18-02524-FOIA

foiapa

From: no-reply@sec.gov on behalf of U.S. Securities and Exchange Commission <no-reply@sec.gov>
Sent: Tuesday, July 17, 2018 1:27 PM
To: foiapa
Subject: Webform submission from Request for Copies of Documents

Submitted on Tue, 07/17/2018 - 13:26

Submitted by: Anonymous

Submitted values are:

Contact Information

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Mr Eddie Wansley-Pena

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Company Name, if Applicable
Ellenoff Grossman & Schole LLP

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Request Details

Subject/Company Name
Grupo Financiero

Date or range of document
April 4, 1995

Type of document
NO ACT (No Action Letter)

Fee Authorization

Fee Authorization
Willing to Pay $61

Fee Waiver Criteria

Fee Waiver is Requested
No

Requesting Expedited Treatment

Expedited Service is Requested
No

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 13, 2018

Mr. Eddie Wansley-Pena
Ellenoff Grossman & Schole lLP
1345 Avenue of the Americas 11th Floor
New York, NY 10105

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **18-02524-FOIA**

Dear Mr. Wansley-Pena:

This letter is in response to your request, dated and received in this office on July 17, 2018, for a No Action Letter concerning Grupo Financiero, dated April 4, 1995.

The search for responsive records has resulted in the retrieval of 15 pages of records that may be responsive to your request. They are being provided to you with this letter.

If you have any questions, please contact me at johnsonee@sec.gov or (202) 551-8350. You may also contact me at foiapa@sec.gov or (202) 551-7900. You also have the right to seek assistance from Aaron Taylor as a FOIA Public Liaison or contact the Office of Government Information Services (OGIS) for dispute resolution services. OGIS can be reached at 1-877-684-6448 or Archives.gov or via e-mail at ogis@nara.gov.

Sincerely,

For Everene Johnson
FOIA Research Specialist

Enclosure

33-77262

Act 23
Section 5
Rule
Public Availability 4-4-95

PE 3/29/95

April 4, 1995

RESPONSE OF THE OFFICE OF INTERNATIONAL CORPORATE FINANCE DIVISION OF CORPORATION FINANCE

Re: Grupo Financiero InverMexico, S.A.
Incoming letter dated March 29, 1995

Based on the facts presented, it is the Division's view that a non-broker-dealer Exchange Offeree (as defined in your letter) exchanging Restricted Debentures for the Exchange Debentures offered and sold pursuant the registered Exchange Offer may resell the Exchange Debentures without compliance with the registration and prospectus delivery provisions of the Securities Act if such Exchange Offeree acquires the Exchange Debentures in the ordinary course of its business and is not participating in the distribution, and has no arrangement or understandings with any person to participate in the distribution of the Exchange Debentures. It is also the Division's view that a broker-dealer Exchange Offeree may resell Exchange Debentures as described in your letter provided such broker-dealer Exchange Offeree acquired the Restricted Debentures for its own account as a result of market-making or other trading activities.

Because this position is based on the representations made to the Division, you should note that any different facts might require another result.

Sincerely,

Michael Hyatte

Michael Hyatte

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14/14 PU
APR 05 1995

DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 4, 1995

Glenn M. Reiter, Esq.
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017-3954

Re: Grupo Financiero InverMexico, S.A.

Dear Mr. Reiter:

In regard to your letter of March 29, 1995 our response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter.

Sincerely,

Martin P. Dunn
Chief Counsel

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WRITER'S DIRECT DIAL NUMBER
(212) 455-3358

March 29, 1995

Re: Grupo Financiero InverMexico, S.A. de C.V.

Paul Dudek, Esq.
Chief, Office of International
Corporate Finance
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Mr. Dudek:

Grupo Financiero InverMexico, S.A. de C.V., a leading Mexican financial services holding company (the "Company"), completed, in June 1994, an offering (the "Offering") of U.S.$143,750,000 aggregate principal amount of its 7.50% Mandatory Convertible Debentures Due 2001 (the "Debentures") in reliance upon Regulation S and Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). The Debentures and the related Indenture include a covenant obligating the Company to conduct an exchange offer (the "Exchange Offer") pursuant to which any Debentures that are "restricted securities" originally placed with qualified institutional buyers ("QIBs") within the meaning of Rule 144A (the "Restricted Debentures") would be exchanged for

identical registered and freely tradeable convertible debentures (the "Exchange Debentures") in the event that the Company makes an offering of any series of shares of its capital stock registered under the Securities Act or registers any such series of shares under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for listing on a U.S. national securities exchange. We are hereby requesting confirmation that the Company may, subject to the conditions set forth herein, rely upon the Exxon Capital "exchange offer" procedure and, in particular, that resales of Exchange Debentures after the Exchange Offer will be viewed by the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") no differently from resales by non-affiliated purchasers after completion of any registered primary offering of equity or equity-related securities.

