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Executive Summary: Regulation for the Protection of User of Financial Services. By J. Velázquez-Morales.

On January 19, 2006, the 10th Resolution by the Monetary Fund approving the final version of the "Regulation on the Protection of Users of Financial Services" was made public. Following is a summary of its content:

General Provisions. The regulation provides the criteria that shall be used to determine the assumptions of the abusive contracts and ensure that financial agreements clearly reflect the rights and obligations undertaken by the parties. It also seeks to create a service so that claims can be filed with the Bank Superintendence.

In this regard, it provides the guidelines for the format of financial contracts and adhesion contracts used by the financial mediation entities in their transactions, and prevent any of these agreements from including clauses or provisions involving the existence of alleged abusive contracts. It also establishes the aspects to be observed by users, financial mediation entities, and the Bank Superintendence to deal with complaints, reports, and claims deriving from the service provision.

Financial Services User's Obligations and Powers. Among a variety of new powers, any individual or company using or acquiring the services or products of a financial mediation institution shall be entitled to obtain from the financial mediation institution 1) the document(s) providing the terms and conditions of the product or financial service engaged, in the form and under the conditions agreed to; 2) information on all the consequences deriving from failure to comply and pay the agreed amount under the terms and within the time frame established, as well as each and every

modification made to the contractual relationship, whether as a result of market conditions or expressly established by the monetary or financial administration; file complaints, claims, and reports with the financial institution or SIB, or justice courts, as applicable, upon prior request to the appropriate financial mediation institution.

On the other hand, users' obligations shall be as follows: a) file claims and reports with the financial institution or SIE, as appropriate, and in the form and within the terms established in this regulation, and; b) comply as agreed in the form and under the terms and conditions provided in the bank agreement.

Obligations of the Financial Mediation Institutions. Financial Mediation Institutions are bound to abide by the provisions previously indicated. Further, they shall also a) hand over to the client the original signed agreement(s), breaking down as much as possible the various items included in cost of operation expressed in yearly terms; b) refrain from charging clients for amounts otherwise not expressly agreed to by the parties, and making oral undertakings, pursuant to the provisions contained in the LMF, except for charges deriving from legal provisions previously issued; c) enforce the decisions issued by the Bank Superintendence with regard to complaints, claims, or reports; d) reissue a report from the Bank Superintendence with regard to the claims filed, in accordance with Article 52 of the law, for which the Bank Superintendence shall provide the appropriate formats; e) make available to users any information intended to give them some guidance towards the submission, servicing, and solutions of claims, among others.

About Bank and Adhesion Agreements. Bank and adhesion agreements are the forms used by financial mediation institutions for their transactions, and as such, they shall become



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part of the procedure, policy and control manuals with regard to the internal governability. They shall reflect and gather clear and precise information on the undertakings contracted by the parties and the rights thereof.

Alleged Abusive Agreements. SIB has full authority to qualify the existence of sufficient material elements to rate an agreement as abusive. Any time the SIB determines that an abusive clause is embodied in an adhesion or bank agreement, the financial mediation institution is bound to modify as indicated by SIE. Once adhesion agreement models have been reviewed and approved by SIE, the approval from such institution must be gotten in order to make any subsequent modification.

Claims filed with the Financial Mediation Institution. Service users are entitled to file any claim in connection with any action that may be deemed to be in violation or detrimental to the terms of the executed agreement. Claims shall be filed in writing, and documents supporting such claim and contributing to the investigation and settlement of such claim must accompany such claim. Users shall file their claims within four (4) years from the time of occurrence of the event. The claim must be signed by the user holder of the service or the legally designated agent thereof, through a power of attorney bearing a private signature.

Article 16 provides that financial mediation institutions shall respond to such claims within a 30-day calendar period, as of the date of filing of the claim. In the event the institution fails to respond within such time limit or the response fails to meet user's criteria, user shall be able to bring such claim before the SIB. Once the response from the financial mediation institution has been notified or conveyed in writing with receipt acknowledgement, the user shall have a two month period, as of the date of

receipt of the response, in order to file the claim in writing with the SIB.

About the organization of the Customer Service Department at Financial Mediation Institutions. Pursuant to the provisions in article 20, financial mediation institutions shall organize internally the Customer Service, Complaints, and Claims Department. Such organization shall include at least the following: a) a clear and precise description of the duties or responsibilities attributed to it; b) the internal policies, procedures, and controls that must be followed by the institution to respond to questions, complaints, and claims, and; c) the method for recording and keeping track of claims, and the manner in which such registries shall be kept for at least two (2) years as of the date they are filed.

User Protection and Service Division. The object and duties of the SIB User Protection and Service Division shall be to tend to consultations, reports, and complaints filed with SIB by users of the services provided by financial mediation institutions, financial mediation institutions themselves, and the Judicial Branch and other government authorities; guide users with regard to the appropriate filing of complaints, reports, and claims; issue investigative reports conducted at the request of tax authorities and competent legal organizations; serve as a mediator or conciliator between user and financial mediation institutions in the appropriate cases, among others pursuant to the current legislation.

Information Requirements. Electronic reports containing the following information must be submitted to SIB on a quarterly basis within five (5) days following the appropriate trimester: a) a statistical summary of the claims served, with information on the ID claim number, claimant's general data, issues raised in the claims, affected amounts and quantities, and; b)



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summary of the awards issued, with indications of the favorable or unfavorable nature for the claimant.

If necessary, SIB shall be able to require that financial mediation institutions send reports regarding the status or degree of execution of the customer claims.

Sanctions. Any financial mediation institution that infringes upon the provisions in the regulation shall be subject to the enforcement of the administrative sanctions provided in the law and sanction regulation approved through the Fifth Resolution issued by the Monetary fund on December 18, 2003.

The regulation grants a 60-day period, as of the date of effectiveness in order for financial mediation institutions to conform and remit to SIB the adhesion contract currently under use to determine whether such agreements do not contain the alleged abusive agreements. In addition, it grants financial mediation institutions a 60-day period, as of the date of the effectiveness to create the Customer Service, Complaints, and Claims Department.

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