INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID Case No. ARB/23/33

CYRUS CAPITAL PARTNERS, L.P.
CONTRARIAN CAPITAL MANAGEMENT, LLC

Claimants

vs.

THE UNITED MEXICAN STATES

Respondent

CLAIMANTS' POST-HEARING BRIEF

January 28, 2026

Jonathan C. Poling
Stephen S. Kho
Katherine P. Padgett
Lide Paterno
David Giller
Shannon A. Jackenthal
Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Tower
2001 K Street, N.W.
Washington, DC 20006

Attorneys for Claimants

CONTENTS

I. INTRODUCTION 5

A. Claimants' Presentation At The Hearing Confirmed That The Tribunal Has Jurisdiction Over This Dispute. 5

II. CLAIMANTS HAVE SATISFIED ALL MANDATORY JURISDICTIONAL REQUIREMENTS UNDER NAFTA CHAPTER 11. 6

A. Previous Cases Confirm That Technical Procedural Default Does Not Negate Respondent's Consent To Arbitrate. 7

B. The Secret Actions Of Mexico's Judiciary And Related Practical Considerations Prevented Claimants From Strictly Adhering To The Technical Requirements Of NAFTA Article 1119. 8

III. THE FACTS SHOW THAT CLAIMANTS HAVE BEEN PROTECTED INVESTORS UNDER NAFTA AT ALL RELEVANT POINTS OF THIS DISPUTE. 10

A. Claimants' Organizational And Ownership Structures Establish Claimants' Status As Protected Investors Via Control And Indirect Ownership Of The Notes. 10

(1) But for the Claimant investment managers (Cyrus and Contrarian), the Noteholders (i.e., the Funds) and the investments would not exist. 11

(2) With reference to U.S. law, Cyrus and Contrarian are "ultimate beneficial owners" of the Noteholders by virtue of their organizational structure. 14

B. Claimants' Control Of The Notes When The September 2022 Injunction Was Issued Gives Rise To The Tribunal's Jurisdiction Over The Denial Of Justice Claim. 15

IV. CLAIMANTS HAVE VALID "LEGACY INVESTMENT" THAT WAS ESTABLISHED NEARLY THREE YEARS BEFORE THE TERMINATION OF NAFTA. 16

A. The Notes Constitute An "Investment" Under Article 1139. 16

B. The Notes Have A Territorial Nexus To Mexico. 17

V. THE CORRECT INTERPRETATION OF ANNEX 14-C EXTENDS BOTH THE SUBSTANTIVE OBLIGATIONS OF NAFTA CHAPTER 11 AND NAFTA'S DISPUTE SETTLEMENT FOR THE TRANSITION PERIOD. 19

A. The Structure Of Annex 14-C And The USMCA Supports Claimants' Interpretation. 20

(1) The definition of "legacy investment" supports that the Parties intended to extend NAFTA's substantive obligations for the Transition Period. 20

(2) Footnotes 20 and 21 of Annex 14-C further support Claimants' interpretation. 21

B. Claimants' Fact Witness, Mexico's Own Lead Negotiator For The USMCA, Confirms Claimants' Plain Meaning Reading Of Annex 14-C. 25

(1) Mr. Smith's testimony supports Claimants' interpretation of Mexico's position on the scope of Annex 14-C and claims covered during the Transition Period. 25

(2) The negotiating history of the USMCA, as supported by Mr. Smith's' testimony, supports Claimants' interpretation. 27

C. This Tribunal Is Not Bound By The Split Decisions Of Other Tribunals. 29

VI. CLAIMANTS HAVE AN INVESTMENT WITHIN THE MEANING OF NAFTA ARTICLE 1139 AND ARTICLE 25 OF THE ICSID CONVENTION. 30

A. The Tribunal Should Not Arbitrarily Apply Respondent's "Double Definition" Test To Find an Investment. 30

B. Bonds Qualify As "Investments" Under *Abaclat* And Other Relevant Legal Authority. 32

VII. CLAIMANTS COMPLIED WITH NAFTA'S WAIVER REQUIREMENT. 33

VIII. MEXICO'S INADMISSIBILITY ARGUMENT IS UNTIMELY, IRRELEVANT AT THIS STAGE, AND INCORRECT. 34

A. Respondent Waived Its Inadmissibility Objection by Failing to Raise the Issue in its Initial Submission. 34

B. Respondent's Arguments Are Outside the Scope of this Bifurcated Jurisdictional Stage, As Agreed Between the Parties. 35

C. Respondent's Waived and Untimely Admissibility Objection Would Fail On The Merits. 36

IX. CONCLUSION 38

GLOSSARY

Short name	Description
BNYM or The Trustee	Bank of New York Mellon
Contrarian	Contrarian Capital Management, L.L.C.
Cyrus	Cyrus Capital Partners, L.P.
Opps II Offshore Feeder	Cyrus Opportunities Fund II Ltd.
Opps II Domestic Feeder	Cyrus Opportunities Fund II, L.P.
Opps II Master	Cyrus Opportunities Master Fund II., Ltd.,
Notes	Debt securities issued by TV Azteca on August 9 2017
Noteholders	Holders of the Notes issued by TV Azteca on August 9 2017
Indenture	Indenture agreement, August 9 2017
Judge Robles	Judge Miguel Angel Robles Villegas
NAFTA	North American Free Trade Agreement
Opportunities Funds	Opps II Master, Opps II Domestic Feeder, and Opps II Offshore Feeder
USMCA Protocol	Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada
Request for Arbitration	Request for arbitration filed on June 30, 2023
Sixty-Third Superior Court	Sixty-Third Superior Civil Court in Mexico City
TV Azteca	TV Azteca S.A.B. de C.V.
USMCA	U.S.-Mexico-Canada Agreement
VCLT	Vienna Convention on the Law of Treaties

I. INTRODUCTION

A. Claimants' Presentation At The Hearing Confirmed That The Tribunal Has Jurisdiction Over This Dispute.

1. Throughout the jurisdictional phase of this proceeding, Claimants have established that this Tribunal has jurisdiction, as detailed in Claimants' prior submissions and presentation at the two-day hearing on jurisdiction in Washington, D.C. from November 5-6, 2025 (the "Hearing").

2. In this submission, Claimants provide concluding responses to each of Respondent's objections and demonstrate that Respondent has failed to rebut Claimants' evidence establishing such jurisdiction. In doing so, Claimants respond to issues and questions raised during the Hearing to aid the Tribunal in finding that Mexico's jurisdictional objections lack merit.

3. As emphasized during the Hearing, this arbitration arises from a consistent pattern of judicial misconduct in Mexico, which denied the Claimants' justice by obstructing their efforts to recover nearly $500 million in debt owed by TV Azteca. The underlying dispute centers on TV Azteca's persistent refusal to honor its debt obligations, specifically the failure to repay sums owed under Notes issued in August 2017. Rather than resolving these claims through the agreed-upon legal channels, TV Azteca initiated a secret proceeding in a Mexican court in September 2022 and deliberately used Mexico's judicial system to block Claimants from recovery. That denial of justice led Claimants to seek redress through this arbitration process.

4. By denying Claimants an opportunity to be heard prior to issuing the Injunction that impacted the legal rights of the Noteholders under their control, the Mexican court unquestionably denied Claimants fair and equitable treatment in accordance with the customary international law principles of due process. This is a clear violation of Mexico's obligations under the Minimum Standard of Treatment requirement of Article 1105. And Claimants have been harmed by that violation.

5. Respondent's objections are based on an unsuccessful attempt to cast Claimants as mere agents of funds and as entities that do not have true, risk-based investments in Mexico. Further, Respondent takes the position that Claimants are unable to take advantage of Mexico's treaty protections based on *ad hoc,* defense-based interpretation of the USMCA. This characterization fails. As investors of a debt clearly covered under the North American Free Trade Agreement ("NAFTA") investor protection provisions – and by the USMCA legacy provisions – Claimants have borne significant harm as a result of the unjust actions of Mexico's judiciary. And Claimants have a direct stake in the Notes at issue. The facts in the record demonstrate that Claimants' investment fund structures meet all relevant legal requirements under NAFTA and the USMCA, based on the consent Mexico gave when it became a party to these agreements.

6. As Claimants chronicled during the Hearing, the renegotiation of NAFTA resulted in the USMCA, which narrowed investor-state dispute settlement (ISDS) protections

and simultaneously provided for a three-year period to ease the transition for investors through Annex 14-C that expired on July 1, 2023.[1] Contrary to the new and novel defense-oriented interpretations advanced by Mexico as Respondent and the United States and Canada as Non-Disputing Party participants, Claimants have demonstrated that the negotiators drafted Annex 14-C to allow legacy investors a period to adjust to the new, more restrictive ISDS framework created by the USMCA. Claimants urge the Tribunal to adopt the correct interpretation and recognize that the provision was designed as a moderate compromise—balancing the political mandate to restrict ISDS with the need to avoid abruptly stripping existing investors of longstanding protections. This interpretation squares with the text, underlying objections, and negotiation context of the USMCA.

7. The majority in *Access Business Group v. United Mexican States* incorrectly found that Annex 14-C did not extend the application of substantive provisions of Section A of NAFTA Chapter 11.[2] The tribunal should instead adopt the reasoning of Arbitrator Franco Ferrari, who explains persuasively that "the object and purpose of the transitional mechanism negotiated by the NAFTA Parties themselves . . . . compels recognition that Annex 14-C encompasses post-termination government measures affecting legacy investments and that the application of the substantive NAFTA obligations has been extended to the same extent as the consent to arbitrate for three years after NAFTA's termination."[3]

8. Claimants will not reiterate the evidence and authority set forth in its previous submissions here, and instead use this opportunity to respond to questions and issues raised by the Tribunal during the Hearing.

II. CLAIMANTS HAVE SATISFIED ALL MANDATORY JURISDICTIONAL REQUIREMENTS UNDER NAFTA CHAPTER 11.

9. As confirmed during the Hearing, the Notice of Intent filed by the Claimants on June 28, 2023 fully complied with the mandatory requirements set forth in Article 1119.[4] Specifically, the Notice: (1) included the names and addresses of the disputing investors; (2) identified the relevant provisions of Chapter 11 alleged to have been breached; (3) set forth the issues and factual basis underlying the claim; and (4) and detailed both the relief sought and an approximate calculation of damages.

10. To protect their rights to bring a legacy investment claim under Annex 14-C, Claimants acted as promptly as practicable and in good faith by submitting the Notice of Intent to Mexico on June 28, 2023, and the Request for Arbitration to ICSID on June 30, 2023, prior to the expiration of Mexico's consent to arbitrate on

[1] English Tr. 147: 20-22; 148: 1-3.
[2] **RL-0141**, *Access Business Group v. United Mexican States*, ICSID Case No. ARB/23/15, Award, 21 November 2025, at ¶ 183.
[3] **CL-0093,** *Access Business Group v. United Mexican States*, ICSID Case No. ARB/23/15, Dissenting Opinion of Arbitrator Franco Ferrari, at ¶ 5.
[4] **C-0056** (Stamped Notice of Intent).

