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INSIDER TRADING AND OTHER HOT TOPICS IN THE MEXICAN MARKETS

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I. INTRODUCTION

In order to deal with some of the hot topics in the Mexican markets, I will initially present an overview of some basic ideas of this broad topic. I will start with insider trading and then go on to the Mexican law on this issue, the stock market law, and Article 16.

II. INSIDER TRADING

According to Mexican law, individuals who have privileged information are members of the board of directors, directors, managers, commissioners, external auditors and secretaries of collective corporate bodies or corporations that have securities registered with the national register of securities and intermediaries. Also included in this group are shareholders of corporations who control 10% or more of the shares representing capital stock, and examiners of corporations who control 10% or more of the capital stock of public corporations. Others who have access to privileged information are independent service providers of such corporations, their advisors in general, and examiners of any corporations or businesses that have participated, advised, or collaborated on an issue that contained privileged information. Additionally, there are shareholders who control 5% or more of the capital stock of financial holding companies or of credit institutions, as well as those who control 10% or more of the capital stock of other financial entities. So, when all of these are part of the same financial group, and one of the corporations forming part of the group is an issuer of securities registered with the National Registry of Securities and Intermediaries there is concern for the privileged information to which all of these people have access. Basically, this means that insiders are restricted from trading with securities or issuers because they are considered to be insiders within a restricted time frame. The purpose of the protection given by the insider trading provisions is basically to prevent the insiders, or those that have insider information, from benefiting from transactions and making the price of public securities fluctuate in a manner that is disorderly to the market.

The law further provides for some stringent penalties and fines, which are difficult to discern. While these provisions will not be discussed here, a noteworthy

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item is that the Mexican Banking and Securities Commission decided to issue a Circular that deals with the idea that an opportune communication of information regarding events that are capable of influencing the price of securities being traded in the market must only be done in an appropriate fashion. Such communication must be done responsibly and leaves the discretionary ability intact. Discretionary ability is defined as those factors capable of influencing the price of securities that have obviously been left to the securities markets or stock markets themselves. There is no discretion when the information deals with disorderly movements in the stock market, whether in the offer or demand of the securities or their price. The chairman of the board, the CEO or the director general, and those that are below them in hierarchy also have the responsibility to determine which relevant information that they are aware of must be published.

There are also other issues, such as all of the electronic information that has affected this kind of Circular. Also, there is the idea that giving information on relevant issues to foreign markets necessitates divulging that information, immediately and simultaneously, to the Mexican market. Therefore, the idea is to coordinate the issuance of securities and price fluctuation so as to protect the public at large from the influence of whatever relevant insider information may affect the value of securities.

III. A BROADER VIEW OF THE SECURITIES MARKET AND RELEVANCE OF HOT TOPICS

Now I would like to share some broad ideas regarding the securities markets and try to explain how some of this conference's topics, such as the code of best practices, insider trading rules, and event information, are relevant and related to the value and issuance of securities.

The Mexican markets are currently looking for placement of derivatives, equity securities and securities principle. In order to do that, one must find out where the liquidity is, and where the securities analysis information is located. It is my belief, as well as that of others in the practice, that the safety factors and the legal constraints that have been discussed at this conference at large are very important. Certainly, they are very relevant to the extent that there are liquid markets, and to the extent that the markets have knowledge of what they are doing with securities. Now, this becomes a real problem when markets do not have a focus on securities and do not follow the securities. Other problems that arise include placement, achieving liquidity, and, achieving more than anything, the feasibility to access the capital that companies are looking for if they go public. The purpose is to achieve capital and resources even in private placements, particularly if companies are going public in the fashion I referred to above.

Therefore, in looking at the Mexican stock market or the Mexican market of securities, we basically heard that family-based companies are the ones that started it. Mexico has very few companies that are actually registered and fewer that are actually trading. Nevertheless, this market has exploded due to the expansion into the international markets and has thereby wound up primarily in the New York market, and some in NASDAQ. The need for capital and the lack of liquidity in the Mexican market prompted individuals and families to go public and move forward.

There is debate as to whether the Mexican market itself, as such, would disappear in trading. I do not think that it is going to disappear in issuance to the extent that the Mexican government continues to uphold the exemption for individuals placing and trading securities in the public market. As long as there is a capital gains tax exemption in that manner, people will continue to register first, then make the offers publicly, and then finally go to the international markets because one needs to piggyback in order to get the benefits of the current Mexican taxation on the sale of public securities. Now, if that is true, the regulatory activity and the issuance activity of the Mexican market will not necessarily go away, but the point is where the Mexican market's real power lays. Is it in Mexico or is it abroad? There is a daunting, two-pronged situation. It will be good to the extent that Mexico achieves savings capacity and to that extent that it is true that the Mexican pension funds are going to achieve that capacity.

Mexican AFORES¹ have been barred from investing in variable price equities in the variable market. Since they were basically used to make up for the deficit of the Mexican government, the Mexican government securities were authorized to be placed with AFORES. So, if President Vicente Fox is correct that he is not going to have a deficit as of 2004, as announced by his economic advisors, then I assume that, either before that or near that date, the Mexican AFORES will be allowed to start investing in securities other than government securities. Furthermore, if that is true, given the conditions and growth of the Mexican savings, then the Mexican market could have the liquidity it needs to have some form of resurrection as far as liquidity and trading are concerned. However, we have also heard that it is not a very good idea that Mexican securities be the only securities that are purchased by Mexican AFORES because of the concern for the international securities. This, of course, takes us back to the issue of the globalization of the markets.

Therefore, the reasons for the Mexican market conditions today, in addition to the real facts of life which I have been trying to address, are as follows: (1) disclosure; (2) accountability; (3) controls of minorities to benefit minorities in the scenario of public companies; and (4) that private companies have heard of many things that are not yet there as far as help in the controls of minorities. This brings about the volatility that is seen every so often. The volatility is not just Mexico and is not just Mexican companies, government, and corporate governance. It really deals with exogenous factors. We saw it to a degree in the vodka situation when Russia collapsed on the public markets. Although it was not strictly related to us, we suffered through it in our securities trading and our capital gathering ability. Then, what happened to us in Mexico was that everything was concentrated in the liquidity of the real markets of the world and we were not there.

The one issue that one must bear in mind is how Mexico will evolve into the next stage. We have discussed strategic alliances and mergers and acquisitions, which basically deals with private placements, so, what we basically need to consider is how to avoid big swings and differences in Mexico and the rest of the world market. Mexican securities need to be differentiated from other securities because Mexico's Securities are linked to strategic alliances in the North, which include mergers and

1. Administradora de los Fondos de Retiro (AFORES) is Mexico's newly privatized pension fund management system.

acquisitions and trading with our partners in the North. In this way, Mexico is different.

Finally, there are the allegedly hot topics of the Mexican market, such as where the Mexican market will be based. In all likelihood, it will be based in New York, London or Canada (either in Toronto or Alberta) since they are all very liquid markets and they are all interested.

In order to move forward, we need analysts that follow Mexican securities. As lawyers, we like to say that we can take care of all of the regulatory issues if there is no analysis and no paid commissions. However, if you do not pay commissions to the concentrated important stock brokerage firms of the world, the broker dealers, and if you do not create a relationship with them, they will not follow your securities and you will be dead. Therefore, the future is in how to influence the markets, how to go to the proper markets, how to get an alliance with analysts, and how to get enough fees paid so that there is following and placement of Mexican securities.

Lastly, there are the many issues that the Internet introduces, with respect to its effect on securities offerings and financial products. The portals that offer services related to dealing with securities will be the portals that will be the most successful.