

Investment Advisors Rules

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On July 23, 2001, the *Comisión Nacional de Valores* (“**CNV**”) published in the Venezuelan Official Gazette an amendment to the “Rules related to the Authorization and Registry of Investment Advisors” (“*Normas relativas a la Autorización de los Asesores de Inversión y al Registro de los mismos*” (“**The Rules**”), which had been in force since June 30, 1993. The purpose of this article is, on the one hand, to point out the differences between both sets of rules and, on the other, to enable the reader to fully understand the system which currently regulates investment advisors (“**Investment Advisors**”).

Advice functions or tasks, as defined by Article 3 of the Rules, are the activities usually performed by those persons who provide (i) information, advice, opinion or pass judgment and, in general, give assistance or counsel about investments or (ii) opportunities for the performance of investment operations, sale or purchase of short, medium or long-term security bonds in the securities market. Accordingly, Articles 1 and 2 of the Rules stipulate that individuals or corporations who perform, intend to perform or habitually exercise advisement functions or tasks, as defined above, for investments on security bonds issued in the domestic or foreign market, or who act as direct or indirect contact with public financial agent or public stockbrokers of foreign security bonds, or who represent the latter, must be previously authorized by the CNV. Furthermore a prohibition contained in Article 5 mandates that the term “Investment Advisors” may only be included in a business name if the person has both (i) complied with the formalities established in the Securities Market Law (“*Ley de Mercado de Capitales*”) (“**LMC**”) and (ii) obtained the aforementioned authorization.

One of the main differences between the abrogated set of rules and the one now in force is that the former invested the CNV with the power to deny and/or revoke the authorization regarding foreign security bonds if it considered the economic and financial situation of Venezuela to be inconvenient. The Rules eliminated this attribution of the CNV.

With respect to the granting of authorization, the Rules establish a series of requirements, such as the submission of personal or company data, nationality and

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domicile, business address, proposed fees, advice system, and express declarations regarding: (i) the non-existence of decisions condemning the petitioner (the “**Petitioner**”) for crimes or felonies against property, notarization or tax authorities, and (ii) the truth about the information submitted. There are other requirements which depend upon whether the Petitioner is an individual or a corporation and, as applicable, the individual or the company’s administrators and partners must submit their *curricula vitarum*, the yearly balances for the last three economic periods certified by a public accountant (the abrogated rules did not require intervention of public accountants), and three personal and bank references. Also the Rules provide certain specific requirements for corporations, such as a copy of the company’s incorporation document and bylaws, the balance sheet and profit and loss statement for the last economic periods duly certified by a public accountant (as mentioned above, this is a novel element of the Rules), a summary of the company’s activity, experience, commercial relationships, etc. for the last five years, and copies of certain types of agreements entered into by the company (Articles 6, 7 and 8). Finally, the CNV added a new requirement for individuals who wish to request authorization to act as Investment Advisors: Article 7 of the Rules provides that the Petitioners must be professionals, graduated from a well-known university, a requirement which was not expressly included in the abrogated rules.

Another important difference between both set of norms is that Article 9 of the Rules establishes an evaluation for the Petitioner, which includes (i) the *curriculum vitae* (of the Petitioner, or the Petitioner’s employees, as the case may be) which is graded according to objective parameters established by the CNV in the same Rules and which is based on a merits scale (40% of the grade) and (ii) an examination (on subjects chosen and publicized by the aforementioned organ, pursuant to Article 11 of the Rules) which is graded by a panel appointed by the CNV (60% of the grade). Indeed, in order to receive the authorization to act as Investment Advisor the Petitioner, or its employees must get, at least, 75 points out of 100. As opposed to this system, the abrogated rules only required the examination, taking into account neither the *curriculum vitae* nor its objective evaluation by pre-established criteria.

Furthermore, the abrogated rules stipulated that if the CNV considered a person to have a recognized professional experience on economic, financial or commercial matters, it could exonerate said person from the examination, thus giving the CNV wide discretionary powers. The current Rules clearly limit this discretionary power of the CNV by providing two concomitant requirements that are needed in order to be exonerated from the examination: (i) that the person should be in the top 80% *curriculum vitae* grade, and (ii) that he/she should be a recognized professional, teacher and/or expert on economic, financial or commercial areas, or should have a foreign title crediting him as “Investment Advisor”.

Once the requirements have been met, the CNV will authorize the Petitioner by means of a resolution, and will order the inscription in the “Investment Advisors Registry Book” (“*Libro de Registro de Asesores de Inversión*”), kept by the National Securities Registry (“*Registro Nacional de Valores*”) (“**RNV**”) (Article 13). If the Petitioner fails the examination, he/she may apply again once a year has elapsed since the last application, pursuant to Article 11.

Impediments for the granting of authorizations are established under Articles 14 and 22 of the Rules. These impediments can be categorized, in two groups: (i) those that relate directly to the Petitioner and (ii) those regarding the advice itself.

The first group are listed under Article 14 of the rules and prohibit the following persons from requesting authorization: (i) public employees or agents, (ii) persons whose inscription on the RNV has been suspended or cancelled by the CNV for violations of the law, (iii) persons subject to moratorium procedures, (iv) bankrupts, (v) persons who have been condemned for crimes or felonies against property, notarization and tax authorities, (vi) persons who have been expelled from the Caracas Stock Exchange (“*Bolsa de Valores de Caracas*”), (vii) persons who do not reside in the country and (viii) corporations that have not been duly incorporated or domiciled in accordance with Venezuelan laws. Another important issue which Article 15 of the Rules regulates is the protection of the client from possible conflicts of interest and contradictory advice regarding the same matter within a narrow margin of time (three months). The new Rules provide that the Investment Advisors which fall within the scope of said Article must notify both the client and the CNV of said situation.

As we explained there is another category related to the advice itself, which prohibits advice which: (i) regards security bonds issued and negotiated abroad and with respect to which the competent authority has not given authorization to make public offers, (ii) regards security bonds issued and negotiated abroad, with respect to which the competent authority has authorized public offers if 60 days of the original placement of said bonds in their respective market have not elapsed, and (iii) is given in bad faith (based on imprecise or false information, lies or misleading statements) in order to increase the sale or purchase of the bonds or in any way impair the client’s investment (Article 22). The CNV further reaffirms this good faith mandate by setting a diligence standard. In fact, Article 21 states that advice should be given with precision, clarity and exactitude, abstaining from making statements which may lead the client to error.

In another order of ideas, the CNV imposed upon the Investment Advisors an obligation to keep records of all materials regarding advice given for a period of five years, and to provide the CNV with said records and/or materials if required (Articles 16, 17 and 19). The Investment Advisors must also keep a numeric code for the identification of each of its clients (Article 18).

Another important issue is that the Rules stipulate that those Investment Advisors who: (i) incur in gross violation of the LMC or the Rules, or (ii) once authorized, fall within the scope of the impediments previously enumerated, may have their authorizations revoked or suspended, depending upon the appreciation of the violation by the CNV. It was also established that authorizations may be both suspended or cancelled at the request of the interested party (Articles 23, 24 and 25).

Finally, the Rules also regulate other matters, such as obligatory publications if the CNV deems it necessary, prior approval by the CNV of any publicity or advertisement, and reference to the LMC regarding violations and sanctions.