July 1, 2023. Claimants' actions do not preclude the Tribunal's jurisdiction over this dispute because: (**A**) default on hyper-technical procedural requirements in NAFTA does not negate Respondent's consent to arbitrate; and (**B**) extraordinary circumstances, including the secret actions of Mexico's judiciary that underlie this dispute, prevented Claimants from strictly adhering to the Article 1119 waiting requirement.

A. Previous Cases Confirm That Technical Procedural Default Does Not Negate Respondent's Consent To Arbitrate.

11. Technical procedural defaults do not bar jurisdiction. Respondent overstated the governing principles when it claimed at the Hearing that "never in México's history of 30 years of experience in investment arbitration has it faced a similar situation, and any excuse for failing to abide by this requirement, for us, is totally insufficient."[5] In fact, prior decisions—including those involving Mexico as respondent—demonstrate that procedural deficiencies relating to Article 1119 do not undermine a party's consent to arbitrate or the jurisdiction of the tribunal.[6] These decisions confirm that such procedural shortcomings do not bar access to arbitration.

12. At the Hearing, Respondent argued that other NAFTA tribunals have affirmed that Article 1119 and Articles 1116-1121 are conditions precedent to the Consent to Arbitrate, citing cases like *Methanex*, *Canfor,* and *Merril & Ring.*[7] Respondent's reliance on those cases is not persuasive because these tribunals acknowledged that there is no uniform interpretation of the precise scope of Article 1119. For example, in *Merrill & Ring*, the tribunal recognized that other "tribunals have taken the view that this kind of requirement ***is essentially procedural*** and ***can thus be subject to remedy in case of defects in their compliance*** so as to avoid the delays that would ensue from reintroducing a claim or bringing a new claim of these aspects…."[8]

13. Contrary to Mexico's contention, NAFTA tribunals like *Pope & Talbot v. Canada, Chemtura v. Canada, ADF v. United States*, and *B-Mex* agree with the position

---

[5] English Tr. 54: 6-10.

[6] *See, e.g.,* **CL-0014**, *B-Mex, LLC and others v. United Mexican States,* ICSID Case No. ARB(AF)/16/3, Judgment of Ontario Superior Court, 20 July 2020, at ¶ 97. *See also* **CL-0005**, *B-Mex, LLC and others v. United Mexican States*, ICSID Case No. ARB(AF)/16/3, Partial Award, 19 July 2019, at ¶¶ 96-97 ("…Filing a notice of intent is, put at its highest, a "procedure" to be followed prior to an arbitration, if any; it is not a procedure with which the subsequent arbitration itself, if any, must accord. As further explained below—when the Tribunal addresses the context of Articles 1119 and 1122(1)—Articles 1123 to 1136 set out precisely those procedures in some detail.").

[7] English Tr. 69: 1-2.

[8] **CL-00079**, *Merrill & Ring Forestry L. P. v. Government of Canada,* ICSID Case No. UNCT/07/1, ICSID Administered, Decision on a Motion to Add a New Party, 31 January 2008, at ¶ 27 (emphasis added).

Claimants advance here.[9] For example, in *Pope & Talbot v. Canada,* the Tribunal determined:

> ...as rulings by this Tribunal and the *Ethyl* Tribunal have found, strict adherence to the letter of those NAFTA articles [Articles 1116-1122] is not necessarily a precondition to arbitrability, but must be analyzed within the context of the objective of NAFTA in establishing investment dispute arbitration in the first place.[10]

14. Similarly, as stated by the tribunal in *ADF. v. United States*, with respect to the requirements set forth in Article 1119(2),

> the notice of intention to submit to arbitration should specify not only 'the provisions of [NAFTA] alleged to have been breached' but also 'any other relevant procedures [of NAFTA].' …. [Yet] [w]e find it difficult to conclude that failure on the part of the investor to set out an exhaustive list of other relevant provisions' in its Notice of Intention to Submit a Claim to Arbitration must result in the loss of jurisdiction to consider and rely upon any unlisted but pertinent NAFTA provision in the process of resolving the dispute.[11]

15. Here, as with its other jurisdictional objections, Respondent fails to identify any precedent to adequately support its claims.

B. The Secret Actions Of Mexico's Judiciary And Related Practical Considerations Prevented Claimants From Strictly Adhering To The Technical Requirements Of NAFTA Article 1119.

16. Because the Mexico judiciary issued its injunction in secret, without providing any notice or an opportunity to be heard prior to its issuance, Claimants were effectively prevented from being able to submit their Notice of Intent 90 days before their Notice of Arbitration. Had Claimants waited the full 90 days, they would have been permanently foreclosed from seeking redress for Respondent's actions in light of NAFTA's July 1, 2023 termination. As Mexico conceded in the hearing, "Mexico's

---

[9] Claimants' Counter Memorial on Jurisdiction, at ¶¶ 127-137; **CL-0005**, *B-Mex, LLC and others v. United Mexican States* (ICSID Case No. ARB(AF)/16/3, Partial Award, 19 July 2019, at ¶¶ 63, 76-78; **CL-0007**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, at ¶ 44 (emphasis added) (Footnotes omitted); **CL-0006** *Crompton (Chemtura) Corp. v. Government of Canada*, PCA Case No. 2008-01, Award, 2 August 2010, at ¶ 104; **CL-0012** *Pope & Talbot Inc. v. Government of Canada*, UNCITRAL, Decision on Motion Regarding Superfee, 7 August 2000, at ¶ 26; **CL-0013,** *ADF Group Inc. v. United States of America*, Case No. ARB(AF)/00/1, Award of 9 January 2003, at ¶¶ 134, 138; **CL-0014,** *B-Mex, LLC and others v. United Mexican States*, ICSID Case No. ARB(AF)/16/3, Judgment of Ontario Superior Court, 20 July 2020, at ¶ 97;

[10] **CL-0012**, *Pope & Talbot Inc. v. Government of Canada*, UNCITRAL (NAFTA), Decision on Motion Regarding Superfee, of 7 August 2000, at ¶ 26.

[11] **CL-0013** *ADF Group Inc. v. United States of America*, Case No. ARB(AF)/00/1, Award of 9 January 2003, ¶ 134 (emphasis in the original).

consent to resolve arbitration claims under Article [Chapter] 11 expired on 1 July 2023. So there was no margin to cure this deficiency."[12]

17. Claimants' approach, as detailed throughout the jurisdictional submissions, demonstrates a good-faith and reasonable attempt, under unique circumstances, to honor the spirit of procedural fairness and flexibility inherent in international investment arbitration.

18. Claimants filed their Notice of Intent as soon as practicable following notice of the Mexican judiciary's action, evaluation of a claim, and determination to proceed with arbitration. At the Hearing, Arbitrator Cairns requested clarification on why Claimants waited to file the Arbitration until receiving the formal notice of the Injunction, despite having constructive notice of the action as early as February 2023.[13] Claimants reiterate that the timing was a result of practical considerations. Specifically, after various impacted entities received constructive notice, Claimants had to take several steps to decide the best course of action, including identifying the claim and assessing the strength of the claim on the jurisdiction and merits, and considering the scope of bankruptcy proceedings against TV Azteca in New York. These decisions required thoughtful coordination and decision-making among various stakeholders.

19. Recognizing the importance of allowing time for consultation and negotiation between the parties here, after filing their Notice of Arbitration, Claimants requested a 90-day suspension of proceedings from ICSID, proposed a mutual pause to Mexico, and committed to not advancing arbitration during that period.[14] Despite these efforts, as Respondent confirmed during the hearing,[15] Respondent wholesale rejected Claimants' efforts. All the while, Respond has continued to mount a false contention that it was deprived of an opportunity to engage in amicable negotiations.[16]

20. In light of the above, Claimants made the best of a complex and rapidly evolving situation—which was compounded by the secrecy of the Mexican proceedings and concerns over corruption in Mexico's judiciary—while acknowledging it was impossible to satisfy the 90-day waiting period and still file the Request for Arbitration before July 1.[17] Despite this obstacle, Claimants assessed—and reiterate here—that a procedural default under Article 1119 does not negate Respondent's consent to arbitrate.

---

[12] English Tr. 72: 4-6.
[13] English Tr. 248: 12-22, 249: 1-3.
[14] Claimants' Rejoinder on Jurisdiction, at ¶¶ 77-78.
[15] English Tr. 71: 14-19.
[16] Claimants' Counter Memorial on Jurisdiction, at ¶¶ 119-126, 144; Claimants' Rejoinder on Jurisdiction, at ¶¶ 58-60, 67, 68, 76-81.
[17] English Tr. 249: 22, to 251: 1-12.

21. Claimants fulfilled all mandatory requirements to establish the Tribunal's jurisdiction under NAFTA.

III. THE FACTS SHOW THAT CLAIMANTS HAVE BEEN PROTECTED INVESTORS UNDER NAFTA AT ALL RELEVANT POINTS OF THIS DISPUTE.

22. While complex, the funds and investment management structures at issue in this case establish Claimants as protected "investors" as provided under NAFTA Article 1139.

23. The $400 million in issued debt securities underlying this dispute is governed by contract—specifically, an indenture agreement ("Indenture") entered into on August 9, 2017, with the Bank of New York Mellon ("BYNM" or "Trustee") as both the Trustee and principal paying agent.[18] The Indenture specifies the terms and conditions of the debt securities issued by TV Azteca, including but not limited to repayment terms, the maturity of the Notes, and choice of law clauses. The Claimants control Notes subject to the Indenture with certain rights thereunder.

24. Respondent has attempted to distract the Tribunal by obscuring the true nature of the investment management entities vis-a-vis the funds.[19] As described at the Hearing and in further detail below, the Noteholders would simply not exist without the investment manager Claimants, nor would they have possessed the Notes at the time the Sixty-Third Superior Civil Court in Mexico City ("Sixty-Third Superior Court") granted TV Azteca's request for an injunction in September 2022 ("September 2022 Injunction").[20]

A. Claimants' Organizational And Ownership Structures Establish Claimants' Status As Protected Investors Via Control And Indirect Ownership Of The Notes.

25. Claimants are protected Investors under NAFTA Article 1139 for two independent reasons: they (1) control the specific Notes underlying the heart of this dispute; and (2) maintain indirect economic interest in the Notes. Respondent has failed to identify any authority that comports with the atextual definition of "investor" that it seeks to impose upon Claimants.[21]

---

[18] **C-0006 (**TV Azteca Indenture (August 9, 2017)).
[19] English Tr. 86: 6; *See also* Respondent's Reply on Jurisdiction, at ¶ 95.
[20] English Tr. 171: 20-22, to 172: 1-12; **C-0025** (September 27, 2022, Injunction in Mexican Court Proceedings).
[21] Article 1139 defines "Investor of a Party" as "an enterprise of such a Party, that seeks to make, is making, or has made an investment." An "investment of an investor of a Party" is further defines to mean "an investment owned or controlled directly or indirectly by an investor of such Party."

