires at least 2% of the capital of the issuer;
- iv. those whose purpose is to compensate employees; and
- v. those that deal with securities that confer to their purchasers the right to membership, use or enjoyment of facilities of

educational, sports or recreational establishments.

2. Amendments to GR 336.

- i. It incorporates, within the possibilities for an offer not to be deemed a public offer, that it be directed to a maximum of 50 investors that are not Qualified Investors.
- ii. It adds that in those securities offerings whose unit value is equal to or greater than 3,000 UF (USD 120,000 approx.), it will not be necessary to verify the presence of Qualified Investors or the maximum number of investors indicated in the preceding point.
- iii. It incorporates as a possibility that the communication of the offer be made in English.
- iv. Modifies the section on Responsibilities and Safeguards, by establishing that the people or entities that offer securities exempted from public offerings may obtain a declaration from the person acquiring these securities to indicate what type of investor he/she is, and the fact that he/she has become aware that the securities to be acquired are not registered in the registries kept by the FMC, and that, therefore, no public offering of these securities may be made in Chile.

3. Public Information Obligations.

Those who make the offerings of exempted securities must indicate in the communication used to offer the securities, that the offering deals with securities not registered in the registries kept by the FMC, and that therefore (i) no public offering of such securities may be made in Chile, and (ii) in case the issuer of the securities is not registered in such registers, that such issuer will not be subject to the FMC's supervision nor to the continuous information obligations required of registered issuers.

4. Information Obligations to the FMC.

Offerors must send to the FMC, 5 business days prior to the day on which the offer is intended to be made, the following information: (i) identification of the offeror, (ii) identification of the issuer of the security, (iii) identification of the entity for which the employees perform work, in case of employees' compensation plans, (iv) type of offering to be made, (v) total amount intended to be placed with the recipients of the offering, and (vi) percentage of the issuer's capital that the offer represents. Additionally, the offeror must attach a declaration of truthfulness of the information presented and the fact that it will comply with the instructions given in the recently issued GR.

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