

Akin Gump Strauss Hauer & Feld LLP  
Robert S. Strauss Tower  
2001 K Street, N.W.  
Washington, DC 20006

T +1 202.887.4000  
F +1 202.887.4288  
akingump.com

**Akin**

Jonathan C. Poling  
+1 202.887.4029/fax: +1 202.887.4288  
jpoling@akingump.com

June 28, 2023

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED  
VIA E-MAIL  
VIA HAND DELIVERY

ATTN: Alan Bonfiglio Ríos, Esq.  
Dirección General de Consultoría Jurídica de Comercio Internacional  
Secretaría de Economía  
Pachuca #189, piso 19  
Col. Condesa  
Demarcación Territorial Cuauhtémoc  
Ciudad de México  
C.P. 06140  
México  
[alan.bonfiglio@economia.gob.mx](mailto:alan.bonfiglio@economia.gob.mx)

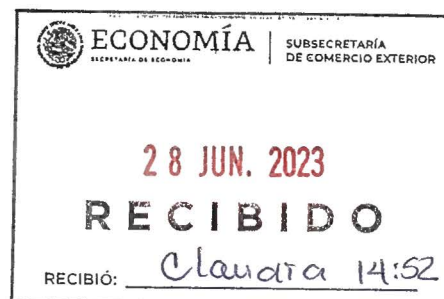
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ATTN: Gibrán Alberto Briones Acosta  
Dirección General de Inversión Extranjera  
Secretaría de Economía  
Insurgentes Sur 1940, piso 8  
Col. Florida  
México, D.F. 01030  
México  
[gibran.briones@economia.gob.mx](mailto:gibran.briones@economia.gob.mx)

Re: Notice of Intent to Submit a Claim to Arbitration Under the North American Free Trade Agreement Chapter 11

Dear Mr. Bonfiglio and Mr. Briones:

In accordance with Articles 1116 and 1119 of Chapter 11 of the North American Free Trade Agreement ("NAFTA") and Annex 14-C of Chapter 14 of the United States-Mexico-Canada Agreement ("USMCA"), Cyrus Capital Partners, L.P. ("Cyrus") and Contrarian Capital Management, LLC ("Contrarian") (collectively, the "Claimants"), hereby serve notice of their



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intent to submit a claim to arbitration against the United Mexican States (“Mexico” or “the Respondent”) for breach of Mexico’s obligations under the provisions of Chapter 11 of NAFTA.

## **I. NAMES AND ADDRESSES OF THE DISPUTING INVESTORS**

1. Claimants are entities organized under the laws of the United States in the State of Delaware.
2. The contact information and principal place of business for Cyrus and the Noteholder (defined below at Paragraph 16) under its control, is as follows:

65 East 55th Street, 35th Floor  
New York, NY 10022  
United States of America

3. The contact information and principal place of business for Contrarian and the Noteholder (defined below at Paragraph 16) under its control, is as follows:

411 West Putnam Ave. #425  
Greenwich, CT 06830  
United States of America

4. The Claimants will be represented in all matters related with this dispute, including amicable consultation or negotiation, by Akin Gump Strauss Hauer & Feld LLP (“Akin”). The contact details of Akin’s lawyers are as follows:

Mr. Jonathan C. Poling  
([jpoling@akingump.com](mailto:jpoling@akingump.com))  
T: +1 202 887 4029  
F: +1 202 887 4288

Mr. Stephen S. Kho  
([skho@akingump.com](mailto:skho@akingump.com))  
T: +1 202 887 4459  
F: +1 202 887 4288

Ms. Katherine P. Padgett  
([kpadgett@akingump.com](mailto:kpadgett@akingump.com))  
T: +1 202 887 4079  
F: +1 202 887 4288

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Ms. Alison M. Trimble  
([atrimble@akingump.com](mailto:atrimble@akingump.com))  
T: +1 202 887 4531  
F: +1 202 887 4288

Akin Gump Strauss Hauer & Feld LLP  
Robert S. Strauss Tower  
2001 K Street, N.W.  
Washington, DC 20006