26. As explained in the authorities relied upon by Respondent, Claimants in this case exercise "control in a manner exclusive and excluding other power."[22] This control is equivalent to a party that has, in the words of the *Thunderbird* tribunal, "the ultimate right to determine key decisions" without the interference of any other person.[23] s

27. Cyrus and Contrarian are both organized under the laws of the United States and have their principal places of business in New York, New York, and Greenwich, Connecticut, respectively.[24] The organizational documents submitted in this arbitration show that Claimants act as the primary entities responsible for directing, controlling, and coordinating the activities of their respective Noteholders.[25] Specifically, the relationship between Cyrus and Opps II Master Fund and the relationship between Contrarian and Sandpiper are not merely administrative or akin to an agent-principal relationship, as Respondent repeatedly mischaracterizes in its submissions. Instead, both Cyrus and Contrarian, as investment managers, are vested with comprehensive authority and control over the fund vehicles and their investments, including the Notes at issue.

28. The Tribunal raised several questions throughout the Hearing concerning how Claimants are structured, which we address below as follows: (1) how Claimants control the Notes via their control of the Noteholders, as evidenced by the investment fund management agreements in the record, which demonstrate that Claimants are protected investors; and (2) how U.S. citizens ultimately own and control Claimants and have indirect direct economic stakes in the Notes via their ownership interests in the. These factual predicates make clear that Claimants meet the NAFTA Article 1139 to qualify as "investors of a party."

(1) But for the Claimant investment managers (Cyrus and Contrarian), the Noteholders (i.e., the Funds) and the investments would not exist.

29. Arbitrator Cairns requested clarification of Claimants' counsel's statement at the Hearing that "but for the Claimants, the Noteholders would not exist."[26] The Noteholders are not only directed and managed by the Claimants for the purpose of purchasing and administering the investment (i.e., the Notes), but were created by Claimants for this purpose. Claimants are not independent third parties, as

---

[22] English Tr. 80:16-19; **CL-0023**, *International Thunderbird Gaming Corporation v. The United Mexican States*, UNCITRAL, Award, 26 January 2006, ¶ 108; Respondent's Reply on Jurisdiction, at ¶¶ 85-87.
[23] Respondent's Reply on Jurisdiction, at ¶¶ 85-87; **CL-0023**, *International Thunderbird Gaming Corporation v. The United Mexican States*, UNCITRAL, Award, 26 January 2006, at ¶ 108.
[24] English Tr.163: 20-22; 163:1-2.
[25] **C-0009** (Cyrus Opportunities Funds Investment Management Agreement), **C-0014** (Sixth Amended and Restated Limited Liability Company Agreement of Contrarian Funds, L.L.C.), **C-0017** (Contrarian Emerging Markets, L.P.-Contrarian Investment Management Agreement), and **C-0072** (Cyrus Investment Management Agreement)
[26] English Tr. Day 171: 20-22, 172:1-2.

Respondent suggests; rather, Claimants established the funds as investment vehicles with the purpose of acquiring debt securities such as the Notes. [27]

30. As explained in the Rejoinder, investment managers use investment fund structures to pool capital from multiple investors to collectively purchase securities, offering a wider range of investment options, professional management, and lower fees compared to individual efforts. Debt securities, such as corporate bonds, represent loans made by investors to corporations in exchange for periodic interest payments and the return of the principal at maturity.[28] Respondent's attempt to characterize the investment managers as a non-controlling entity thus fundamentally misstates the nature of the industry.[29]

31. The relationship between Cyrus as investment manager and the Noteholder funds is created by contract. Specifically, the Cyrus Noteholder entity is Cyrus Opportunities Master Fund II., Ltd., ("Opps II Master"), owned by two entities: (1) Cyrus Opportunities Fund II, L.P., a Delaware limited partnership ("Opps II Domestic Feeder") and (2) Cyrus Opportunities Fund II Ltd, a Cayman Islands limited company ("Opps II Offshore Feeder").[30] The principal governance document for Opps II Master Fund states that its Directors have the authority to appoint the Investment Manager, and may delegate to the Investment Manager any of the powers they can exercise. The Cyrus Opportunities Funds Investment Management Agreement ("Cyrus Funds IMA") further grants Cyrus full authority to invest, trade securities, and exercise all rights, powers, and privileges associated with securities and other properties owned by the Opportunities Funds. This confirms that Cyrus has comprehensive control over Opps II Master Fund and, by extension, the Notes it owns.

[27] English Tr. 165: 3-22; 166:1-4; 175: 5-12.
[28] *See*, **C-0080,** Investopedia, *What Is an Investment Fund? Types of Funds and History,* available at https://www.investopedia.com/terms/i/investment-fund.asp (last visited June 30, 2025); **C-0081,** Investopedia, *What Is a Debt Security? Definition, Types, and How to Invest,* available at https://www.investopedia.com/terms/d/debtsecurity.asp (last visited June 30, 2025).
[29] President Collins queried why the funds and investment managers are organized in this fashion. *See* English Tr. 172: 17-18. In short, these structures are created to pool capital and account for certain tax considerations. For example, the organization of one fund under the laws of a state such as Delaware allows for the admission of U.S. investors under a favorable tax regime. Simultaneously, the establishment of an offshore fund by the investment managers—owned and managed by the same entity—permits the inclusion of non-U.S. investors while avoiding adverse U.S. tax consequences. These "feeder funds" typically aggregate their assets into a master fund, which is also organized offshore, primarily for U.S. tax efficiency and regulatory considerations.
[30] Claimants' Counter-Memorial on Jurisdiction, at ¶¶162-168, Rejoinder on Jurisdiction, at ¶¶ 92 - 95.

[redacted]

32. Similarly, the governing documents of Contrarian and the Noteholder funds show the relationship between the entities. With respect to Contrarian, its organizational structure places it as the non-Member manager of Contrarian Funds, LLC. According to the Contrarian Funds LLC Agreement (Sixth Amended and Restated Limited Liability Company Agreement),[31] Contrarian is solely responsible for all decisions related to Contrarian Funds LLC and its wholly owned subsidiary, Sandpiper. This includes the authority to direct investments and perform all acts necessary or advisable for the company's business, which encompasses managing the Notes held by Sandpiper, an entity that was established as an "acquisition vehicle."[32]

[31] *See*, Claimants' Counter-Memorial on Jurisdiction, ¶¶ 33-35; **C-0014** (Sixth Amended and Restated Limited Liability Company Agreement of Contrarian Funds, L.L.C.), at Section 3.01 and 1.03.

[32] English Tr. 165: 3-17, 166:1-4, 172: 5-12.

[redacted]

[redacted]

(2) With reference to U.S. law, Cyrus and Contrarian are "ultimate beneficial owners" of the Noteholders by virtue of their organizational structure.

33. Both Cyrus and Contrarian's "ultimate beneficial owners" have indirect economic interest in the Notes. President Collins raised a question on the qualification of the Cyrus and Contrarian controlling parties as "ultimate beneficial owners" in the context of the Notes, distinguishing between beneficial ownership in a trust scenario and outright ownership through a corporate structure.[33] Both Cyrus and Contrarian's control of the Noteholder funds establish them as "ultimate beneficial owners" under U.S. law.[34]

34. With respect to Cyrus, the General Partner of the Opps II Domestic Feeder fund holds a [redacted] in Opps II Master Fund and thus in the Notes, which means that Cyrus's ultimate beneficial owner – Stephen C. Freidheim, a U.S. citizen – directly owns [redacted] of the Notes. Similarly, Contrarian's ultimate beneficial owners possess economic stakes in the Notes through their respective interests ([redacted]

[33] English Tr. 175: 2-5; 176: 13-17.

[34] Claimants acknowledge that "ultimate beneficial owner" may have different definitions depending upon the specific legal context invoked. Here, Claimants refer to the definition of "ultimate beneficial ownership" under the Corporate Transparency Act ("CTA"), which defines an ultimate beneficial owner as "an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise . . . exercises substantial control over the entity." 31 U.S.C. 5336(a)(3). There is no requirement or implication under the CTA that assets must be held in trust or by a nominee to meet this definition.

[redacted] in the General Partners of the funds that own Contrarian Funds LLC, and consequently, the Notes owned by Sandpiper.

35. The general partners of most of the funds that own Contrarian Funds, L.L.C. are ultimately owned and controlled by the same three U.S. nationals who control Contrarian—Jon Bauer, Janice Stanton, and Gil Tenzer. Through these general partners, Contrarian's ultimate owners retain an indirect economic interest in the TV Azteca Notes, including those held by Sandpiper Limited.[35]

36. Should the Tribunal have any doubt regarding Claimants' ownership in the Notes, however, it need not reach this issue. Article 1139 defines an "investment of an investor of a Party" as "an investment owned *or* controlled directly or indirectly by an investor of such Party." Because Claimants' control of the Notes is clear, the Tribunal need not decide whether they also own any economic interests in the Notes.

B. Claimants' Control Of The Notes When The September 2022 Injunction Was Issued Gives Rise To The Tribunal's Jurisdiction Over The Denial Of Justice Claim.

37. Claimants' control of the Notes existed at all relevant points of this dispute. Based on the extensive facts on the record regarding the Claimants' structure and their relationship with the Notes,[36] Claimants reiterate here that Mexico's sixth and eighth objections also fail, as Claimants controlled the Notes prior to the issuance of the September 2022 Injunction. Mexico has, in fact, conceded that the Noteholders owned the Notes at the time TV Azteca commenced the proceedings, thereby satisfying its own stated requirement that "the alleged investment was [Claimants'] property when the Challenged Measure occurred."[37]

38. As explained, Contrarian exercised control over the Notes at the time of the September 2022 Injunction through Contrarian Emerging Markets, L.P., an affiliated entity under Contrarian's control and a partial owner of Sandpiper. The subsequent transfer of the Notes between Contrarian-controlled entities does not affect the Tribunal's jurisdiction: Contrarian has established an unbroken chain of control over the Notes both before and after the September 2022 Injunction.[38] The record

[35] Claimants' Counter-Memorial on Jurisdiction, at ¶¶ 36-37.
[36] Claimants' Counter-Memorial on Jurisdiction, at ¶¶ 261-264; Claimants' Rejoinder on Jurisdiction, at ¶¶164-168; English Tr. 256: 4-8.
[37] English Tr. 119: 10-12.
[38] Claimants' Counter-Memorial on Jurisdiction, at ¶¶ 32-38, 263; Claimants Rejoinder on Jurisdiction, at ¶¶ 93, 165 and 167; **C-0018** (Contrarian Emerging Markets, L.P. May 13, 2023 Transfer); **C-0075** (TV Azteca's September 22 2022 Injunction Request); *See* Members of Contrarian Funds L.L.C. at **C-0014** (Sixth Amended and Restated Limited Liability Company Agreement of Contrarian Funds, L.L.C.), p. 10; and **C-0013** (Sandpiper Limited Register of Members); English Tr. 169-171.

