

Legal Alert: Anonymous Whistleblower



6 de julio, 2021 / By [Matías Zegers](#) and [Josefina Consiglio](#)

On April 13th, 2021, the Law No. 21,314 regarding Transparency and Responsibility of Market Agents that modifies various regulations, among them, the Legal Decree No. 3.538, which creates the Financial Market Commission ("CMF" or the "Commission") was published in the Official Gazette, to create the Anonymous Whistleblower. On July 5th, the CMF issued the Rule with General Character No. 456 (the "Rule"), which regulates the Anonymous Whistleblower status.

Who can have the Anonymous Whistleblower status?

Anonymous Whistleblower are those who voluntarily, and in accordance with CMF specifications, **collaborate in investigations**, providing to the Commission Investigations Unit with substantial, precise, true, verifiable, and previously unknown information by it; to detect, verify or confirm violations of the laws that are competency of the CMF, or information regarding the participation of alleged participants in these violations.

Anonymous Whistleblower must **expressly request** that the CMF grants the status as such.

According to the Rule, this request must be submitted through an electronic form prepared for these purposes available on the Commission website (www.cmfchile.cl), by those who want to obtain Anonymous Whistleblower status in accordance with webpage instructions. This request must contain the data and information indicated by the Rule.

The identity of the Anonymous Whistleblower shall **remain secret**, except when the whistleblower waives anonymity. There are obligations to keep the whistleblower's identity secret for anyone who has become aware of it. The identity of the whistleblower will be secret from the date of the aforementioned request, regardless of whether the status of Anonymous Whistleblower is granted.

Additionally, the Rule defines what will be understood as substantial, precise, true, verifiable, and previously unknown to the CMF information.

The information provided by the Anonymous Whistleblower must be in reference to violations which, because of their relevance, gravity, or magnitude, are those which in conformance with the contents of articles 23 and 24 of the Legal Decree No. 3.538, may end in an investigation and subsequent sanctions by the Commission. Therefore, will not be considered as anonymous reports those that referrers to unprosecutable violations, that the sanctioning power has expired, are only of minor magnitude or which is unlikely to bring about an investigation due to those rules.

Who may not have Anonymous Whistleblower status?

Those who have committed the sanctioned conduct or that are victims of such conduct. Additionally, there sanctions for those who request the status of Anonymous Whistleblower knowingly providing false or fraudulent information.

Do Anonymous Whistleblower receive rewards?

Yes, the Anonymous Whistleblower has a right **to receive a percentage of the fine which is applied as a result** of the investigation and procedures in which collaborates. This amount may not be less than 10% of the fine, nor greater than 30% of the applied fine or 25,000 UF (whichever is of lesser value).

The Rule states the CMF Council will establish, in the decision to sanction, the percentage of the fine which the Anonymous Whistleblower will receive, as the result of the collaboration to prove sanctioned conduct, considering the relevancy factors of the information provided; opportunity, collaboration of the Anonymous Whistleblower, among others.

This amount shall not be considered income and the necessary operations to make its payment will be covered by bank secrecy.

Are there other measures in favor of Anonymous Whistleblower?

Yes, contracts for the provision of services with an Anonymous Whistleblower may not be terminated, or the initiation of these may not be suspended, due to the whistleblower's collaboration with investigative authorities.

Additionally, the Anonymous Whistleblower collaborating with the CMF will not be subject to penalties nor shall they be administratively responsible for the collaboration. Likewise, the Anonymous Whistleblower will not be civilly liable for the damages produced by the mere act of collaborating with the CMF.

Validity

The contents of the Rule shall take legal effect on July 19, 2021.

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