



## **CMF sanctions directors of Blanco y Negro S.A. for insider trading and breach of duty to refrain**

November 12, 2019

*The CMF Board fined former B&N chairman Gabriel Ruiz-Tagle for UF 15,000. This fine was halved after he took advantage of the alleged offender's cooperation mechanism. Furthermore, he was banned for five years from holding management positions in corporations, and all background information will be submitted to the Public Prosecutor's Office. The Council also fined Aníbal Mosa for UF 10,000 for violating the duty to refrain from trading.*

The Board of the Financial Market Commission (CMF) sanctioned Blanco y Negro S.A. (B&N, for its Spanish acronym) directors Gabriel Ruiz-Tagle and Aníbal Mosa for infringing Article 165 of the Securities Market Act. Both traded Colo Colo shares while being aware of the company's financial statements as of March 31, 2018. Said statements were not publicly available at that date.

Article 165 of the Securities Market Act stipulates that any person holding a position, activity or relationship with an issuer of securities or with the persons indicated in said Act who holds inside information must keep it confidential. They may not use it for their own benefit or the benefit of others, nor may they acquire or sell, for themselves or for third parties, directly or through other persons, the securities about which they hold such information. It also bans the use of inside information to obtain profits or to avoid losses through any type of transaction with the securities to which it refers.

The sanctions issued by the Board of the CMF reflect the seriousness of the behaviors detected, as they threaten the transparency and integrity of the securities market and investors' confidence. They also imply a violation of the

Securities Market Law that seeks to prevent transactions involving asymmetrical information.

### **Sanctions imposed on Gabriel Ruiz-Tagle Correa**

According to [Exempt Resolution No. 7604](#) of November 8, 2019, the Board concluded that former Chairman of the Board of Blanco y Negro S.A., Gabriel Ruiz-Tagle Correa, first violated the duty to refrain or absolute prohibition of acquiring securities while in possession of inside information. This was established through the sanctioning procedure initiated by the CMF's Investigation Unit, as well as the analysis of the discharges and evidence submitted.

Gabriel Ruiz-Tagle Correa breached the duty to refrain in the purchase of Colo Colo shares made through his related company, Inversiones III Ltda. on May 29, 2018. These transactions were carried out while he held inside information, being aware the previous day of the financial statements of Blanco y Negro S.A. as of March 31, 2018. Said statements were approved by the Board of Directors but were not yet published.

Gabriel Ruiz-Tagle also breached the ban on using the same inside information for his own benefit in the sales of shares made by Inversiones III Ltda. on May 29, 2018. His aim was to avoid losses due to the decrease in the price of Colo Colo shares after the financial statements were published. According to his statement to the Commission, in his opinion, the shares were very expensive in relation to their economic value.

The resolution states that whoever possesses inside information cannot forego it when purchasing or selling securities. Thus, it is possible to presume that the purchase or sale decisions were influenced by the inside information if an individual is in possession of this information, and has demonstrably carried out an operation regarding the securities to which such information refers. Therefore, it is possible to establish a contravention of the ban on the use of inside information referred to in Article 165 of the Securities Market Act.

While the purchase or sale may have been made with different background information, it is up to the individual to prove that he has not used inside information.

In this case, and based on the antecedents of the sanctioning process, the conclusion is that Gabriel Ruiz-Tagle's defense did not provide elements that would have ruled out the use of inside information.

The Board decided to impose the maximum fine of UF 15,000 to Gabriel Ruiz-Tagle -- as defined in Article 37(a) of Legislative Decree No 3,538. However, given that Gabriel-Ruiz Tagle took advantage of the alleged offender's cooperation mechanism -- set in Article 58 of Legislative Decree No. 3,538 --, said sanction was halved to UF 7,500 for fiscal benefit.

The alleged offender's collaboration is an institution incorporated into DL No. 3,538 by Law No. 21,000. It seeks to encourage self-reporting and the submission of background information to the Investigation Unit while performing their activities that lead to prove the offending conduct and determine who is responsible.

The Board also agreed to apply to Gabriel Ruiz-Tagle the accessory sanction of five-year ban from the position of director or chief executive of corporations or any other entities supervised by the CMF.

The Commission will send the investigation's background information to the Public Prosecutor's Office, considering that some facts could constitute legal infractions.

### **Sanctions imposed on Aníbal Mosa Shmes**

According to [Exempt Resolution No. 7603](#) of November 8, 2019, the Board applied Blanco y Negro S.A. director Yakob Aníbal Mosa Shmes a UF 10,000 fine for fiscal benefit. This sanction was applied due to the breach of the duty to refrain or absolute prohibition of acquiring shares while in possession of privileged information. This was established through the sanctioning procedure initiated by the CMF's Investigation Unit, as well as the analysis of the discharges and evidence submitted.

The resolution states that Aníbal Mosa Shmes violated the duty to refrain in the acquisitions of Colo Colo shares made through the Parinacota Investment Fund on May 29, 2018. Those operations were executed while possessing inside information, regarding the financial statements of Blanco y Negro S.A. as of March 31, 2018, approved by him in the Board of Directors the day before. Said statements were not publicly available for the market at that date.

The breach of the duty to refrain is confirmed since the person (share's buyer) under investigation maintained the same conduct as the prior one to accessing privileged information. This, coupled with the motivation shown for his purchases -- to improve his political position within the corporation -- rules out the aggravated hypothesis of insider trading.

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