confirms that Cyrus—through Opps II Master Fund—owned the Notes at the time the Injunction was issued in September 2022.[39]

39. Accordingly, the Tribunal should reject Mexico's related sixth and eighth objections in full.

IV. CLAIMANTS HAVE VALID "LEGACY INVESTMENT" THAT WAS ESTABLISHED NEARLY THREE YEARS BEFORE THE TERMINATION OF NAFTA.

A. The Notes Constitute An "Investment" Under Article 1139.

40. Claimants established through their written submissions and at the Hearing that the investment at issue in this case clearly meets every requirement of a "legacy investment" under Annex 14-C of the USMCA because:

    a. *First*, the Claimants' Notes, as a debt security, are clearly an "investment" as provided in Article 1139 of NAFTA. As defined by NAFTA, the Notes are "debt securit[ies] of an enterprise … [w]here the original maturity of the debt security is at least 3 years" because they were issued on August 9, 2017 and matured on August 9, 2024. In addition, the Notes were issued by TV Azteca, which is "a publicly traded variable capital corporation…organized and existing under the laws of the United Mexican States."[40]

    b. *Second,* the Notes were established prior to the termination of NAFTA, specifically on August 9, 2017, the date on which the debt security was created.[41] Respondent has argued that the date on which Claimants purchased the Notes is dispositive. But that contention reads "established" out of the agreed-upon definition of investment under NAFTA. As clarified at the Hearing, the only relevant question is when the debt instrument itself was created or established—here, on August 9, 2017, i.e., well prior to the termination of NAFTA.[42]

41. Contrary to Respondent's contention, there is no requirement that Claimants must be the creators of the debt instrument.[43] This interpretation demonstrates a fundamental misunderstanding of debt instruments. Previous decisions in *Fedax NV v. Venezuela* and *Lion Mexico Consolidated v. United Mexican States* confirm that that a debt

[39] Claimants' Counter-Memorial on Jurisdiction, at ¶¶ 150, 161-164; Claimants' Rejoinder on Jurisdiction, at ¶¶ 94, 168; **C-0071** (Memorandum of Association of Cyrus Opportunities Master Fund II, Ltd., Adopted by special resolution passed on September 4, 2012); **C-0072** (Cyrus Investment Management Agreement); English Tr. 169-171.
[40] English Tr. 179:2-22.
[41] *See* **C-0006 (**TV Azteca Indenture (August 9, 2017)).
[42] English Tr. 180:13-22, 181:1-12.
[43] English Tr. 88: 3-11.

security remains a legitimate investment, irrespective of the specific entity holding it.[44]

B. The Notes Have A Territorial Nexus To Mexico.

42. The debt, as issued by a Mexican publicly traded company, has a clear territorial nexus to Mexico.[45] TV Azteca is organized under the laws of Mexico, its principal place of business in Mexico, and the Company's equity securities are traded on the Mexican Stock Exchange. Furthermore, TV Azteca assets are located almost entirely in Mexico. As one of the top broadcast organizations in Mexico, TV Azteca depends on numerous government concessions granted by Mexico, including to operate its telecommunications and broadcast capabilities.

43. President Collins posed the question of whether the purchase of Notes or Bonds issued by a company in a different jurisdiction constitutes an investment in that company's home country, even if the Notes are subject to the jurisdiction of another country.[46] The answer is yes. Notably, as evidenced in **Exhibit C-0024**, TV Azteca's submissions before Mexican courts have described its provision of "essential public services" in Mexico, including the operation of both public and private telecommunications, as well as the delivery of a wide range of services related to telecommunications and broadcasting through various electrical, electronic, and mechanical means. This prominent role in Mexico's economy is reinforced by the numerous public concessions granted to TV Azteca, allowing it to operate more than 89 television channels throughout Mexican territory, as is detailed in its complaint filed before the Mexican court on September 22, 2022.[47] Indeed, the Offering Circular for the Notes at issue here explains in detail that "TV Azteca reached an average of 93.1% of households in Mexico" and that it "must provide to the government of Mexico" substantial television broadcast services.[48]

44. Those connections to the Mexican state—which necessarily include TV Azteca's assets and debts—are more than adequate to satisfy any territorial nexus, even if the Notes are payable in New York and governed by New York law. Nothing in NAFTA suggests that contractual terms that extend beyond a covered party's borders (i.e., through choice of law clauses or others) preclude an investment from being a covered investment under the treaty. TV Azteca's deliberate use of the Mexican legal system to hinder Claimants and other Noteholders from recovering on their

---

[44] **CL-0077**, *Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, at ¶ 194; *See also***, CL-0029**, *Fedax NV v. The Republic of Venezuela,* ICSID Case No. ARB/96/3, Decision of the Tribunal on Objections to Jurisdiction, 11 July 1997, at ¶ 40.
[45] Specifically, Arbitrator Douglas asked Claimants to address the territorial nexus of the Notes, given that as secondary debt instruments, they are governed by New York law and subject to the jurisdiction of New York courts. English Tr. 184:1-11.
[46] English Tr. 187: 18-22, 188: 1.
[47] *See* **C-0024**, *Société Générale In respect of DR Energy Holdings Limited and Empresa Distribuidora de Electricidad del Este, S.A. v. The Dominican Republic*, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction, 19 September 2008, at 56-60.
[48] **R-0016** (TV Azteca Final Offering Circular), at 59, 79.

investments only confirms its connection to Mexico. The company's counsel requested that the Mexican courts declare the purported "impossibility of my client to perform the obligations assumed when executing the Issuance agreement dated August 9, 2017, executed by TV AZTECA as Issuer."[49]

45. Next, Claimants agree with Arbitrator Douglas that this dispute does not involve government debt.[50] In fact, Article 1139 expressly excludes a debt security "of a state enterprise." Nevertheless, TV Azteca is a prominent company in Mexico with substantial connections to government entities, which distinguishes its relationship with the State from that of an ordinary private company lacking a strong territorial nexus.

46. Claimants have cited *Fedax NV v. Venezuela*, which involved government debt, not as a point of comparison on the type of debt (e.g., sovereign vs. private debt), but to illustrate that for debt securities, the time at which the investor acquires the investment is immaterial. Specifically, the tribunal in *Fedax NV* held that

> although the identity will change with every endorsement, the investment itself will remain constant, while the issuer will enjoy a continuous credit benefit until the notes become due. To the extent that this credit is provided by a foreign holder of the notes, it constitutes a foreign investment which I in this case is encompassed by the terms of the Convention and the Agreement….[51]

47. That point—which is just as applicable to debt securities issued by private companies as by states—forecloses Respondent's arguments that Claimants did not acquire certain of the Notes until after the September 2022 Injunction.

---

[49] **C-0024** (TV Azteca Complaint in Mexican Court Proceeding (filed September 22, 2022)). During the Hearing, President Collins queried the Mexican court's authority to grant the September 2022 Injunction, given the New York choice of law clause in the Indenture. English Tr. 136: 3-8. The Mexican courts disregarded the choice-of-law provision contain in Section 11.7(a) of the Indenture. *See* C-0006 (TV Azteca Indenture). President Collins also sought clarification on Claimants' powers to bring legal action under section 6.6 of the Indenture. English Tr. 136:9-16. Because this arbitral dispute is against Mexico and concerns its courts' denial of justice to Claimants, the arbitration is not governed by the Indenture, and thus, section 6.6 has limited application.

[50] English Tr. 186: 9-22. English Tr. 187: 1-17.

[51] **CL-0029,** *Fedax NV v. The Republic of Venezuela,* ICSID Case No. ARB/96/3, Decision of the Tribunal on Objections to Jurisdiction, 11 July 1997, at ¶ 40 (emphasis added); *see also id.* ("although the identity of the investor will change with every endorsement, the investment itself will remain constant, while the issuer will enjoy a continuous credit benefit until the time the notes become due."); **CL-0065**, *Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, at ¶ 194 (recognizing that debt securities are tradeable).

V. THE CORRECT INTERPRETATION OF ANNEX 14-C EXTENDS BOTH THE SUBSTANTIVE OBLIGATIONS OF NAFTA CHAPTER 11 AND NAFTA'S DISPUTE SETTLEMENT FOR THE TRANSITION PERIOD.

48. A plain reading of the terms of Annex 14-C of the USMCA—supported by documentary evidence and the testimony of Mexico's lead negotiator of the agreement, Mr. Kenneth Smith—demonstrates that the Parties extended both the substantive obligations and dispute resolution provisions of NAFTA for three years following the agreement's expiration on July 1, 2020 (i.e., the "Transition Period").

49. Mexico consented to arbitrate legacy investment claims within the three-year Transition Period following the termination of NAFTA. The language of Annex 14-C is clear in its grant of consent, specifying that:

> Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under:
>
> a. ***Section A of Chapter 11 of NAFTA 1994***;
> b. Article 1503(2) (State Enterprise) of NAFTA 1994; and
> c. Article 1502(3)(a) (Monopolies and State Enterprises) of NAFTA 1994 where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A of Chapter 11 (Investment) of NAFTA 1994.
>
> …
>
> A Party's consent under paragraph 1 shall expire three years after the termination of NAFTA 1994.[52] (emphasis added)

50. Annex 14-C imposes specific temporal limitations, restricting arbitration to claims regarding investments in existence on July 1, 2020, yet it notably does not limit the timing of the alleged breach. Respondent's argument that only breaches occurring prior to NAFTA's termination are covered finds no support in the text of the Annex (including surrounding provisions), which instead demonstrates that Mexico's obligations continued within the Transition Period.

51. The contrary position adopted by Mexico, the United States, and Canada in these proceedings represent an *ad hoc* and self-serving departure from both the text of the provision and original intent expressed during the negotiation of Annex 14-C. As demonstrated by contemporaneous evidence and Mr. Smith's testimony, the Parties' negotiating objectives were to ensure continued access to investor-state dispute settlement for legacy investments during the Transition Period, regardless of whether the breach occurred before or after the entry into force of the USMCA. The *post hoc* coordinated stance now advanced by the USMCA Parties for self-interested,

[52] **CL-0003**, USMCA Annex 14-C at ¶¶ 1(a)-(c), 3.

defensive litigation purposes cannot supplant the express text or original object and purpose of the Treaty, nor does it constitute a formal interpretation of the meaning of the USMCA under the VCLT.

A. The Structure Of Annex 14-C And The USMCA Supports Claimants' Interpretation.

52. Claimants' interpretation of Annex 14-C is in accordance with Article 31 of the VCLT because (1) the definition of "legacy investment" comports with the plain meaning of the provision; (2) the footnotes of Annex 14-C would be rendered meaningless if not read consistent with Claimants' interpretation; and (3) the function of Annex 14-C as construed against other procedural NAFTA requirements do not undermine Claimants' reading of the plain text.