The Company

The Company is a leading Mexican financial services holding company. The Company and its subsidiaries (together, the "Group") are engaged in the businesses of commercial banking, investment banking, securities brokerage, leasing, factoring, foreign exchange and other financial services.

The Group's commercial banking business is conducted through Banco Mexicano, S.A., the fourth largest bank in Mexico based on total unconsolidated assets and total net income at and for the year ended December 31, 1994. The Group conducts its securities brokerage and investment banking businesses through InverMexico, Casa de

Bolsa, S.A. de C.V. The Group also conducts leasing, factoring, foreign exchange and other operations through additional subsidiaries.

The Company had total unconsolidated assets of N$2,647 million and total stockholders' equity of N$2,638 million at December 31, 1994. The Company had net income of N$36 million for the year ended December 31, 1994. (This financial data has been derived from the Company's preliminary unconsolidated financial statements prepared in accordance with accounting practices prescribed by the *Comisión Nacional Bancaria* (the Mexican National Banking Commission).)

The Company is currently exempt from reporting under the Exchange Act by virtue of Rule 12g3-2(b) thereunder. The Company is on the Staff's list of foreign issuers that claim exemption pursuant to Rule 12g3-2(b).

Capital Structure

The authorized capital stock of the Company currently is comprised of A Shares, B Shares and C Shares, all of which carry full voting rights, and L Shares, which carry limited voting rights. The Company's outstanding capital stock currently consists of 369,495,380 A Shares (representing 46.36% of the Company's outstanding capital stock), 331,236,293 B Shares (representing 41.56% of capital stock), 23,769,071 C Shares (representing 2.98% of capital stock) and, since June 23, 1994, 72,450,074 L Shares (representing 9.09% of capital stock).

In March 1994, the Company's stockholders authorized the issuance of the L Shares. The stockholders authorized the issuance of up to 217,350,223 L Shares. All of

the outstanding L Shares were issued in conjunction with a 10% share dividend payable in L Shares to holders of the Company's outstanding A Shares, B Shares and C Shares on June 23, 1994. In addition, the Debentures are convertible into L Shares (in the form of American Depositary Shares ("ADSs")). Finally, the Company anticipates that L Shares may be offered and sold in a Securities Act-registered offering in the future.

As of December 31, 1994, the Company's capital stock was owned as follows: members of the Company's Board of Directors, 54%; members of the Company's senior management (approximately 30 persons), 14%; DESC, S.A. de C.V., a major Mexican corporation, 10%; and the remaining 22% by unaffiliated stockholders.

Market Information

The A Shares, B Shares, C Shares and, since June 23, 1994, the L Shares are listed on the Mexican Stock Exchange. In addition, ADSs representing (i) B Shares (in the form of ordinary participation certificates (CPOs) representing financial interests therein), (ii) C Shares and (iii) L Shares, respectively, are traded in over-the-counter markets in the United States. In connection with the Offering, a restricted Rule 144A ADR facility was established with respect to any L Shares issued upon conversion or redemption of the Restricted Debentures.

The ranges of high and low closing prices (in new pesos) for the A Shares, the B Shares and the C Shares during 1993 and 1994 and for the L Shares during 1994 (since their initial issuance on June 23, 1994) were as follows:

	High	Low
A Shares		
1993	N$7.30	N$4.00
1994	7.72	4.00
B Shares		
1993	7.58	4.00
1994	7.84	3.99
C Shares		
1993	7.30	4.20
1994	7.70	4.30
L Shares		
1994	6.10	3.98

The Offering

The Debentures were offered, through a group of managers headed by Bear, Stearns & Co. Inc. (the "Managers"), in the United States solely to qualified institutional buyers in reliance upon Rule 144A and outside the United States in reliance upon Regulation S.

The Debentures are convertible into ADSs at a conversion ratio of 46.71 ADSs for each U.S.$1,000 principal amount of Debentures (equivalent to a conversion price of U.S.$21.41 per ADS).[1/] Debentures that are Restricted Debentures are convertible into Rule 144A ADSs. Each ADS represents ten L Shares of the Company.

[1/] The initial conversion ratio and conversion price of 42.46 ADSs and U.S.$23.55 per ADS, respectively, were adjusted as a result of the above-mentioned L Share dividend on June 23, 1994.

