

# Press Release



## **SVS PUBLISHES SANCTIONS FOR THE USE OF PRIVILEGED INFORMATION IN THE PURCHASE OF SHARES AND VIOLATION OF CONFIDENTIALITY**

The Superintendencia de Valores y Seguros (SVS) has resolved to apply three sanctions for violation of confidentiality and five for the use of privileged information. Both of these figures are included in the Securities Market Law and have come about through agreement negotiations in the Falabella-D&S merger, announced publicly on May 17, 2007.

The sanctions, adopted under the framework of the administrative process carried out by this Superintendencia and approved by the Sanctions Committee, are based on the information, documents and testimonies gathered during the investigation process, the subsequent pressing of charges and, finally, the in-depth analysis of the defense and evidence presented.

Based on this information, the SVS has resolved to bring sanctions against Mr. Hans Eben Oyanedel, director of D&S, as well as against Mrs. Ana María Laguna Galasso, external communications consultant for D&S and Mrs. María Luisa Solari Falabella, a member of Falabella's controlling group.

At the same time, the SVS sanctioned Mr. Vicente Aresti López, Mr. Alejandro Irrarázabal Ureta and Mr. Eugenio Eben Aresti for the use of privileged information provided by Mr. Eben Oyanedel; Mr. Peter Bruno Studer in relation to Mrs. Laguna; and Mr. Marcel Zarour Atanacio, in relation to Mrs. Solari.

Based on Article 58 of the Securities Market Law, this Superintendencia believes it is relevant to provide the corresponding District Attorney's office with information related to the cases of privileged information usage that were resolved. Notwithstanding the above, in the current penal system the District Attorney's office may initiate an investigation on the use of privileged information as it sees necessary.

The SVS Superintendente, Guillermo Larraín, emphasized that "what we have to protect is confidence in the market, considering that access to the stock market represents a potential source of financing for companies and their investment projects. This investment is what ultimately allows for the economic growth and progress of the country".

He added that the “the operations of the stock market are negatively affected when companies and executives do not carefully manage the confidential information that they normally generate. This leads to rumors and generally favors the worst type of speculation”.

The regulation entity explained that those who use privileged information for personal gain, not derived from their own analytical and professional capacity but by virtue of unfair access to information, “cause great injury to the market because other investors, both local and foreign, do not possess the same type of information when they make their decisions. The use of privileged information undermines the trust that needs to prevail in the market”.

Superintendente Larraín emphasized that “the use of privileged information is not a common practice in Chile, but it exists; and if we want Santiago to be a relevant stock market, it is necessary to take strong action against it”.

“A strong market requires just the opposite: more and better analysts studying the operations and perspectives of the companies listed and an increasingly greater number of local and foreign investors who, directly or indirectly, channel their savings to the stock market”, stated the Superintendente.

## **I. Chain of Events:**

The SVS was able to establish the following chain of events:

**1.- On May 7, 2007**, there was a meeting in Lima between Mr. Hans Eben Oyanedel – director of D&S – and Mr. Alfredo Moreno – director of Falabella –, and as a result representatives of both entities met for dinner in the same city that night. This event was also attended by Juan Cuneo (controlling partner of Falabella), Felipe and Nicolás Ibáñez (controllers of D&S). At this time they discussed the possibility of exploring joint ventures and agreed to meet again on May 10<sup>th</sup>, once they had returned to Santiago.

**2.- On May 8, 2007**, from Lima, Hans Eben and Alfredo Moreno contacted the investment bank JP Morgan and the legal consultants of the Barros y Letelier Firm, in order to study the situation. Additionally, José Luis del Río, the director of Falabella, was called regarding the meeting.

**3.- On May 10, 2007**, once back in Santiago, Mr. Eben, Felipe and Nicolás Ibáñez, and Mr. Cuneo, along with the lawyers and consultants of JP Morgan, met in the office of Alfredo Moreno, where they once again discussed the possibility of a joint venture, coming to a preliminary agreement based on recommendations by the consultants to do so by means of a merger between the two companies. At this time they mentioned the exchange rate, issues of

corporate governance and the valuation of the companies, which they agreed to study on the weekend, along with the controllers of each company.

**4.- On May 14, 2007**, the negotiators met again in the offices of Mr. Alfredo Moreno, where they reached an agreement regarding the exchange rate, but did not yet discuss the issue of corporate governance. This meeting was attended by representatives of the negotiators of both companies, Mr. Hans Eben and the legal and financial consultants, among others.