(1) The definition of "legacy investment" supports that the Parties intended to extend NAFTA's substantive obligations for the Transition Period.

53. Paragraph 6(a) of Annex 14 C provides the definition of "legacy investment" under the treaty. For the purposes of the Annex:

> "legacy investment" means an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and **in existence** on the date of entry into force of this Agreement…[53]

54. In addressing the United States delegation during their NDP testimony at the Hearing, Arbitrator Cairns asked about the import of the requirement that the legacy investment must be "in existence" on the date the USMCA came into force.

55. Claimants agree with the U.S. delegate's response that the "… entire purpose of Annex 14-C was to give a three-year window to allow those kinds of claims to go forward"[54] and that "...having the 'and in existence' part is an additional sort of trade-off to kind of benefit those who kept their investments going when USMCA came into force."[55]

56. The U.S. comments are consistent with Claimants' position that the USMCA "negotiators chose to give the affected investors time to make any adjustments in their investment strategies or planning to account for the near universal loss of ISDS protections across the entire NAFTA region, and that they did so by giving those existing investors a time-limited extension of NAFTA's investment protections and associated broader ISDS mechanism."[56]

---

[53] **CL-0003**, USMCA Annex 14-C (emphasis added).
[54] English Tr. 34:11-13.
[55] English Tr. 34: 15-18.
[56] English Tr. 147: 12-19.

57. However, Mexico and the United States have so far failed to acknowledge why the negotiators undertook the effort to craft such a comprehensive and carefully structured Annex 14-C. As Claimants reiterated during the hearing, the Parties "wanted to offer a time-limited buffer to protect existing investors":

> [T]he process afforded to legacy investments under Annex 14-C was a moderate but intended trade-off to achieve a balance between the political mandate to narrow and even eliminate access to ISDS with an interest in protecting most existing investors from the sudden and total loss of protections of ISDS that would have otherwise occurred.[57]

58. How did the Parties address the thread of immediately losing the protection of ISDS? By agreeing to extend the protections of NAFTA Chapter 11 for an additional three years, until July 1, 2023, for claims that arose during that period for so-called "legacy investments."[58]

59. The interpretation advanced by the U.S. delegate (and shared by Mexico) would undermine the principal objective of establishing a transition period intended to benefit investments made during the NAFTA era and to ensure a seamless transition during the first three years of the USMCA. Claimants recognize that the USMCA introduces new rules and standards of protection for investors that differ from those previously provided under NAFTA. This significant shift is precisely why the Parties agreed to the Transition Period—to allow investors and investments existing at the time of the USMCA's entry into force to continue to access ISDS under Chapter 11 for claims alleging breaches of substantive obligations derived from the same Chapter 11.

(2) Footnotes 20 and 21 of Annex 14-C further support Claimants' interpretation.

60. In assessing the totality of the USMCA and Annex 14-C to determine the meaning, as required by the VCLT, the surrounding text offers further evidence of the Parties' intent to extend their substantive obligations during the Transition Period. The two Footnotes included in Annex 14-C must be read together and in light of the principle of *effet utile* to give meaning to the text of the treaty.

61. First, Footnote 20 clarifies that claims involving legacy investments are subject to the provisions of NAFTA 1994—specifically Chapter 11, Section A—"for greater certainty" that these protections continue to apply throughout the life of the Transition Period. This language reinforces the scope and intent of the Annex. As Claimants reiterated in the hearing, "if there was no overlap and 14-C only applied to preexisting measures, there would be no reason to include Footnote 20" in the agreement at all.[59]

---

[57] English Tr. 150: 17-22, 151: 1-4.
[58] English Tr. 147: 20-22.
[59] English Tr. 196: 18-20.

62. On the other hand, Footnote 21, contemplates an explicit exception: it states that Mexico and the United States do not consent to arbitration for investors who qualify to bring claims under Paragraph 2 of Annex 14-E, which concern disputes related to covered government contracts. This means Footnote 21 deliberately excludes certain substantive claims from the scope of coverage under Section A, indicating that all other claims not mentioned in this Footnote remain covered.

63. The recent dissenting opinion by Arbitrator Franco Ferrari in the *Access Business Group* case correctly notes that:

> Footnote 20 confirms, rather than contradicts, as Mexico, the majority of this Tribunal and that of the *TC Energy* case find, the above conclusion. Its express text states that, "[f]or greater certainty, the relevant provisions in [...] Chapter 11 (Section A) [...] of NAFTA 1994 apply with respect to such a claim." This cannot be dismissed as an indication that Footnote 20 "merely confirms the uncontroversial proposition that Section A is applicable to claims arising out of the measures that predate the termination of NAFTA." If, as Mexico insists, the text of Annex 14-C already foreclosed any post- termination application of Section A, there would be no need to underscore Section A's applicability in a footnote. Footnote 20 deliberately confirms the result reached through the Contracting Parties' agreement as recorded in Annex 14-C that extends the substantive obligations of Section A of NAFTA Chapter 11 for three years. To hold otherwise renders Footnote 20 superfluous, which violates the principle of effectiveness…[60]

64. Arbitrator Franco Ferrari is also correct that Mexico's position that the Footnote is merely a "restatement about pretermination measures" cannot be reconciled with the scope and structure of Footnote 20.

65. Arbitrator Franco Ferrari's comments on Footnote 21 are also persuasive:

> Footnote 21 carves out claims eligible under Annex 14-E: "Mexico and the United States do not consent under paragraph 1 with respect to an investor of the other Party that is eligible to submit claims to arbitration under paragraph 2 of Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts)." This carve-out presupposes a potential overlap between Annex 14-C legacy investment claims and post-USMCA-entry-into-force Annex 14-E claims. **This overlap can only exist if Annex 14-C and, therefore, Footnote 20 reach post-NAFTA-termination measures. This is because USMCA Chapter 14 obligations, to which Annex 14-E relates, only apply to measures taken after the entry into force of the USMCA.** This is because Chapter 14 applies prospectively only, absent Annex 14-C

[60] **CL-0093**, *Access Business Group LLC v. United Mexican States*, ICSID Case No. ARB/23/15, Dissenting Opinion of Arbitrator Franco Ferrari, 21 November 2025, at ¶ 52 (footnotes omitted).

> carve-outs. Article 14(2)(3) states that "this Chapter, except as provided for in Annex 14-C (Legacy Investment Claims and Pending Claims) does not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement." Because Annex 14-E claims are brought under "this Chapter," [107] the impugned State measures must arise after the USMCA's entry into force. Therefore, Footnote 21 necessarily presumes that Annex 14-C covers also post-NAFTA-termination measures, meaning post-USMCA-entry-into-force measures (for the purpose of Annex 14-E claims), else there would be no need for a carve-out.[61]

66. Following that same line of reasoning, the dissenting opinion of Prof. Henri Alvarez in *TC Energy* correctly concludes:

> … in my view, Annex 14-C provides for the continued application of Sections B and A of NAFTA Chapter 11, both of which are required to determine a claim alleging a breach of Section A with respect to a legacy investment. Annex 14-C plainly refers to both sections of Chapter 11 and provides for the application of each in the case of a claim with respect to a legacy investment. The application of Section A is confirmed by footnote 20….[62]
>
> In my view, Annex 14-C is a transitional provision addressing the treatment of ongoing investments made under one treaty under a new, replacement treaty. It provides for a short transition period of three years. I do not share the majority's view that the extension of the application of NAFTA Chapter 11, Section A for that period is implausible and extremely unlikely because footnote 20 would extend the application of a number of other chapters of NAFTA, including Chapters 14 (Financial Services), 15 (Competition Policy, Monopolies and State Enterprises) and Chapter 17 (Intellectual Property). A number of the chapters in question are referred to in NAFTA Chapter 11, certain contain exceptions applicable to the obligations in Chapter 11, Section A, and others contain definitions of terms that are used in Chapter 11, Section A. It seems logical that the Parties intended to ensure that those references, exceptions and definitions would continue

[61] **CL-0093**, *Access Business Group LLC v. United Mexican States*, ICSID Case No. ARB/23/15, Dissenting Opinion of Arbitrator Franco Ferrari, 21 November 2025, at ¶ 59.
[62] **CL-0037,** *TC Energy Corporation and TransCanada Pipelines Limited v. United States of America*, ICSID Case No. ARB/21/63, Dissenting Opinion of Arbitrator Henri C. Alvarez, K.C., 12 July 2024, at ¶¶ 10-11.

> to any apply to any claims under Annex 14-C made during the transition period.[63]

67. Arbitrator Douglas raised several questions on the intended purpose of Footnote 21, querying whether the footnote was intended as a negotiated trade-off limiting investors' rights or to address "continuing breaches."[64]

68. Testimony by Claimants' fact witness, Mr. Kenneth Smith, addresses those queries. Mr. Smith confirmed that the outcome of the negotiation of Annex 14-C was to offer this transitional protection to legacy investors, thereby affirming the Claimants' interpretation of the provision's scope and objectives.[65]

69. During the cross-examination of Mr. Smith by counsel for Respondent, specific attention was given to the language used in the Mexican Congress report relating to the USMCA.[66] Mr. Smith clarified that the report's reference to the extension of the ISDS system under Chapter 11 was understood by all Parties—including the United States, Mexico, and Canada—as an extension of both the substantive and procedural provisions of Chapter 11. His testimony confirmed that the intent was to ensure continued substantive protection and access to investor-state dispute settlement mechanisms for legacy investments during the transitional period:

> Q. So why doesn't the document we were just reviewing, the Report to the Mexican Congress, actually use those words?
>
> Why does it just refer to the extension of the arbitration mechanism?
>
> A. Because, throughout the negotiations . . . [a] proposal to have a three-year extension of NAFTA Chapter 11, **we referred, both Mexico, Canada, and the U.S., to the ISDS protection, so the substantive provisions and the procedures to bring claims, as the mechanism. There was never a distinction between a -- substantive provisions versus the procedure itself.**

---

[63] **C-0037,** *TC Energy Corporation and TransCanada Pipelines Limited v. United States of America,* ICSID Case No. ARB/21/63, Dissenting Opinion of Arbitrator Henri C. Alvarez, K.C., 12 July 2024, at ¶ 5.

[64] English Tr. 26: 6-17.

[65] English Tr: 272: 9-10. In response to specific question, Mr. Smith confirmed that "Mexico's position was that we had agreed with the United States and Canada to extend the coverage of NAFTA Chapter 11 in its entirety, both the substantive provisions and the mechanism for submitting claims for three years into the existence of the new Agreement in the USMCA, so that we would agree to grandfather the provisions established in the NAFTA Chapter 11. And, in addition to that, we agreed with the U.S. on several provisions specifically on a limited ISDS and a broad coverage for investors for Government-covered Contracts."

[66] **R-0025** (Report of the Ministry of Economy to the Chamber of Senators of the H. Congress of the Union on the final result of the negotiations for the modernization of the North American Free Trade Agreement, November 9, 2018).