The Debentures are now convertible into ADSs, at the option of the holders, at any time. The Debentures are also mandatorily convertible into ADSs at the then effective conversion price on the stated maturity date in 1999. In addition, the Debentures are redeemable, at the option of the Company, on or after three years after the closing date for the Offering or in the event of certain changes in Mexican law affecting taxation. In the case of an optional or tax redemption, the Company may make the redemption payment (i) in cash or (ii) in ADSs (provided that for 20 out of the 30 consecutive business days preceding the date of the redemption notice the average sales price for the L Shares on the Mexican Stock Exchange was at least 130% of the then effective conversion price).

The Restricted Debentures are subject to transfer restrictions permitting resale or transfers only pursuant to Rule 144A, Regulation S or, if available, Rule 144 under the Securities Act. The Rule 144A ADSs (and the underlying L Shares represented by the Rule 144A ADSs) are subject to substantially the same transfer restrictions.

The Debentures and the related Indenture contain, in addition to other covenants, a covenant to the effect that if the Company makes an offering of L Shares or any other series of shares of its capital stock in the United States registered under the Securities Act or registers the L Shares or any other series of shares of its capital stock under the Exchange Act for listing on a U.S. national securities exchange, the Company will, to the extent permitted under applicable law, conduct the Exchange Offer permitting holders to exchange the Restricted Debentures for the Exchange Debentures, which will

be registered under the Securities Act and which will have the same terms as the Debentures.

The Exchange Offer

The Exchange Offer would involve the surrender of the Restricted Debentures by tendering holders (the "Exchange Offerees") against delivery of the Exchange Debentures by the Company. Unless extended, the Exchange Offer would remain open for 20 business days after its commencement.

The Company would file a registration statement on Form F-1 under the Securities Act registering the Exchange Debentures to be offered to the Exchange Offerees in the Exchange Offer and L Shares of the Company issuable upon conversion of Exchange Debentures (the "underlying Exchange L Shares").[2/] Prior to the effectiveness of the Form F-1, the Company would provide a supplemental letter to the Staff (i) stating that the Company is registering the Exchange Offer in reliance on the Staff's interpretative position enunciated in the response to this letter and (ii) confirming that the Company and its affiliates have not entered into any arrangement or understanding with any person to distribute Exchange Debentures to be received in the Exchange Offer or underlying Exchange L Shares and also that, to the best of the Company's information and belief, each Exchange Offeree is acquiring the Exchange Debentures in its ordinary course of business and has no arrangement or understanding

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2/ References herein to the underlying Exchange L Shares are, unless the context otherwise requires, deemed to include the ADSs representing such L Shares.

with any person to participate in a distribution of Exchange Debentures or underlying Exchange L Shares.

A prospectus (the "Exchange Offer Prospectus") and a letter of transmittal (the "Letter of Transmittal") to be executed by each Exchange Offeree in order to participate in the Exchange Offer would be sent to all Exchange Offerees promptly after the Form F-1 is declared effective. The principal terms of the Exchange Offer would be disclosed in the Exchange Offer Prospectus.

The Exchange Offer Prospectus would, among other things, state that if any Exchange Offeree (i) is an "affiliate" (as such term is defined in Rule 405 under the Securities Act) of the Company, (ii) is participating in a distribution of Exchange Debentures to be received in the Exchange Offer or underlying Exchange L Shares, (iii) is a broker-dealer that acquired the Restricted Debentures in a transaction other than as part of its market-making or other trading activities or (iv) is not acquiring Exchange Debentures in the ordinary course of business, such Exchange Offeree would not be entitled to rely on the Staff's interpretative position enunciated in response to this letter or in similar interpretative letters, including Letter regarding Exxon Capital Holdings Corporation (available April 13, 1988) and Letter regarding Shearman & Sterling (available July 2, 1993). In addition, the Exchange Offer Prospectus would state that a secondary resale transaction in the United States by an Exchange Offeree which is using the Exchange Offer to participate in a distribution of Exchange Debentures or underlying Exchange L Shares must be covered by an effective registration statement containing the

selling securityholder information required by Item 507 of Regulation S-K and that such an Exchange Offeree must comply with the prospectus delivery requirements of the Securities Act in connection with such secondary resale transaction. The Letter of Transmittal would include a representation to the effect that, by accepting the Exchange Offer, each Exchange Offeree represents that it is not engaged in, and does not intend to engage in, a distribution of Exchange Debentures to be received in the Exchange Offer or underlying Exchange L Shares. The Company would, through the Exchange Offer Prospectus or otherwise, make each Exchange Offeree aware that any secondary resale transaction in the United States by an Exchange Offeree which is using the Exchange Offer to participate in a distribution of Exchange Debentures or underlying Exchange L Shares would not be covered by the Staff's interpretative position enunciated in response to this letter or in similar interpretative letters and would instead be subject to the above-mentioned registration and prospectus delivery requirements of the Securities Act.