## **II. CHAPTER 11 OF NAFTA IS ENGAGED**

5. As noted above, the Claimants are entities that exist under the laws of the United States and that have principal places of business in the United States and thus qualify as “U.S. investors.” Through enterprises under their control, Claimants hold covered “investments,” i.e., debt securities of an entity organized under the laws of Mexico, TV Azteca, S.A.B. de C.V. (“TV Azteca”), where the original maturity of the debt security is at least three years. The claims at issue here, therefore, involve “investments” of “investors of a Party” pursuant to Article 1139 of NAFTA.
6. Namely, the Claimants control claims against TV Azteca based upon certain holdings under their control of the 8.25% senior unsecured notes due 2024 issued by TV Azteca under that certain Indenture, dated as of August 9, 2017 (the “Notes”).
7. Because the claims pertain to the treatment of the Claimants by Mexico, and more specifically a Mexican court in a proceeding relating to and affecting the TV Azteca Notes under their control, which were established (i.e., issued) prior to the entry into force of the USMCA on July 1, 2020, the Claimants are entitled to bring their claims to arbitration against Mexico under Chapter 11 of NAFTA as “legacy investment” claims, consistent with Annex 14-C of the USMCA.
8. Claimants are serving this Notice of Intent on Mexico prior to the expiration on July 1, 2023 of Mexico’s consent to the submission of claims to arbitration that allege a breach of an obligation under Section A of Chapter 11 of NAFTA, in accordance with Section B of Chapter 11 of NAFTA and Annex 14-C of the USMCA.
9. Claimants intend to submit their Request for Arbitration consistent with Section B of Chapter 11 of NAFTA to the International Centre for Settlement of Investment Disputes

(“ICSID”) prior to July 1, 2023, and intend to request a 90-day suspension of the proceedings consistent with Article 1119 of NAFTA as part of that submission.

10. Accordingly, the Claimants are “investors of a Party” submitting a claim to arbitration that Mexico has breached an obligation of Section A of Chapter 11 of NAFTA with respect to Notes under their control that qualify as an “investment” of an investor of a Party for purposes of NAFTA, consistent with the legacy investment procedures and rights outlined under Annex 14-C of the USMCA.

### **III. MEXICO’S BREACH OF ITS OBLIGATIONS UNDER NAFTA**

11. In summary, Mexico breached its obligations under Article 1105 (Minimum Standard of Treatment) of Chapter 11 of NAFTA.
12. As discussed in further detail below, the Claimants’ mistreatment by the Superior Court of Justice of Mexico City amounts to a violation of Mexico’s obligations to provide Claimants, as U.S. investors, with the Minimum Standard of Treatment under Article 1105 of Chapter 11 of NAFTA, which requires it to accord “treatment in accordance with international law, including fair and equitable treatment.”
13. “Fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world.
14. As demonstrated by the facts described below, the Mexican court committed multiple brazen violations of Claimants’ due process rights in the proceedings before it, including denying Claimants any notice or an opportunity to be heard prior to issuing an injunction that has barred their ability to pursue relief as creditors of TV Azteca, which is owned and controlled Ricardo Salinas Pliego, to whom the presiding judge has been known to show favor.

#### **A. Statement of Facts**

15. Claimants set forth below a brief statement of the factual background underlying their claims. These matters will be fully supported by witness testimony and documentary evidence to be submitted at the appropriate stage of the arbitration.

##### **1. Claimants Control Notes Issued by TV Azteca under an Indenture**

16. On August 9, 2017, TV Azteca entered into an indenture agreement (the “Indenture”) with the Bank of New York Mellon (“BNYM” or “Trustee”) as the trustee, the Bank of New York Mellon, London (“BNYML”) as the principal paying agent, and a number of

guarantors (the “Guarantors”). The Indenture provides (a) for the issuance of \$400 million in debt (the “Notes”) to certain noteholders (the “Noteholders”) by TV Azteca, and (b) that the Guarantors, which are subsidiaries of TV Azteca, fully guarantee the obligations of TV Azteca.

17. Under the terms of the Indenture, TV Azteca is obligated to make semi-annual interest payments to the Noteholders, which include entities controlled by the Claimants, at the rate of 8.250% per annum on the \$400 million principal sum on August 9 and February 9 of each year during the term of the Indenture. Each required interest payment is \$16,500,000.
18. The maturity date of the Notes is August 9, 2024.