> When we negotiated this with the U.S., the intention and the objective and the goal that we achieved was an extension of the entire content of NAFTA Chapter 11 into the three-year transition period of the USMCA. So when we talked about mechanism—that's how we explained it to the Senate and in different meetings that Secretary Guajardo had with stakeholders and México-- **we were referring to both substantive provisions and the procedures for bringing in a claim.**
>
> There was never a distinction between those two elements when we talked about the extension for three years into the USMCA.
>
> Q. But the official document delivered to the Congress doesn't use those words, does it?
>
> So you're saying it was sort of implied or inferred, and everyone understood that; is that right?
>
> A. Certainly everybody in the negotiation, but México, Canada, and the U.S. understood that, when we were talking about the extension of NAFTA Chapter 11 provisions, **it meant the entire elements, both the substantive -- the substance and the procedures,** and that's how we presented it and explained it to the stakeholders and the Senate in México.[67]

B. Claimants' Fact Witness, Mexico's Own Lead Negotiator For The USMCA, Confirms Claimants' Plain Meaning Reading Of Annex 14-C.

70. The Tribunal can now confirm, based on the testimony provided at the Hearing, that Mr. Kenneth Smith has personal knowledge of the discussion and negotiation of Annex 14 -C. Specifically, Mr. Smith confirmed that (1) Claimants' interpretation is consistent with the scope of claims covered during the Transition Period, based on Mexico's position at the time of negotiations; and (2) based on the full context of the negotiations, the Negotiating Parties intended for the substantive provisions under NAFTA Chapter 11 to extend for the life of the Transition Period.

(1) Mr. Smith's testimony supports Claimants' interpretation of Mexico's position on the scope of Annex 14-C and claims covered during the Transition Period.

71. During his cross examination, Mr. Smith was specifically questioned regarding if he was speaking on behalf of former Secretary Guajardo. He responded

> A. I speak on behalf of the Mexican Government and in terms of our understanding of the U.S. position and how the U.S. Government -- in

[67] English Tr. 293: 4-22; 294: 1-19.

> the different exhibits and the documents that we presented and the discussions that we had with the U.S. Government, that is how they presented the issue.
>
> We were grandfathering Chapter 11 into three years of the USMCA. So throughout the negotiation, there was never any discussion on temporal limitations or separating the procedures from the substance of Chapter 11. ***It was the entire chapter that was to be extended for three years***.[68]

72. Mr. Smith was also asked to clarify Mexico's final position on the extension of the substantive provisions of NAFTA Chapter 11 for the Transition Period, to which he testified:

> A. Mexico's position was that we had agreed with the United States and Canada to extend the coverage of NAFTA Chapter 11 in its entirety, both the substantive provisions and the mechanism for submitting claims for three years into the existence of the new Agreement in the USMCA, so that we would agree to grandfather the provisions established in the NAFTA Chapter 11.
>
> And, in addition to that, we agreed with the U.S. on several provisions specifically on a limited ISDS and a broad coverage for investors for Government-covered Contracts.[69]

73. Mr. Smith also clarified how Mexico explained the outcomes of the negotiation to the Senate of Mexico, particularly how the Parties agreed to "grandfather" Chapter XI for three-years from the entry into force of the USMCA:

> A. Well, there was a distinction in terms of how the structure, what we were explaining was, in the document was, the structure of the NAFTA Chapter 11, basically the separation between Section A and Section B.
>
> We were then describing, when we explain[ed] to the Senate, what was the structure of the USMCA Investment Chapter, and we emphasized the fact that one of the key achievements was to obtain a three-year extension or grandfathering of NAFTA Chapter 11. And when we were referring to the "mechanism," we were referring to the entire substantive and procedural aspects of Chapter 11.
>
> And I have mentioned -- what I wanted to elaborate on is that, you know, it would not have made much sense for México to accept an

[68] English Tr. 295: 2-13 (emphasis added).
[69] English Tr. 272: 6-20.

extension of three years of NAFTA Chapter 11 without having both the substance and the procedure be part of that.[70]

74. Mr. Smith's response affirms Mexico's understanding of the results achieved at the time that the negotiations concluded, specifically that the outcome of USMCA Annex 14-C extends both the substantive and procedural protections of Chapter 11 of NAFTA for three years following its termination.

(2) The negotiating history of the USMCA, as supported by Mr. Smith's' testimony, supports Claimants' interpretation.

75. During the Hearing, Arbitrator Cairns asked whether Mexico's contemporaneous view that investor-state dispute settlement was important for attracting foreign investment was supported by empirical studies or based on other considerations. He also inquired whether Mexico's position considered foreign investors' perceptions of Mexican courts and whether any explicit analysis compared ISDS and domestic proceedings. [71]

76. As Mr. Smith explained:

> THE WITNESS: Yes, thank you very much. Well, the position was based on the history that we had seen throughout the North American Free Trade Agreement. There was indeed concern during the initial negotiation of the original NAFTA as to the impact that having impartial arbitration bodies would have in terms of impacting government decisions that could affect investment.
>
> At the end of the day, this was a piece that proved to be very useful, I think, for all three countries, in terms of providing that certainty for investors.
>
> … In the case of an investor state, it proved to be useful as a tool to provide guarantees that in cases that there are breaches, in cases that the solution could not be found at the level of the domestic courts, that there is the potential, the possibility of recourse to Expert courts that can make a decision as to whether a party is in violation of the investment protection provisions.
>
> That, over the years, became the guiding position of the Mexican Government. In other trade agreements that we pursued over the years after the NAFTA, that was incorporated as part of the agreements that we established. [72]

[70] English Tr. 305:7-22, 306: 1-2.
[71] English Tr. 310: 17-22, 311: 1-8.
[72] English Tr. 311: 111-22, 312: 2-16.

77. Mr. Smith's explanation provides additional insight into Mexico's priorities when negotiating the agreement. These priorities are consistent with the extension of NAFTA's dispute settlement and substantive protections for the life of the Transition Period.

78. Arbitrator Cairns also sought clarification from Mr. Smith on how the U.S. position regarding ISDS evolved during negotiations and the specific differences in dispute settlement mechanisms between the initial American proposal and the final version captured in the text of Annex 14-C.[73]

79. In response, Mr. Smith explained that the U.S. proposed significant changes to dispute settlement procedures during NAFTA renegotiations, including a three-year expiration and an opt-out option for the U.S., which were unacceptable to México. Mr. Smith elaborated:

> So from the Mexican point of view, what we saw -- this was by the fourth round of the negotiation -- a shift in the position by the U.S. where at the beginning they said, no dispute settlement at all, but said we want the possibility of granting you the possibility as a concession to have a three-year extension; right? The Chapter of NAFTA, Chapter 11, will be extended for three years.
>
> So that was seen as a first concession by the U.S., but certainly not enough from the Mexican perspective . . . then that means that after three years you essentially would not have dispute settlement; right? And that is a position that the U.S. Government made or put forward on the table during the fourth round.
>
> Later on, as we advanced -- and I believe it was in the seventh round, and it's mentioned in one of the exhibits that I presented -- in addition to temporary extension, the U.S. was talking about the possibility of opting out, so voluntary participation in cases where there were alleged breaches by the U.S.

80. Mr. Smith described, with specificity, how the negotiations evolved through the final days, with unresolved issues including automotive rules of origin, the labor chapter, and investment protections—particularly ISDS coverage for government contracts in key sectors. Ultimately, with respect to the finalized package, Mr. Smith recalled:

> So once that package was put together, which was very much late in the negotiation, we were able to accept those positions and come out with what we believe was a balanced negotiation that maintained sufficient investment protections.[74]

[73] English Tr. 317: 2-7.
[74] English Tr. 322: 9-13.

81. Mr. Smith's testimony confirms that the negotiating parties intended Annex 14-C of the USMCA to extend substantive protections for investors, reflecting a deliberate approach to the transition from NAFTA's dispute settlement framework. Notably, Mr. Smith's account highlights that the United States initially proposed an opt-out mechanism during the fourth round of negotiations, which would have simply extended NAFTA for three years. However, this position evolved, resulting in the more comprehensive provisions ultimately adopted under Chapter 14. This evolution underscores the USMCA Parties' shared intent to create a robust transitional regime for investor-state dispute settlement, as embodied in the final version of Annex 14-C.

C. This Tribunal Is Not Bound By The Split Decisions Of Other Tribunals.

82. It is a well-established principle in investment arbitration that ad hoc arbitral tribunals are not bound by prior rulings from other panels. At most, tribunals may give due regard to prior decisions when, for example, there is a series of consistent cases or trends that suggest a more uniform interpretation. The limited number of prior decisions on the interpretation of Annex 14-C do not present that circumstance.

83. In *Wintershall v. Argentina*, for example, the Tribunal recognized:

> …. *stare decisis* has no application to decisions of ICSID tribunals – each tribunal being constituted *ad hoc* to decide the dispute between the parties to the particular dispute – The award of such tribunal is binding only on the parties to the dispute (Article 53 of the Convention) – not even binding on the State of which the investor is a national. Decisions and Awards of *ad hoc* ICSID tribunals have no binding precedential effect on successive tribunals, also appointed *ad hoc* between different parties.[75]

84. This principle is also recognized in various NAFTA cases. For example, in *Glamis Gold v. United States*, the tribunal determined:

> … a NAFTA tribunal, while recognizing that there is no precedential effect given to previous decisions, should communicate its reasons for departing from major trends present in previous decisions, if it chooses to do so...[76]

85. In *Chemtura v Canada* the tribunal stated:

> The Tribunal is not bound by previous decisions of NAFTA or other international tribunals. At the same time, it is of the opinion that it should pay due regard to earlier decisions of such tribunals. The Tribunal is further of the view that, unless there are compelling reasons to the contrary, it ought to follow solutions established in a series of

[75] **RL-0082,** *Wintershall Aktiengesellschaft c. República Argentina*, ICSID Case No. ARB/04/14, Award, 8 December 2008, at ¶ 194.
[76] *Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Final Award, 8 June 2009, at ¶ 8.

> consistent cases, comparable to the case at hand, but subject of course to the specifics of a given treaty and of the circumstances of the actual case.[77]

86. The Tribunal here should consider that the two previous cases that considered the interpretation of Annex 14-C resulted in split decisions. There is no series of "consistent cases" to which the Tribunal should accord serious weight. By exercising its discretion to depart from the majority in the distinct *TC Energy* and *Access Business Group* cases, and to instead align with the dissenting opinions in both cases, the Tribunal would give full effect to the purpose of the Parties in ensuring that legacy investors are meaningfully protected during the Transition Period, consistent with the express language and objectives of the treaty.

VI. CLAIMANTS HAVE AN INVESTMENT WITHIN THE MEANING OF NAFTA ARTICLE 1139 AND ARTICLE 25 OF THE ICSID CONVENTION.

87. In response to Respondent's fifth objection, Claimants have clearly established that their investment satisfies the requirements of the definition set forth in Article 1139 of NAFTA and Article 25 of the ICSID Convention.

