

# RITCH

## M U E L L E R

### COVID-19 – CNBV announces the extension of terms applicable to securities' issuers to comply with certain reporting obligations

In the midst of the COVID-19 outbreak, the Mexican Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*; “CNBV”) issued on April 8, 2020 temporary measures to facilitate compliance by Issuers<sup>1</sup> of their periodic information disclosure obligations (the “Temporary Measures”). The Temporary Measures were issued by the CNBV in line with measures adopted by regulators in other jurisdictions aimed at, *inter alia*, extending the terms for listed companies to deliver and disclose information to regulators and the market and to reduce the inherent legal risk associated with the adoption by the Issuers' boards and committees of resolutions via remote link.

Although the Temporary Measures have been received favorably by many Issuers, considering the uncertainty of the effects of the COVID-19 pandemic and the measures that Issuers may adopt or consider adopting in respect of their businesses to face the pandemic, it is important for the market to have information, as soon as possible, in respect of the Issuers' results in the first quarters of 2020, their liquidity and the measures being considered to address the impact of the pandemic to their businesses.

Pursuant to the Temporary Measures, Issuers may, in respect of their reporting obligations set forth in the general rules applicable to issuers and other securities market participants (the “Issuers' Rules”) and in the general rules applicable to entities and issuers supervised by the CNBV hiring external audit services for basic financial services (the “Audit Rules”), temporarily follow the provisions described below.

#### Annual Information<sup>2</sup>

Extension until **July 8, 2020** to submit to the CNBV and to the relevant stock exchange (the “Stock Exchange”):

- the annual audited financial statements and related external audit opinion of the Issuer and its associated entities (contributing more than 10% of the Issuer's consolidated earnings or assets, excluding investments companies in the case of financial institutions);
- the chief executive officer and board of directors' reports and opinion to the Issuer's annual general ordinary shareholders' meeting;
- the certification by the secretary of the Issuer's board of directors as to the status of the Issuer's corporate books and records; and
- the documents referred to in Articles 84 and 84 Bis of the Issuers' Rules (relating to independence and quality control), signed by the external auditor.

<sup>1</sup> The Temporary Measures define Issuers as “*the issuers having securities registered with the Mexican Securities Registry, subject to the Supervision of the Mexican Banking and Securities Commission*”, which includes not only stock companies, but also companies issuing bonds (*certificados bursátiles*) and other debt instruments and issuer trusts.

<sup>2</sup> Ref.: Articles 33, fraction I, paragraph a) and 7, fractions VI, paragraph a), sub-paragraph 6 and IX, paragraph a), sub-paragraph 8 of the Issuers' Rules.

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With respect to Issuers of development trust certificates or project investment trust certificates that use at least 70% of available funds to invest in unlisted collective investment mechanisms (“Collective Investment CKDs and CERPIs”), the deadline to submit the foregoing has been further pushed back to **September 1, 2020**.

## **Annual Report<sup>3</sup>**

Extension until **July 3, 2020** to submit to the CNBV and to the Stock Exchange the 2019 annual report (instead of April 30, 2020).

With respect to Collective Investment CKDs and CERPIs, the deadline to submit the 2019 annual report has been further pushed back to **September 1, 2020**.

## **Quarterly Information<sup>4</sup>**

Extension until **July 3, 2020** to submit to the CNBV and to the Stock Exchange quarterly information otherwise required to be submitted by April 30, 2020. Considering that the deadline applicable to Collective Investment CKDs and CERPIs to submit quarterly information in respect of Q4 2019 is April 30, 2020, despite the fact that the Temporary Measures are silent on the matter, the deadline to submit such information can also be deemed extended through July 3, 2020 by analogical reasoning.

It is important to note that, as of this date, the deadline to report Q2 2020 by **July 28, 2020** has not been extended.