**5.- On May 15 and May 16, 2007**, negotiations continued. In fact, the SVS established that on May 15 the negotiators met in the office of Mr. Moreno, and on the night of the May 15 consultants were summoned regarding communications issues, implications and strategies.

**6.- On May 17, 2007**, at 3:00 p.m., the parties signed the Merger Agreement. At 4:00 p.m. the Superintendente, Guillermo Larraín, was informed in a meeting at the Superintendencia de Valores y Seguros. At 4:30 p.m. the D&S board of directors was informed and at 5:08 p.m. – once the market was closed –, D&S issued a statement corresponding to the agreements reached. At 6:01 p.m., Falabella issued its own.

## **II. Individual Sanctions**

After a thorough analysis of the events indicated and the application of the law, this Superintendencia has affirmed that the negotiations between the controllers of D&S and of Falabella, aimed at drawing up a Merger Agreement between them, constituted privileged information during the period from their initiation up to the statement issued on May 17, 2007.

Independent of multiple market rumors and press publications at the time, only those who took part in or knew about these negotiations knew to an exact science – and not only as a rumor – about their existence, knew their degree of progress, the partial agreements that were adopted and, finally, could make a more certain projection regarding the possibility of their success.

The above-described situation constituted a privilege held by those who were aware of the negotiations, and for this reason is subject to the obligations and prohibitions described in article 165 of Law N° 18,045.<sup>1</sup>

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<sup>1</sup> The type of infraction resulting from the violation of the **obligation to maintain the confidentiality** of privileged information to which one has access, described by article 165 of Law N° 18,045, consists of the dangerous and illegal activity resulting from the mere revelation of any information capable of affecting the price of securities. In this way, this infraction has been described as an act aimed at absolutely prohibiting said revelation, since it has been understood that that sole circumstance and given the nature of the information involved, implies the possible use or misuse of a privilege, which the ruling legal system prevents and completely dismisses in order to conserve the laws that uphold the securities market.

At the same time, the infractional type of **privileged information use** described by article 165 of Law N° 18,045, constitutes an illegal activity that resulting from the sole use, for personal or third-party benefit, of any

As a result, the SVS has concluded that the following persons did not comply with what is expressly indicated in Chilean legislation regarding the treatment of privileged information:

- **Fine in the amount of 400 UF for violation of confidentiality, against Mr. Hans Eben Oyanedel.** Mr. Eben, director of D&S and key actor in negotiations with Falabella, is charged with an infraction regarding his access to and subsequent revelation of privileged information about the negotiations between D&S and Falabella to various people, who by virtue of this information bought D&S shares between May 11 and May 16, 2007. That is, during the precise period in which the former took part in those negotiations. Nevertheless, this investigation also established that Mr. Eben did not directly or indirectly make any type of transaction, nor did he receive direct or indirect benefit, and for this reason the sanction is for mere violation of confidentiality.

Based on the merit of the information processed, it has been established that there is a group of investors related to Mr. Eben Oyanedel – socially, commercially, professionally and/or through family relation – whose transactions presented a number of peculiarities, giving them an evident abnormality that cannot be due to mere coincidence. These peculiarities are: a) that there is no evidence to show that the buyers had the habitual and coordinated practice of investing as they did in these transactions; b) that they correspond to decisions regarding the same instrument – D&S – made and carried out during the same period (as the Agreement negotiations); c) that they occurred during a period no longer than 10 days; d) that among the buyers there are people who do not habitually participate in the stock market or that made investments much greater than normal in that market which are significantly concentrated on D&S; e) that all persons used debt to make these transactions and f) that there was direct communication with Mr. Eben.

- **Fine in the amount of 100 UF for violation of confidentiality, against Ana María Laguna Galasso.** Mrs. Laguna, who is a partner of the company that provides communications services to D&S, is charged with an infraction regarding her access to and subsequent revelation of privileged information about negotiations between D&S and Falabella to her spouse, Peter Bruno Studer. By virtue of this information, the Mrs. Laguna's spouse purchased D&S shares in the amount of \$7,879,585 on May 16, 2007, that is, immediately after she had access to such information due to her job.

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information not publicly distributed, the knowledge of which is capable of affecting the price of securities. In this way, this infraction has been described as an act of absolute prohibition, from the moment that it is understood that the mere circumstance of having used such information implies the misuse or abuse of a privilege, that the ruling legal system completely dismisses in order to conserve the laws that uphold the securities market.

These transactions gave Mr. Studer a benefit resulting from the immediate valuation estimated at 26% of the price of D&S shares held in his portfolio, due to market knowledge of the Agreement, and the subsequent increase in the price of the instruments generated during this period.

