



January 31th, 2023

CLIENT ALERT

Resolution that amends, adds and repeals the general provisions referred to in article 266 Bis of the Securities Market Law (“*LMV*”), applicable to investment advisers.

This is an update to the alert published on October 30th, 2022, [here](#) you can find it.

On January 20th, 2023, it was published at the Official Gazette of the Federation (“*DOF*”) the Resolution through which the “*general provisions referred to in article 266 Bis are reformed, added, and repealed. of the Securities Market Law, applicable to investment advisers*” (the “*Resolution*”).

In general terms, the purpose of the Resolution is to modify the current process of non-face-to-face operations for Investment Advisors.

The most relevant differences with the current provision are that (i) the face to face interview is replaced by one of the Technological Identification Mechanisms (“*MTI*”) referred to in Annex 2 of the Provisions; (ii) The authorization of the National Banking and Securities Commission (“*CNBV*”) to carry out remote transactions is exempted in the case of transactions that do not exceed 30,000 Investment Units (“*UDI*”); (iii) the execution of non-face-to-face contracts with domestic legal entities is added and the possibility for foreign individuals and legal entities is eliminated; and (iv) Advisors are authorized to carry out simplified identification.

In particular, the following points of the Resolution are highlighted:

I. Non-Face-to-Face operations

- (i) MTIs are defined as “*to any of the procedures referred to in Annex 2, through which Investment Advisors carry out the matching of the valid identification document and the application of proof of life.*”
- (ii) Investment Advisors must know the geolocation of their clients in order to carry out operations. However, in the event that the characteristics of the device used make it impossible to obtain such geolocation, the Advisors must obtain, through the procedure established in the Resolution, the approximate geographic coordinates of latitude and longitude.
- (iii) The MTI of the Advisors must have technology that allows the identification of the applicant by means of an image and sound recording, which must be kept





during the term of the contract and five more years, without editions and for its full duration.

- (iv) Likewise, the Advisors must have means that allow the transmission, safekeeping and correct reading of data, as well as guarantee the integrity of the information and the impossibility of its manipulation.
- (v) In addition to the identification and geolocation requirements, it will be necessary to require and obtain the consent of the individuals, which may be obtained through Electronic Signature or Advanced Electronic Signature or through the established process.
- (vi) If the clients agree to carry out transactions limited to a maximum of 30,000 **UDIS**, per client and per Advisor, during a calendar month, the Advisor, will not be obligated to request for the non-face-to-face authorization process, it only will have to send a notice to the **CNBV** prior to carrying out any transactions. However, it must carry out the process of collecting and verifying the biometric data, proof of life and video recording.

II. Other Amendments

- (vii) For contracts with individuals limited to transactional operations of less than 3,000 UDIs per Client and per Advisor in a calendar month, identification files may be integrated only with full name, date of birth and address, obtained from a valid identification document (“Simplified KYC”).
- (viii) The terms for reporting Unusual and Internal Transactions are amended and it is established that, as a first step, they will have a maximum period of 60 calendar days from the date the alert has been generated to make dictate the operation and they will have 3 business days to submit the report after the report has been issued by the Compliance Committee or Officer.
- (ix) A report is added for Advisors to submit quantitative information on their operations, channels, clients, products and services, as well as geographic zones, among others, within the last 10 business days of April of each year. This information, which shall cover the period from January to December of the previous year and shall be sent through electronic means, and in the official format issued by the Commission for such purpose.
- (x) The Advisors are authorized to equate the term “Real Owner” with the term “final beneficiary ” in regulations on the Prevention of Transactions with Illicit Proceeds.

III. Transitory Provisions





- (i) The Provisions shall become effective the day after their publication in the Official Gazette of the Federation.
- (ii) The Advisors that have obtained the approval of the Commission to carry out the non-face-to-face identification of their clients according to the current regulation, will have a term of 12 months to request a new application for authorization according to the new requirements.
- (iii) Four months to modify the compliance manual and submit it to the Commission.
- (iv) Nine months to modify the risk-based methodology.
- (v) Eighteen months to update the automated systems.

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If you have any questions or comments on the matter, please contact us.

This document does not constitute legal advice.