## **Share Capital Ownership Reporting and Information Requests<sup>5</sup>**

Extension until **September 1, 2020** to submit to the CNBV the required reports as to share capital ownership by (i) board members and relevant officers beneficially owning, directly or indirectly, more than 1% of the Issuer’s capital stock (“Relevant Board Members and Officers”); (ii) persons, entities, trusts or other investment vehicles beneficially owning, directly or indirectly, more than 5% of the Issuer’s capital stock (“Relevant Shareholders”); and (iii) the top ten largest beneficial shareholders. These reports must also include information in respect of any person beneficially owning, directly or indirectly, 1% or more of the Issuer’s capital stock.

To facilitate the completion of the reports, Issuers now have until **July 3, 2020** to request the necessary information from their board members and relevant officers and from the brokerage houses representing relevant shareholders. Relevant Board Members and Officers and Relevant Shareholders now have until **July 19, 2020** to provide Issuers with the requested information. Although not expressly mentioned in the Temporary Measures, the deadline for reporting any person beneficially owning, directly or indirectly, 1% or more of the Issuer’s capital stock can also be deemed extended through **July 19, 2020** by analogical reasoning.

## **Legal Information<sup>6</sup>**

For those Issuers that have yet to submit for 2018 and 2019 their notarized shareholders meeting minutes with a conformed current version of their by-laws, as registered with the Public Registry of Commerce (or Board Secretary certification stating that no by-law amendments have been adopted in the past three years), the deadline to file such documents is extended through **September 1, 2020**.

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<sup>3</sup> Ref.: Articles 33, fraction I, paragraph b) and 37, fraction I, paragraph b) of the Issuers’ Rules.

<sup>4</sup> Ref.: Article 33, fraction II of the Issuers’ Rules.

<sup>5</sup> Ref.: Articles 49 Bis 2 and 49 Bis 3 of the Issuers’ Rules.

<sup>6</sup> Ref.: Article 34, fraction V of the Issuers’ Rules.

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## Consent Statement - Audit<sup>7</sup>

Extension until **July 3, 2020** to submit to the CNBV and the Stock Exchange the consent statement signed by the Issuer's external audit firm and the independent external auditor, in respect of the inclusion and disclosure of their external auditor reports in the Issuer's annual report.

With respect to Collective Investment CKDs and CERPIs, the deadline to submit the audit consent statements has been further pushed back to **September 1, 2020**.

## External Audit Report<sup>8</sup>

Extension until **July 8, 2020** to submit to the CNBV and the Stock Exchange, the information related to:

- the statement of the Issuer's persons and officers responsible for signing audited basic financial statements;
- the statement of the independent external auditor addressed to the Issuers (and to the Audit Committee, if applicable) on, *inter alia*, the description of the policies and procedures implemented to carry out the audit, prevent and address threats to auditor independence and quality of external audit;
- the external audit report, including the audited basic financial statements; and
- the quality and independence statement of the independent external auditor.

With respect to Collective Investment CKDs and CERPIs, the deadline to submit such information has been further pushed back to **September 1, 2020**.

This extension to provide the audit opinion and annual financial statements is unprecedented in Mexico's recent past and could impact the calculation of certain obligations, as well as the issuance of analyst reports.

It should be noted that the Temporary Measures do not limit the CNBV's authority (including its authority to carry out inspections) nor should they be viewed as affording Issuers new or different rights other than those expressly contained therein.

Should you have any questions or require further information, our team of professionals is available to assist you. We encourage you to reach out to your ordinary Ritch Mueller contacts to seek advice and discuss your particular circumstances and any issues in connection with your disclosure obligations.

Otherwise, feel free to reach out to us at [contacto@ritch.com.mx](mailto:contacto@ritch.com.mx) so we may direct your query to the appropriate team members.

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<sup>7</sup> Ref.: Article 39 of the Audit Rules.

<sup>8</sup> Ref.: Articles 32, 35, 36, fraction II, 37 and 38 of the Audit Rules.