

RITCH

M U E L L E R

Amendments to rules applicable to investment funds

In order to specify the concept of fiduciary certificates, as well as determining the conditions under which investment funds may carry out transactions with derivative financial instruments, structured securities, asset-backed securities and fiduciary certificates, the National Banking and Securities Commission (CNBV) published on April 26 in the Federal Official Gazette, a Resolution that amends the General Provisions applicable to investment funds and their service providers, also known as Investment Funds Circular or CUFI (“Resolution”).

The Resolution also aims to avoid inequitable treatment between investors and discriminatory practices between distributors of investment funds shares, as well as to promote a correct fee settlement, thus opening the possibility for funds to determine such fees on the basis of new criteria.

1. Redefinition of fiduciary certificates

According to the Resolution, fiduciary certificates refer to development fiduciary certificates, real estate fiduciary certificates and indexed fiduciary certificates defined in article 63 Bis 1 of the Securities Market Law (1), as well as investment certificates in energy and infrastructure and investment projects certificates set forth in the General Provisions applicable to issuers of securities and other participants of the securities market. (2)

(1) **Development fiduciary certificates:** resources are intended for investment, direct or indirect, in shares, stock or financing of Mexican companies, through varied investment vehicles.

Real estate fiduciary certificates: resources are intended for real estate investment in development, marketing or administration, either in companies that carry out such investments or in securities or property rights or their combination.

Indexed fiduciary certificates: those that represent rights over securities, goods, derivative financial instruments or other assets that seek to replicate the behavior of one or more indexes, financial assets or reference parameters.

(2) **Investment certificates in energy and infrastructure:** those issued by investment trusts in energy and infrastructure, whose resources are intended for direct or indirect investment in companies, projects or in energy and infrastructure assets.

Investment projects certificates: resources are destined to finance projects and investment in shares, assets or corporate financing, directly or indirectly, through one or more investment vehicles.

2. New condition for equity and debt funds to carry out transactions with derivative financial instruments, fiduciary certificates, structured securities and asset-backed securities

Investment funds may operate with such instruments provided that the company administering the funds subscribes a letter, prior the first transaction of each asset to be invested, which shall include the name, position and signature of those responsible for investing the resources in the assets determined by the Board of Directors, and briefly mention that they:

- a) Conducted an analysis of the respective securities.
- b) Recognize the inherent risks of such securities.
- c) Are aware of the yield payment scheme.
- d) Have determined that the transaction is in line with the investment regime of the fund they administer.

The letter should also specify all documents reviewed in order to determine the aforementioned regarding derivative financial instruments, fiduciary certificates, structured securities and asset-backed securities. Letters shall be updated when the investment regime changes and be kept for a period of 5 years.

3. Fee fixing

In addition to previously established mechanisms, investment funds may determine fees for the administration of assets or stock distribution, differentiated by series of shares, in accordance with the following principles:

- a) Minimum investment amounts required per series of shares, total amount invested in investment funds or through any other criterion referred to in article 43 of the General provisions applicable to financial institutions and other providers of investment services. (3)
- b) Such criteria must justify the access of clients to the series of shares in question.
- c) The foregoing does not prevent the issuance of series free of fees for distribution or administration services.

(3) Criteria must be based on objective conditions such as investment profiles and transactions carried out, as well as their amount and frequency, and shall not jeopardize the capacity to carry out transactions with the general public by acting in the interests of clients.

RITCH M U E L L E R

d) Investment funds operators must abstain from discriminatory practices among those who provide share distribution services and from promoting inequitable treatments between investors.

Finally, the Resolution, which came into force on April 27, also replaced Annex 2 of the Investment Funds Circular, regarding requirements and characteristics of prospectus on equity and debt funds to be rendered publicly.

**For information regarding this subject, please do not hesitate to contact us at 9178 7000 or through the following e-mail:
contacto@ritch.com.mx**