- **Fine in the amount of 1,000 UF for violation of confidentiality, against María Luisa Solari Falabella.** This Superintendencia investigated the purchase of D&S shares made on May 16, 2007, by Mr. Marcel Zarour Atanacio – the significant other of nearly two decades to Mrs. María Luisa Solari, who is the controlling partner of Falabella –, on his own behalf and on the behalf of the company Complejo Turístico Bahía Quimán Ltda. and the company Agrícola Icha Solari y Cía. Ltda., both companies in which Mrs. María Luisa Solari participates.

The file shows that Mrs. María Luisa Solari traveled outside of Chile, along with Mr. Zarour on May 16, 2007. At the same time, it is shown that on the same day on which Mrs. Solari traveled outside of Chile, around 7:00 in the morning, she was visited at her residence by Mr. Reinaldo Solari Magnasco, who went to personally obtain her signature, since the Agreement with D&S required 100% support from all persons belonging to the controlling group of Falabella.

It is for this reason that Mrs. Solari is charged with an infraction regarding her access and subsequent revelation of privileged information about negotiations between D&S and Falabella to Mr. Marcel Zarour. Mr. Zarour, by virtue of this information, purchased D&S shares on May 16, 2007, that is, after Mrs. Solari had access to such information. These transactions provided Mr. Zarour and the companies he manages – with ample participation in the corporate rights by Mrs. Solari – a benefit resulting from the immediate valuation estimated at 30% of the price of D&S shares held in the respective portfolios, due to market knowledge of the Merger Agreement between D&S and Falabella, and the consequent increase in the price of the instruments generated during this period.

- **Fine against Mr. Vicente Aresti López for the use of privileged information, in the amount of 38,970 UF, in addition to the surrender of gains as per article 172 of Law 18,045 in the amount of 50,366.34.** Mr. Aresti participates in the board of directors of the Tucapel companies along with Mr. Eben Oyanedel, director of D&S and one of the key actors in the agreement with Falabella. Mr. Aresti is charged with an infraction regarding the purchase of D&S shares made by him through 3 of his companies (ARLOP Ltda., VICAR Ltda. and La Producción Ltda.) between May 11 and 16, 2007, in the total amount of \$2,396,676,804, which it is assumed were carried out using privileged information about negotiations between D&S and Falabella that he had access to because of his social, commercial and professional relationship with Mr. Hans Eben Oyanedel, with whom he had contact.

These transactions, made partially against credit lines, provided Mr. Aresti with direct profits in the amount of \$113,629,673 from the subsequent sale of some of the shares acquired using privileged information by ARLOP Ltda., \$96,190,068.- from the sale of some shares acquired using privileged information by VICAR Ltda. the day after the market received information about the Merger Agreement, and \$114,385,000.- from the sale of some shares acquired using privileged information by La Producción Ltda., a product of the consequent increase in the price of instruments generated.

At the same time, Mr. Aresti's purchases coincided with Mr. Eben Oyanedel's absence at the extraordinary board of directors meeting of the Empresas Tucafel on May 10, 2007, even when the subject of this meeting was of utmost importance for the company and his presence was insisted upon. In fact, there is evidence of at least 2 telephone conversations between the two, in which Mr. Eben excused himself from participating in this meeting, as is shown in the corresponding document. After Mr. Eben's absence from the board of directors, Mr. Aresti made D&S share purchases between May 11 and 16. Finally, it should be noted that Mr. Aresti López acted alongside Mr. Eugenio Eben Aresti and Mr. Alejandro Irrázabal.

- **Fine against Mr. Eugenio Eben Aresti for the use of privileged information in the amount of 1,110 UF, in addition to the surrender of gains as per article 172 of Law 18,045 in the amount of 1,1071.02 UF.** Mr. Eben Aresti is the manager of Nuevos Negocios de Empresas Tucafel; he is the son of Sr. Eugenio Eben Oyanedel, brother to Mr. Hans Eben Oyanedel, the director of D&S and also Empresas Tucafel. Mr. Eben Aresti is charged with an infraction regarding D&S share purchases made by him through his spouse, Mrs. Caroline Fell, on May 11, 2007, in the total amount of \$49,819,840, which it is assumed were carried out using privileged information about negotiations between D&S and Falabella that he had access to because of his family, social, commercial and professional relationship to Mr. Hans Eben Oyanedel.

These transactions provided him with direct profits in the sum of \$14,458,150.- from the sale of shares acquired using privileged information on the day after the market received information about the Merger Agreement.