A. The Tribunal Should Not Arbitrarily Apply Respondent's "Double Definition" Test To Find an Investment.

88. Mexico contends that this Tribunal should apply a dual test—one under NAFTA Article 1139 and another under Article 25 of the ICSID Convention, relying on the *Salini* criteria. Indeed, Arbitrator Cairns questioned whether Mexico's position effectively requires a "double definition" of investment.[78] He expressed a potential view that Salini and its associated criteria may be outdated, noting that while Salini was once a prominent attempt to clarify the meaning of "investment" under Article 25, it was not intended as a definitive or exhaustive set of requirements. Claimants agree.

89. To apply a "double definition" would be contrary to the NAFTA Parties' agreement on protections, as Article 1139 of NAFTA provides a clear and exclusive definition of "investment." To the extent the *Salini* criteria are relevant at all, they should be applied flexibly and only if it is unclear under Article 1139 whether a given factual scenario qualifies under the definition.[79]

90. As explained above, there is no doubt – and Mexico does not dispute – that the debt securities held by Claimants, issued on August 9, 2017 with a maturity date of August 9, 2024 (i.e., a maturity date of seven years), meet NAFTA's express criteria

---

[77] **RL-0062**, *Crompton (Chemtura) Corp. v. Government of Canada*, PCA Case No. 2008-01, Award, 2 August 2010, at ¶ 109.
[78] English Tr. 251: 16-22, 252: 1.
[79] For the avoidance of doubt, it is Claimants' position that if the *Salini* test were to apply, the Notes would satisfy it with respect to the elements applicable to debt securities as investments.

for a qualifying investment under Article 1139. Therefore, the Notes are investment for purposes of Article 1139 of NAFTA.

91. Prevailing jurisprudence confirms that when a treaty provides a specific definition of "investment," that definition governs exclusively. Claimants addressed these authorities at length in the Counter-Memorial, the Rejoinder, and at the Hearing.[80]

92. While Mexico argues that the cases cited by Claimants fall under UNCITRAL rather than ICSID, this distinction is irrelevant. And it is wrong. The *Apotex* decision specifically discusses ICSID cases, and further makes direct reference to both the ICSID Convention and NAFTA Article 1139, demonstrating that the definition of "investment" in NAFTA is controlling, regardless of the arbitration rules.

93. Notably, Respondent has not cited any NAFTA case applying the *Salini* test. There is no reason for this Tribunal to break new ground in doing so.

94. In fact, in prior NAFTA cases, Respondent has taken the opposite position of the one it advances here. In *Finley Resources Inc. v. United Mexican States*, Mexico argued that the *Salini* test was not applicable, emphasizing that the Tribunal should rely on the express language of NAFTA to determine the existence of an investment.[81] The Tribunal acknowledged that only where ambiguity exists in the treaty text might it be appropriate to consider the Salini factors "if needed" as a supplementary tool. The finding of that Tribunal is clear:

> The Tribunal notes that the NAFTA and USMCA definitions of "investment" are similar, even if Article 14.1 of the USMCA adds as typical characteristics of an investment "the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk". The definitions under both treaties are quite broad and do not differ essentially from Article 25 of the ICSID Convention, such that the *Salini* test developed in connection with the latter may reasonably be applied, if need be, to the former."[82]

---

[80] For example, in the *Hassan Awdi* case, the tribunal there held that "[i]n the absence of a definition in Article 25, the Tribunal considers that the primary legal framework for determining the definition of "investment" must lie in the will of the Parties as set forth in the definition of "investment" under the BIT. Thus, the definition of 'investment' in a treaty will determine its content in an exclusive way with no room for additions or subtractions." **CL-0066,** *Hassan Awdi, Enterprise Business Consultants, Inc. and Alfa El Corporation v. Romania*, ICSID Case No. ARB/10/13, Award, 2 March 2015, at ¶ 197, 199.

[81] *See* **CL-0083**, *Finley Resources Inc., MWS Management Inc., and Prize Permanent Holdings, LLC v. United Mexican States*, ICSID Case No. ARB/21/25, Decision on Jurisdiction and Liability. The Tribunal in that case found: "…Further, Respondent contends that "[t]he *Salini* test and the *Joy Mining* decision are inapplicable in this context," since "the *Salini* test is used solely to determine whether an investment exists for the purposes of the ICSID Convention…" *Id.* at ¶ 218. *See also* English Tr. 94: 1-4, 213: 5-18, 255: 9-16.

[82] **CL-0083,** *Finley Resources Inc., MWS Management Inc., and Prize Permanent Holdings, LLC v. United Mexican States*, ICSID Case No. ARB/21/25, Decision on Jurisdiction and Liability, at ¶ 245.

95. Other tribunals have concurred that the *Salini* test does not constitute mandatory prerequisites to finding an "investment," and that the enumerated criteria should be considered as mere examples.[83] As Arbitrator Cairns' questions suggested, the outdated *Salini* test should not override the clear txt of NAFTA Article 1139.

B. Bonds Qualify As "Investments" Under *Abaclat* And Other Relevant Legal Authority.

96. Even if the Tribunal were to depart from NAFTA and apply the atextual standard Respondent now urges, Claimants' investment would meet it. Mexico insists that Claimants do have not have a qualifying investment because they have not made any contribution of capital. That is incorrect and unsupported by the record and legal precedent.[84]

97. As Claimants have consistently clarified in their written submissions, the requisite contribution consists of the acquisition of debt securities—namely, the Notes—by the Noteholders, who are under the direct control of Claimants. Through this structure, Claimants exercise control over the flow of capital into the investment and maintain authority over the Notes. Consequently, the capital contribution is embodied in the acquisition and ongoing holding of the debt securities.

98. That conclusion is supported by the findings in *Abaclat v. Argentine Republic,* where the claim at issue concerned bonds and debt instruments. The tribunal found that Claimants had made a contribution upon acquiring the bonds and debt entitlements, with an expectation of receiving value in the form of monetary payment upon the debt's maturity.[85]

99. President Collins queried if the Parties have identified any authority beyond *Abaclat* that considers bonds as investments. [86] In this regard, Claimants point the Tribunal to *Ambiente Ufficio S.P.A. and others (formerly Giordano Alpi and others) v. Argentine Republic*, in which the tribunal held that it had jurisdiction:

> . . . in the light of the broad understanding to be given to Art. 25 of the ICSID Convention, the Tribunal has no doubt that bonds/security entitlements such as those at stake in the present proceedings fall under the term "investment" as used in Art. 25 of the Convention.

---

[83] *See* **CL-0068**, *M.C.I. Power Group, L.C. and New Turbine, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2007, at ¶165; **CL-0057,** *Ambiente Ufficio S.p.A. and others v. Argentine Republic*, ICSID Case No. ARB/08/9, Decision on Jurisdiction and Admissibility, 8 February 2013, at ¶481.
[84] English Tr. 112:12-8.
[85] *See* **CL-0067** *Abaclat and others (formerly Giovanna a Beccara and others) v. Argentine Republic,* ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011 at ¶¶ 365-366.
[86] English Tr. 331: 6-18.

100. Similarly, the tribunal of *Cyprus Popular Bank Public Co. Ltd. v. Hellenic Republic* confirmed its jurisdiction and recognized bonds as investments under the ICSID Convention and the relevant BIT. [87]

101. In the *Abaclat, Ambiente Ufficio,* and *Cyprus Popular Bank* cases, the tribunals carefully examined the language of the relevant bilateral investment treaties and ultimately concluded that debt securities constitute covered investments under those agreements. There is no reason for this Tribunal to hold otherwise, particularly given that Article 1139 expressly covers "a debt security of an enterprise" with a maturity date of at least three years.

102. The Tribunal should dismiss Mexico's Objection 5 entirely.

VII. CLAIMANTS COMPLIED WITH NAFTA'S WAIVER REQUIREMENT.

103. Mexico argues that the waivers do not meet the requirements set forth in Article 1121 of NAFTA and that Claimants are now are seeking to cure a defect.

104. Claimants have no need to cure any defect: The waivers were properly submitted in compliance with the formal requirements in NAFTA Article 1121. Specifically, Claimants: (1) submitted the waivers in writing; (2) delivered the waivers to Respondent; and (3) submitted the waivers in the Request of Arbitration.[88]

105. The waiver text makes clear that Claimants will not initiate or continue any proceedings against the presiding Judge or other official of the Superior Court of Justice of Mexico, regarding the issuance of the *ex parte* Injunction and file number 995/2022. Mexico argues that Claimants inappropriately included a "limitation" in the waiver.[89] Not so: By stipulating that Claimants "waive the right to bring any claim that seeks any damages for the breach of its due process rights,"[90] Claimants simply incorporated the NAFTA Article 1121 exception "for proceedings for injunctive, declaratory or other extraordinary relief not involving the payment of damages."

106. Arbitrator Cairns asked why Claimants did not replicate the precise language of Article 1121 to effectuate the waiver.[91] Claimants used the more precise language for specificity and to avoid any risk of misinterpretation, given legitimate and non-conflicting proceedings concerning overlapping subject matter of the underlying

[87] **CL-0093,** *Cyprus Popular Bank Public Co. Ltd. v. Hellenic Republic*, ICSID Case No. ARB/14/16, Decision on Jurisdiction and Liability, 08 January 2019, at ¶ 897-899, 1535.
[88] Claimants' Counter-Memorial, at ¶ ¶ 165, 266; Claimants' Rejoinder on Jurisdiction, at ¶ ¶ 24, 172-176; English Tr. 1. 218:18-22, 219: 1. *See also* **C-0073** (Cyrus Waiver); **C-0074** (Contrarian Waiver).
[89] English Tr. 122: 5-11.
[90] **C-0073** (Cyrus Waiver); **C-0074** (Contrarian Waiver).
[91] English Tr. 230: 9-18.

dispute in New York.[92] Claimants' intent was to clarify the claims that it was waiving consistent with Article 1121, not to depart from Article 1121.

107. Mexico argued during the Hearing that the waiver is inadequate because private proceedings allegedly violate the waiver.[93] That is a nonstarter for multiple reasons. The Mexican proceedings that Respondent referenced were initiated by TV Azteca, not by the Claimants. Attempts to dissolve the improperly issued Injunctions would comfortably fit the Article 1121 exception for "proceedings for injunctive, declaratory or other extraordinary relief not involving the payment of damages."

108. Moreover, the litigation that Respondent cites is not directed against the Respondent State. The precedents on which Respondent relies for its waiver arguments, including *Renco Group,* make clear that the object and purpose of the waiver requirement is to protect a Respondent State from litigating multiple proceedings in different forum for the same measure. Similarly, in *Waste Management*, the two entities were owned by the Mexican government and the tribunal was concerned about the Mexican State having to relitigate the same issue.[94] Here, however, this arbitration is the only proceeding by Claimants that involves the Mexican government, and the waiver does not suggest otherwise.

