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New rules for external audits of foreign issuers and the independence of auditors

In order to provide certainty to foreign issuers regarding independent external audits of their financial statements, as well as the conditions of independence that auditors must observe, the National Banking and Securities Commission (CNBV) issued a resolution amending a number of provisions applicable to issuers and other market participants (“Resolution”), which entered into force on August 10.

Regarding external audits of foreign issuers, the Resolution provides the following:

1. Financial statements of foreign issuers, trustees or guarantors (“Foreign Companies”), shall be issued by external auditors, either in accordance with the international auditing standards set forth in the “General Provisions applicable to entities and issuers supervised by the National Banking and Securities Commission who contract external audit services for basic financial statements” (“External Audit Provisions”) or under the auditing rules of the Foreign Companies' country of origin.
2. Foreign Companies and their associates, counterparties or financial instrument providers, third parties related to the issuance of fiduciary securities and trust certificates, as well as entities different from those Foreign Companies (“Associates”), may hire external auditors from the country of origin of the Foreign Company concerned. However, for the purpose of verifying their independence, auditors shall comply with the External Audit Provisions and, in addition, shall not be partial, in terms of the code of ethics issued by the International Federation of Accountants or the code of ethics of their country of origin.
3. The above provisions shall also apply for intermediate financial reporting, as well as combined or Pro Forma financial statements of Foreign Companies and their Associates.
4. Regarding external auditors reporting their financial statements, both Foreign Companies and their Associates are bound solely to the abovementioned obligations.

Finally, amendments concerning the independence of external auditors are as follows:

1. On the date the financial statement report is issued, the external auditor shall deliver the issuer and the stock exchange (via the issuer), a document manifesting his compliance with all independence, registration and quality control requirements set forth in the External Audit Provisions.

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2. For their part, issuers must submit to the stock exchange, the information on any service outsourced with the external auditor, other than the external audit of its basic financial statements, and the reason why this does not affect his or her independence.

3. The external auditor, on the date of submission of the prospectus or the offering circular and, where appropriate, the annual report of the previous financial year, shall submit to the issuer and the stock exchange, a document manifesting the consent for the issuer to include the external audit in the prospectus, offering circular or annual report.