## **2. TV Azteca Stopped Making Required Interest Payments on the Notes**

19. TV Azteca ceased making its semi-annual payments in February 2021. The Trustee subsequently issued multiple Notices of Event of Default. Following two more missed payments in August 2021 and February 2022, and after months of failed negotiations to resolve the missed payments, the Trustee, at the direction of the Claimants and other Noteholders, moved to accelerate the debt on August 5, 2022 and August 8, 2022.
20. On August 26, 2022, after TV Azteca refused to make its required interest payments and ignored the notices of acceleration, the Trustee sued TV Azteca in New York State court seeking compensatory damages totaling the aggregate amount of accrued and unpaid interest based on TV Azteca’s failure to make three interest payments, the full amount of the interest up to the date of acceleration on August 5, 2022, the redemption premium, and the full amount of the principal due under the Indenture at the time, collectively totaling \$469,783,272. At present, TV Azteca owes the Noteholders in excess of \$488,623,510, of which not less than \$219,050,000 million is owed to U.S. investors.
21. On September 23, 2022, TV Azteca removed the case to the U.S. District Court for the Southern District of New York, which has since been stayed as a result of the involuntary Chapter 11 proceeding against TV Azteca and the Guarantor initiated with the United States Bankruptcy Court for the Southern District of New York, which is discussed further below.

## **3. Mexican Court Violates Due Process Rights of Claimants**

22. Meanwhile, on September 22, 2022, unbeknownst to the Claimants, at the same time it was seeking to remove the Trustee’s action to U.S. District Court for the Southern District of New York, TV Azteca filed a complaint against Noteholders controlled by the



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Claimants, other Noteholders, and the Trustee in the Superior Court of Justice of Mexico City, Mexico seeking to bar the Noteholders and the Trustee's recovery efforts under the Notes (the "Mexican Court Proceeding").

23. Specifically, TV Azteca sought a court decree that the COVID-19 pandemic constituted an Act of God or force majeure event that prevented TV Azteca from performing its obligations under the Indenture, and thus TV Azteca should be entirely relieved from performing any obligations under the Notes, including making the required payments on the Notes controlled by, among other Noteholders, the Claimants.
24. On September 27, 2022, just five days after the complaint was filed, the presiding judge in the Mexican Court Proceeding, Judge Miguel Angel Robles Villegas (who is known to be partial to TV Azteca and Grupo Salinas), issued an injunction (the "Injunction") that had the effect of, among other things, prohibiting any proceedings to enforce rights and remedies with respect to the Notes and deeming the acceleration notices ineffective until the World Health Organization ("WHO") declares the end of the COVID-19 pandemic.
25. Neither TV Azteca nor the Mexican court has ever provided notice of the complaint nor the Injunction to the Claimants or any other defendant Noteholders. The Trustee only became aware of the Mexican Court Proceeding and the Injunction when it was served on February 21, 2023, approximately five months after the entry of the Injunction. The Claimants first became aware of the Mexican Court Proceeding and Injunction on March 3, 2023 after reading about the Injunction in a Bloomberg Law article.
26. To challenge the Injunction, on March 15, 2023, the Trustee, as the only defendant served in the Mexican Court Proceeding, filed a separate Amparo (the "Amparo Proceeding") in Mexican federal court, seeking relief from the Injunction. An amparo is relief available in Mexican courts to seek protection from acts that violate fundamental constitutional rights. The Amparo argued that the Injunction violated the Constitution of Mexico by depriving the defendants of fundamental rights to due process.
27. On March 23, 2023, however, the Mexican court dismissed the Amparo without prejudice due to a failure to exhaust local remedies. As a result, the Trustee subsequently filed an appeal from the Mexican Court Proceeding challenging the Injunction, which remains pending.
28. On March 27, 2023, as a last resort, certain Noteholders, including the entities under the Claimants' control, filed a petition initiating an involuntary Chapter 11 proceeding against TV Azteca and the Guarantor with the United States Bankruptcy Court for the

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Southern District of New York. The litigation before the U.S. District Court for the Southern District of New York is stayed as a result of the Chapter 11 proceeding.

