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COVID-19 – Issuers and Disclosure of Relevant Information

In the midst of the COVID-19 epidemic and the recent publications in the Official Federal Gazette (the “DOF”) of decrees on health emergency and suspension of activities (see Newsflash entitled “COVID-19 – Declaration of Sanitary Emergency due to Force Majeure” [here](#)), issuers of securities face a period of uncertainty, which could have a material effect on their operations, financial situation and results.

In light of this situation, issuers should consider the need to determine the level and timing of disclosure to the market as to the anticipated impact they could suffer from this extraordinary event, and how to best comply with the duty of care to which their board members and first and second level officers are subject.

Relevant Information and Events

Under applicable law, and specifically pursuant to the Mexican Securities Market Law (the “LMV”) and the General Provisions applicable to Issuers and Other Securities Market Participants, issuers are required to disclose to the market: (i) the existence of relevant information, and (ii) the consummation of a relevant event.

Relevant information consists of all real and current information that has an effect on the financial situation and operations of a business, and that could influence the price of securities or the investment decisions of an issuer. Unlike relevant information, which is of a general nature, a relevant event is specific to an issuer and consists of an event that has already been consummated or will imminently be consummated, and has affected or will imminently affect, the operations, results or financial situation of an issuer.

Non-Disclosure Effects

Disclosure, on a timely basis, of relevant information or events that could affect the operations or financial situation of an issuer, is one of the obligations to which issuers are subject and which must be overseen by the board members of an issuer and its first and second level officers, in performing their duty of care.

Failure to disclose on a timely manner (*i.e.* as soon as soon as there is knowledge or certainty of the existence of information or an event deemed relevant) could result in (i) civil liability for board members and officers, for breach of their duty of care, (ii) penalties for board members and officers for breach of their duty of disclosure, (iii) penalties (including imprisonment) in case of transmission or misuse of privileged information (resulting from the failure to disclose relevant information or events) by any person, and (iv) market speculation in respect of an issuer’s securities.

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Conclusions

The publication in the DOF, on March 30, 2020, of the National Health Council's decree pursuant to which the COVID-19 epidemic was declared as a health emergency constitutes relevant information, susceptible of disclosure by all issuers. Despite their being uncertainty as to the impact that such relevant information could have, issuers should adopt a conservative stance and disclose to the public, as a preventive measure, the possible impact that this health emergency could have on their operations, results and financial situation. This initial disclosure should be updated periodically, as soon as the real impact attributable to such relevant information on the operations, results or financial situation of the issuer is known.

Furthermore, in light of the publication in the DOF, on March 31, 2020, of the decree suspending all non-essential activities from March 30th to April 30, 2020, issuers should disclose to the market, as a relevant event, as soon as practicable, the decision adopted by their governing bodies as to whether their business activities qualify or not as an essential activity and, if so, whether they will suspend their operations or not (or the extent to which they will suspend such operations), as well as the potential impact that such suspension may have on their operations, results or financial situation.

Should you require further information, our team of professionals is available to answer any questions. 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 so we may direct your query to the appropriate team members.

We wish that you and your families are safe and remain healthy during these challenging times.

**Torre Virreyes, Av. Pedregal No. 24, 10th floor
Molino del Rey, 11040 Mexico City
+52 55 9178 7000
contacto@ritch.com.mx / www.ritch.com.mx**