The Exchange Offer Prospectus would also state that each Exchange Offeree which is a broker-dealer holding Restricted Debentures for its own account as a result of market-making or other trading activities, and which is to receive Exchange Debentures in exchange for such Debentures pursuant to the Exchange Offer, may be a statutory underwriter and must deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of Exchange Debentures. Similarly, the Letter of Transmittal would include a representation to the effect that, if the Exchange Offeree is a broker-dealer holding Restricted Debentures acquired for its own account as a result of

market-making or other trading activities, it would deliver such a prospectus in connection with any resale of Exchange Debentures received pursuant to the Exchange Offer.*

Finally, the Company has represented and agreed that it has not entered into, and will not enter into, any arrangement or understanding with any person to distribute Exchange Debentures to be received in the Exchange Offer or underlying Exchange L Shares.

The Exchange Offer would provide a number of benefits to both the tendering Exchange Offerees and the Company. The Exchange Offerees which participate in the Exchange Offer would obtain the liquidity provided by securities registered under the Securities Act. The Company believes that, by conducting the Exchange Offer and eliminating the series of Restricted Debentures and the related restricted Rule 144A ADR facility, the liquidity and efficiency of the U.S. public market for both the Exchange Debentures and the ADSs would be enhanced. Moreover, all securityholders of the Company would have increased access to public information about the Company as a result of the Company becoming a reporting company under the Exchange Act. Under these circumstances, we believe that the Staff should provide the confirmation requested herein.

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* Such prospectus could be the Exchange Offer Prospectus so long as it contains a plan of distribution with respect to such resale transactions.

Prior Interpretative Letters

We believe that, in seeking the requested confirmation from the Staff, we are supported by the Staff's prior interpretative letters permitting foreign private issuers to take, in effect, a "stepping stone" approach to the U.S. public equity markets, beginning with a Rule 144A offering and followed by a Securities Act-registered exchange offer. See, e.g., Letter re Corimon C.A., S.A.C.A. (available March 22, 1993) and Letter re Vitro, Sociedad Anónima (available November 19, 1991). We also believe that the requested confirmation is broadly consistent with the Staff's interpretative position in respect of debt exchange offers. See, e.g., Letter regarding Shearman & Sterling (available July 2, 1993) and Letter regarding Morgan Stanley & Co. Incorporated (available June 5, 1991). Although these latter interpretative letters do not cover exchange offers involving equity or convertible debt securities, we believe that the Corimon and Vitro interpretative letters stand for the proposition that foreign private issuers should be encouraged to enter the U.S. public equity markets with exchange offers to eliminate restricted equity or equity-related securities in order to obtain the benefits referred to above.

Conclusion

We hereby request confirmation from the Staff of the Commission that any resales of Exchange Debentures acquired in the Exchange Offer by any Exchange Offeree that (1) is not an affiliate of the Company, (2) is not participating in a distribution of Exchange Debentures or underlying Exchange L Shares, (3) is not a broker-dealer that

acquired the Restricted Debentures in a transaction other than as part of its market-making or other trading activities and (4) is acquiring the Exchange Debentures in the ordinary course of its business, will be viewed no differently from resales by non-affiliated purchasers after completion of any registered primary offering of equity or equity-related securities and, therefore, that resales of Exchange Debentures by such Exchange Offeree may be effected without any further registration under the Securities Act or, subject to the qualification in the next sentence, the delivery of a prospectus. We understand, however, that an Exchange Offeree that is a broker-dealer holding Restricted Debentures for its own account as a result of market-making or other trading activities, and which is to receive Exchange Debentures pursuant to the Exchange Offer, will be required to deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of Exchange Debentures. We also understand that any Exchange Offeree that is a broker-dealer which acquired Restricted Debentures directly from the Company would not be entitled to rely on the confirmation provided by the Staff of the Commission in response to this letter.

Please call Glenn M. Reiter (telephone: 212-455-3358) or Gregory W. Conway (telephone: 212-455-2810) if you have any comments or questions concerning the foregoing.

Very truly yours,

Simpson Thacher & Bartlett

SIMPSON THACHER & BARTLETT

FILMED

APRIL 1995

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E N D