29. The Trustee, as the only defendant served, filed a response in the Mexican Court Proceeding on April 20, 2023. Relying on a blatantly incorrect interpretation of Mexican law in order to accept the response deadline unilaterally and unlawfully chosen by TV Azteca, on May 2, 2023, the Mexican court arbitrarily and capriciously dismissed the Trustee's response as untimely.
30. On May 8, 2023, the Trustee submitted a Motion for Reconsideration requesting the Mexican court to reconsider its ruling and declare the Trustee's response as timely filed. On May 15, 2023, the court reversed its decision and declared the response timely filed. However, by refusing to accept the response as timely filed under a correct interpretation of Mexican law in the first instance by abiding by the unlawfully forged deadline, Judge Robles thus initially denied the Claimants the ability to contest the merits of the Injunction through the Trustee's response, and ultimately required it to undertake the unnecessary burden of seeking reconsideration of the ruling.
31. On May 15, 2023, based on the WHO's May 5, 2023 statement that COVID-19 is no longer a public health emergency and a statement from the Mexican President that COVID-19 is no longer a health emergency in Mexico, the Trustee filed a motion to vacate the Injunction, arguing that the predicate condition supporting the Injunction had lapsed. Rather than consider the motion in timely fashion, Judge Robles has reserved decision on that motion and thus the Injunction remains pending despite the fact that its underlying basis has very obviously lapsed.
32. The Injunction has the effect of inhibiting the Claimants' ability to obtain full and effective remedies in Mexico against TV Azteca for its default on the Notes under their control. By failing to accord the Claimants any notice or opportunity to oppose TV Azteca's request for an injunction before it was issued, the Mexican court's actions constitute a violation of the Claimants' substantive and procedural due process rights such that the Claimants were denied justice by the Mexican court, contrary to the principle of due process embodied in the principal legal systems of the world.
33. TV Azteca's claim in the Mexican Court Proceeding that an injunction against its creditors was warranted because that it could not perform its obligations under the Indenture due to the COVID-19 pandemic, was not supportable at the time of its issuance based on the fact that TV Azteca made significant payments toward its local debt –

totaling \$165 million – at the same time it was defaulting on its obligations under the Notes.

34. To further demonstrate the Mexican court's overt partiality to TV Azteca, on May 9, 2023, Judge Robles issued yet another injunction at TV Azteca's request without providing the defendants a notice or opportunity to be heard in a clear violation of Mexican law. This latest injunction permits TV Azteca, to its benefit, to refrain from reporting financial information to the public until a final judgment in the Mexican Court Proceeding is issued.
35. Finally, the Claimants understand that there is yet another separate commercial litigation against the Trustee and Noteholders in Mexico for which service has not yet been effected. Neither the Claimants nor the Trustee have been formally served in connection with that proceeding and are only aware of its existence based on a footnote in a TV Azteca filing in the bankruptcy proceeding in the United States.

#### **B. Statement of Legal Claims**

36. Article 1105: Minimum Standard of Treatment of NAFTA provides as follows:

*1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.*

*2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.*

*3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).*

37. The treatment accorded to the Claimants by the Mexican court amounts to a denial of justice in violation of the obligations under Article 1105: Minimum Standard of Treatment to provide "treatment in accordance with international law, including fair and equitable treatment."

#### **IV. LOSSES AND DAMAGES**

38. By reason of Mexico's breaches of Chapter 11 of NAFTA described above, the Claimants have suffered and continue to suffer substantial losses and damages. The



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amount of losses and damages suffered to date on the Notes controlled by U.S. investors is currently estimated to be not less than \$219,050,000 million.

## V. REQUEST FOR RELIEF

39. Based on the foregoing, Claimants intend to seek an arbitral award from a duly constituted Tribunal:

- a. Declaring Mexico to be in breach of its obligations under Article 1105 of Chapter 11 of NAFTA;
- b. Directing Mexico to pay damages to Claimants in an amount currently estimated as being not less than \$219,050,000 million;
- c. Awarding Claimants pre-award and post-award interest at the applicable rate;
- d. Directing Mexico to pay all of Claimants' costs and expenses of the arbitral proceedings, inclusive of attorneys' fees; and
- e. Awarding further relief that the Tribunal may consider just and proper.

## VI. RESERVATION OF RIGHTS

40. Claimants hereby reserve the right to amend, supplement, and augment the claims stated herein, and to submit such further pleading, arguments, and evidence as may be appropriate or required in connection herewith.

Sincerely,



Jonathan C. Poling  
Partner