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Amendments to the regulatory framework of investment funds and brokerages for the prevention of money laundering and terrorist financing

On July 22, the Ministry of Finance and Public Credit (SHCP) published in the Federal Official Gazette two resolutions amending the general provisions of the Investment Funds Law and the Securities Market Law, respectively (“Resolutions”). Through these reforms, Mexico seeks to integrate the recommendations rendered by the Financial Action Task Force (FATF) on January 3, 2018, as part of its Mutual Assessment Report.

The most relevant aspects of the “Resolutions” are:

I. Customer identification

1. Investment funds and brokerage companies (“Entities”) shall integrate and preserve an identification file for each of their customers before they open an account or enter into a contract to carry out transactions of any kind. Such dossiers must meet the requirements set forth by the SHCP.
2. In the event of off-site account openings or contract concluding by means of electronic devices, in addition to identification data, Entities shall require customers to geolocate such devices. In the absence of this information, Entities may not open the account or conclude the contract.
3. Before establishing a contractual relationship with the customer, Entities will conduct an interview in person with him or his legal representative, in order to collect the identification data. In case of off-site account openings or contracts, they can use questionnaires and applications to gather such information. They may also hire third parties to conduct the interview.
4. Entities are prohibited from using simplified customer identification measures where there are suspicions that the resources, assets or securities appointed for any transaction could be related to money laundering or terrorist financing.
5. Entities may suspend the customer identification process if they consider that:
 - a) Customer may be related to money laundering or terrorist financing activities.
 - b) The identification process may alert the customer of suspicions.
 - c) Entities identify the existence of risks related to these crimes.

RITCH

M U E L L E R

In case of suspension of identification, Entities shall generate an Unusual Transaction Report and forward it to the National Banking and Securities Commission (CNBV) within the next 24 hours.

6. Entities shall preserve all information and documents relating to the identifications of customers for at least 10 years after the conclusion of their contractual relationship.

II. Risk management

1. Entities shall implement a methodology to assess the risks they may be subject to due to their products, services, costumers, countries, transactions and shipping or distribution channels.

2. The risk assessment and control methodology should comply with international standards for the prevention of money laundering and terrorist financing and should be updated annually or when new risks are identified, or the national risk assessment is updated.

3. In determining the customers' degree of risk, as well as their classification as politically exposed individuals, Entities shall establish their own criteria, which must at least take into account their background, occupation, activity, place of residence and origin and destination of resources.

4. Prior to entering into any contract with customers that could imply a high degree of risk for the Entities, at least one of their managers with the power to conclude such a contract shall give his or her approval, either in writing or by digital means.

5. In transactions carried out with high risk customers, Entities must enforce measures to ascertain the origin of resources regarding the spouse and financial dependents of such customers, as well as companies and associations related to them and, in the case of companies, their main shareholders or partners.

6. Entities shall develop mechanisms to identify the risk of their transactions with politically exposes Mexican individuals and determine whether their transactional behavior is consistent with their office, level and responsibility.

7. Entities must have an alert system in place to timely detect any change in the transactional behavior of their clients.

8. Should significant changes in the customer's normal transactional behavior be identified without justified cause, or where doubts arise as to the veracity of his or her information, Entities must reclassify such customer to the appropriate higher risk level and request the updating of all their data.

RITCH

M U E L L E R

9. All information generated by the risk assessment should be made available to the CNBV and preserved for at least 5 years.

10. Prior the launching of services or products through innovative models, Entities shall assess the risks to which they may be exposed.

III. Indications or evidence of suspicious transactions

1. In the event of information based on evidence or facts that one of their customers is acting on behalf of another individual, without having been informed in a timely manner, Entities shall request all data to identify the actual owner of the resources.

2. In case of doubts about the veracity of the data or documents provided by the customer, based on their own criteria for risk control, Entities must issue the corresponding Unusual Operation report.

3. Where, on the basis of certain evidence or facts, Entities suspect that resources are the product of illicit activities or intended to launder money or finance terrorism, they shall send to the SHCP, through the CNBV and within 24 hours of becoming aware of these facts or evidence, the so-called 24 Hour Report.

4. Entities must preserve all documentation supporting the transactions carried out with their customers for at least 10 years after they were carried out, including reports of relevant, unusual or worrisome transactions, as well as records of the terms and conditions under which such operations were carried out.

The “Resolutions” entered into force on July 23, with the following exceptions:

a) To adjust their compliance manuals to the Resolutions and submit them to the CNBV, Entities will have 4 months from their entry into force.

b) Entities shall have 9 months from such entry into force to amend their risk assessment methodology, 18 months to update their automated systems and 24 months to gather the geolocation of the device from which customers hold each of their transactions, in accordance with the Resolutions.

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M U E L L E R

c) Customer identification suspension reports should be sent once the SHCP issues the corresponding guide.

d) Finally, in the case of domestic or international money transfers in foreign currency, brokerage firms are compelled to collect information regarding the customer and entities involved in such transfers as of November 1, 2020.

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