It should be mentioned that from the information reviewed during investigations, it has been shown that in May 2007, Mr. Eben Aresti not only concentrated his investment portfolio in variable income D&S shares, but that he also did so with debt, using a line of financing for this type of pre-approved investments, and opening up the corresponding account for his spouse, Mrs. Caroline Fell Costa, with the precise purpose of making these transactions using financing provided by this line given his equity. At the

same time, it should be added that Mr. Eben Aresti acted alongside Mr. Sres. Vicente Aresti López and Mr. Alejandro Irarrázabal.

- **Fine against Mr. Alejandro Irarrázabal Ureta for the use of privileged information in the amount of 8,464 UF, in addition to the surrender of gains as per article 172 of Law 18,045 in the amount of 10,635.98 UF.** Mr. Irarrázabal is the general manager of Arrocería Tucapel and is the son-in-law of Mr. Vicente Aresti López, who is the vice-president of Empresas Tucapel. Mr. Irarrázabal is charged with an infraction regarding the D&S share purchases made by him through his company SOTAVENTO, between May 11 and May 15, 2007 in the total amount of \$472,002,680, which it is assumed were carried out using privileged information about negotiations between D&S and Falabella that he had access to because of his social, commercial and professional relationship to Mr. Hans Eben Oyanedel.

These transactions provided him with direct profits in the sum of \$101,019,766 from the sale of shares acquired using privileged information by SOTAVENTO, on the day after the market received information about the Merger Agreement. Finally, it should be noted that Mr. Irarrázabal acted alongside Mr. Eugenio Eben Aresti and Vicente Aresti López.

- **Fine in the amount of 428 UF for the use of privileged information, against Peter Bruno Studer, in addition to the surrender of gains as per article 172 of Law 18,045 in the amount of 162.33 UF.** Mr. Studer is married to Ana María Laguna with separate ownership of property. Mr. Studer is charged with an infraction for the D&S share purchases made by him on May 16, 2007, with a total investment of \$7,879,585, which it is assumed were made using privileged information about negotiations between D&S and Falabella that he had access to by virtue of his spousal relationship to Mrs. Ana Laguna Galasso, a communications consultant for D&S, who participated in at least one of the Merger Agreement meetings that took place on May 15, 2007. Mr. Studer's purchase was recorded at 10:55 a.m. on May 16, 2007.

These transactions provided him with direct profits coming from the immediate valuation estimated at 26% of the price of D&S shares held in his portfolio, as a consequence of market knowledge about the Merger Agreement between D&S and Falabella.

- **Fine in the amount of 2,725 UF for the use of privileged information, against Marcel Zarour Atanacio, in addition to the surrender of gains as per article 172 of Law 18,045 in the amount of 2,983.20 UF.** Mr. Zarour is charged with an infraction regarding the D&S share purchases made by him on May 16, 2007, which it is assumed were made using privileged information that he had access to by virtue of his relationship with

Mrs. María Luisa Solari, a majority shareholder of Falabella. The SVS has shown that first thing in the morning of May 16, 2007, the signature of Mrs. Solari was needed to approve the merger operation and that Mr. Marcel Zarour Atanacio, at 11:20:25 on the same day gave orders for the purchase of D&S shares by the companies Agrícola Icha Solari Ltda. and Complejo Turístico Bahía Quimán Ltda. with a total investment of \$68,629,198.- by Agrícola Icha Solari and of \$56,968,041.- by Complejo Turístico Bahía Quimán. In total, these operations reached \$125,597,239.

At the same time, Mr. Zarour acquired 101,490 D&S shares for himself, with an investment of \$23,650,869, by successive orders also given at the same time.

These transactions provided Mr. Zarour and his companies with direct profits as a result of the immediate valuation estimated at 30% of the price of D&S shares held in his portfolio as a consequence of market knowledge about the Merger Agreement between D&S and Falabella.

### **III. Fine Amounts**

The amounts of all fines issued were set based on articles 28 and 29 of the Organic Law of the SVS.

In the case of privileged information use two elements are considered: one is the fine, which is set at 30% of the operation in addition to a base amount of 300 UF. The second corresponds to the estimated amount of benefits received by the offenders, in order so that the affected third-parties may legally sue for the corresponding indemnity or, if this is not sued for, it is included in government records. The time period set for the second capital market reform for this type of claim is 4 years from the moment when privileged information is revealed to the market.

The sanctions of each case are published on the SVS website, on the [sanctions issued](#) page of the last month.

*Santiago, June 17, 2008.*  
*www.svs.cl*