VIII. MEXICO'S INADMISSIBILITY ARGUMENT IS UNTIMELY, IRRELEVANT AT THIS STAGE, AND INCORRECT.

109. Respondent argues that Claimants' denial of justice claim is inadmissible because Mexican proceedings seeking to vacate the Injunction were ongoing when this arbitration was initiated. However, Respondent: (**A**) forfeited this argument by failing to include it in its Memorial in June 2024, despite knowledge of all relevant facts at that time; (**B**) concedes that this issue does not relate to jurisdiction, and therefore is not relevant to this stage of the bifurcated proceeding; and (**C**) in any event, is incorrect in its proposition that Claimants were required to exhaust all judicial avenues prior to commencing this arbitration.

A. Respondent Waived Its Inadmissibility Objection by Failing to Raise the Issue in its Initial Submission.

110. In the Reply on Jurisdiction, Mexico claimed for the first time that the denial of justice claim is inadmissible because it was not "ripe" when Claimants filed their Request for Arbitration.[95] However, Mexico failed to submit this objection in

[92] English Tr. 230: 19-22, 231, 232:1-2.
[93] English Tr. 122:5-22, 123-125: 1-12.
[94] Respondent's Reply on Jurisdiction, at ¶¶ 196-197. *See* **CL-0073,** *Waste Management v. Mexican United States (I)*, ICSID Case No. ARB/(AF)987/2, Award, 2 June 2000; **CL-0074**, *The Renco Group Inc. c. Republic of Peru [I]*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction, July 15, 2016.
[95] Respondent's Reply on Jurisdiction, at ¶ 210 and 212; English Tr. 125:13-22, 126.

accordance with the ICSID Rules.[96] Mexico's Memorial did not raise any issue of admissibility.

111. At the Hearing, Respondent suggested that it could not have raised this issue in its initial submission because it did not understand Claimants' claims.[97] But Claimants had fully explained their claims in the Notice of Intent and Notice of Arbitration, and did now present new facts in their Counter-Memorial that could give rise to the untimely introduction of this objection. Procedural Order No. 1 or ICSID Arbitration Rule 30 makes clear that replies and rejoinders must be limited to facts that could not have been previously known. Respondent's Memorial illustrated its knowledge of the status of the Mexican litigation.[98]

112. The new judicial resolutions that Respondent has since entered into the record do not indicate otherwise.[99] Indeed, Respondent argues only that these resolutions "confirm" its (already waived) argument that Claimants' claim is "extremely premature,"[100] rather than that they give rise to the defense. Regardless of the accuracy of Respondent's theory, the new documents simply relate to the same litigation matter that Respondent has confirmed it knew about well before it submitted its Memorial.

113. Respondent's forfeiture of this issue at this stage is sufficient for the Tribunal to dismiss the argument in its entirety.

B. Respondent's Arguments Are Outside the Scope of this Bifurcated Jurisdictional Stage, As Agreed Between the Parties.

114. Even setting aside Respondent's forfeiture of the admissibility contention at this stage, the issue raised by Mexico relates at most to the merits of the dispute or the assessment of damages, not to the Tribunal's jurisdiction. Thus, the Tribunal has already "accept[ed] the Claimant's argument that [the Mexican proceedings] are not relevant to any of the issues before the Tribunal" at the current stage of the bifurcated proceedings.[101]

---

[96] Rule 30(2), ICSID Arbitration Rules (emphasis added); Claimants' Rejoinder on Jurisdiction, at ¶¶ 182-187.
[97] English Tr. 234: 3-8.
[98] Respondent's Memorial on Jurisdiction at ¶ 37 ("Against this resolution, on February 8, 2024, BNYM and BNUMY LB filed a new appeal, ***which is still ongoing***.") (emphasis added).
[99] On December 31, 2025, the Respondent requested leave from the Tribunal to admit three new factual documents to the record that pertain to the Mexican court proceedings, which address the review and annulment of the September 2022 Injunction. In granting Respondent's request, the Tribunal explained that "[i]t accepts the Claimant's argument that they are not relevant to any of the issues before the Tribunal, but considers that they are part of the factual matrix in which the issues before the Tribunal arise and that it would be unrealistic to ignore them." Letter to the Parties – Tribunal's Decision on Application re New Evidence, January 21st, 2026.
[100] Letter from Respondent (Dec. 31, 2025), at 4
[101] Letter to the Parties – Tribunal's Decision on Application re New Evidence, January 21st, 2026.

115. That Respondent's admissibility defense concerns the merits of the claim is made plain by Respondent's own argument—*i.e.*, that "the denial of justice claim fails . . . because Mexico cannot have breached the treaty when the Request for Arbitration was filed."[102] Indeed, Respondent's chief authority reinforces that "this ground of objection should be dealt with at the hearing on the merits," rather than conclusively at the jurisdictional phase.[103]

116. Respondent does not even argue otherwise. Instead, it has contended that the Tribunal should consider this issue at the "threshold" as a "matter of judicial economy."[104] But the only authority Respondent has cited for that point made clear that the Tribunal departed from the usual practice only because both parties had agreed to "treat[] this objection as one of jurisdiction."[105] That is not the case here.

117. On the contrary, Respondent has conceded that the finality issue is relevant only "should the Tribunal find jurisdiction" first.[106] Claimants raised this concession at the Hearing,[107] and in response to Respondent's application to add the judicial resolutions to the record. Respondent has never disputed it.

C. Respondent's Waived and Untimely Admissibility Objection Would Fail On The Merits.

118. Respondent's admissibility contention is not only waived and untimely at this stage, but also underdeveloped. A decision by the Tribunal on this issue at this stage would deny Claimants a full and fair opportunity to engage—and would deny the Tribunal the benefit of informed briefing on—several complicated issues that the parties will likely need to confront at the merits stage.[108]

119. For starters, the issue that Respondent raises is not simple or settled within international treaty arbitration. On the contrary, a "wider debate" exists on whether the customary international law requirement of "finality" applies in the context of investor-state disputes.[109] NAFTA and similar treaties often require only a *waiver*—not full exhaustion—of local remedies. Moreover, these treaties expressly allow the parties to proceed with actions for injunctive or declaratory relief, even while waiving damages claims. The parties have simply not engaged this debate at all.

---

[102] Reply Mem. (Eng.) ¶ 211.
[103] *Loewen Group, Inc. & Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Decision on Jurisdictional Objections ¶ 74.
[104] Reply Mem. (Eng.) ¶ 210.
[105] *Apotex Inc. v. United States of Am.*, ICSID Case N. UNCT/10/2, Award on Jurisdiction and Admissibility ¶ 259, June 14, 2013 (RL-0116).
[106] Reply Mem. (Eng.) ¶ 213; *see also id.* ¶ 210.
[107] English Tr. 235: 2-18.
[108] Respondent Reply on Jurisdiction, at ¶ 210.
[109] *Apotex Inc. v. United States of Am.*, ICSID Case N. UNCT/10/2, Award on Jurisdiction and Admissibility ¶ 257 n.113, June 14, 2013 (RL-0116).

120. Moreover, regardless of whether all of the secret *ex parte* injunctions that the Mexican judiciary issued against Claimants have been annulled, there is no question that Claimants suffered concrete and substantial harm prior to initiating this arbitration. For years the Claimants have been unable to recover funds that they are clearly owed under binding contracts. In addition, Claimants were forced to expend substantial resources seeking an anti-suit injunction in New York and collateral actions in Mexico.

121. President Collins directly queried this point during the Hearing, requesting clarity on "to whom the international wrong was done."[110] To be clear, Claimants—the U.S. investors whose procedural and substantive rights under the Indenture and international law were trampled on by the actions of the Mexican judiciary—have been harmed as a result of the unlawful (years-long) Injunctions the Mexico judiciary imposed, among improper actions it took that violated its obligations under international law. As recognized by other NAFTA tribunals, damages for denial of justice are measured from the point at which the breach crystallizes.[111]

122. For these reasons, as Claimants will brief in full in subsequent stages, the current status of the September 2022 Injunction (and other injunctions issued on a secret, *ex parte* basis) is relevant only to the amount of damages suffered, not to whether Claimants were denied justice. Arbitrator Douglas addressed a related question when he asked if the Claimants' loss would only materialize if the New York Court upheld the argument based on Mexican law.[112] The answer is that the Claimants' loss has *already* occurred. The fact that the Injunction is lifted now does not change the fact that the denial of justice occurred—and Claimants suffered substantial harm—when the Injunction was imposed without affording Claimants' notice or an opportunity to respond to that initial action.

123. That Claimants were forced to engage in a lengthy, complex, and opaque legal process as a result of the Mexican judiciary's failure to afford due process in the first instance reflects the harm they have suffered, rather than somehow negates it (as Respondent suggests). To be clear, any current relief in the Mexican Judicary came about due to a collateral attack following years of failed appeals. NAFTA expressly carves out from the waiver requirement the type of "extraordinary" relief the new judicial resolutions reflect. Such collateral relief is always available; the possibility of it (or, in this rare instance, the actual issuance of it) does not undermine the finality of the injury already imposed and the failure of the Mexican judiciary to correct it through the direct appeal process. Indeed, under Mexican law, Claimants were only able to pursue an Amparo because they had first suffered a constitutional deprivation. If the availability of an

[110] English Tr. 162: 13-15.

[111] **CL-0077**, *Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, Award at ¶ 631. Mexico's denial of justice arose over several judicial instances, but began with the Cancellation Judgment by the *Juez de lo Mercantil* and the subsequent cancellation of the Mortgages by the Public Registries. This act clearly harmed the Claimant, extinguishing the Mortgages and removing the collateral securing the Loans. Therefore, the quantification of the damages was measured from the date of each Mortgage's cancellation.

[112] English Tr. 190:9-13.

Amparo or some other collateral challenge were to render an arbitration claim premature, no denial-of-justice claim could ever prevail before a Tribunal.

124. Claimants look forward to engaging at length with Respondent and the Tribunal on these issues at the next stage of these proceedings. In the meantime, we respectfully submit that the Tribunal should not reach Respondent's belatedly raised and underdeveloped admissibility point.

IX. CONCLUSION

125. For the reasons explained above and documented on the record in its prior submissions and at the Hearing, the Tribunal should reject the entirety of Respondent's jurisdictional objections and hold in abeyance its admissibility contention. Accordingly, Claimants respectfully request that the Tribunal confirm its jurisdiction over the claims .

126. In addition, Claimants respectfully request that the Tribunal order Respondent to compensate Claimants for all costs and attorney fees associated with the bifurcated stage of this arbitration.

DATED this 28th day of January 2026.

Respectfully submitted on behalf of Claimants,

[Signed]

_____

Katherine P. Padgett

Jonathan C. Poling
Stephen S. Kho
Katherine P. Padgett
Lide Paterno
David Giller
Shannon A. Jackenthal
Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Tower
2001 K Street, N.W.
Washington, DC 20006
Attorneys for Claimants