

REQUEST FOR DOCUMENTS OF THE UNITED MEXICAN STATES

(SEPTEMBER 12, 2024)

Cyrus Capital Partners, L.P. and Contrarian Capital Management, LLC v. United Mexican States

(ICSID Case No. ARB/23/33)

I. INTRODUCTION

1. This Request for Production of Documents (RfD) is submitted pursuant to §15 as well as Annex C of Procedural Order No. 1 (PO1) dated April 3, 2024.

2. Respondent has formulated this RfD based on the requirements set forth in Article 37 of the ICSID Rules and Article 3.3 of the IBA (International Bar Association) Rules on the Taking of Evidence in International Arbitration 2020 (“IBA Rules”).

3. The terms used in this RfD are defined in Respondent’s Memorial on Jurisdiction.

4. Additionally, the Respondent adopts the definition of “Document” as defined by the IBA Rules on the Taking of Evidence in International Arbitration 2020 (IBA Rules), *i.e.*, “a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means”. The term “Communications” includes –but is not limited to– records of discussions, analyses, conferences, conversations, negotiations, agreements, meetings, interviews, presentations, talking points, telephone conversations, letters, written correspondence, e-mails or any other form of communication, including attachments or files attached to the Communications.

5. This RfD identifies documents that are in the custody, possession or control of the Claimants or third parties cited and/or related to them, *i.e.*, shareholders or business partners, attorneys, representatives, advisors or accountants or those persons who, due to their functions, should have the requested documentation.

6. The Respondent has limited and has specified its requests, to the extent possible, so that the Claimants can more easily obtain such documents. Respondent considers that the requested documents exist and are in Claimants’ possession, custody or control, or that of any of their

subsidiaries or any entity that the Claimants alleged to control,¹ because the documents had to have been prepared and/or preserved by them. The Respondent states that the requested documents are not in its possession, custody or control.

7. This RfD should not be construed as the acceptance of any of the Claimants’ claims and their responses to the jurisdictional objections raised by Mexico.

8. Finally, in the event that the Claimants allege that any of the requested documents or categories of documents are confidential and/or “privileged” in nature and refuse to waive confidentiality and/or privilege, Respondent requests the submission of a confidential document record (*i.e.*, privilege log) identifying the request in which the document is located, the date of the document, its author or issuer, the recipient, and a description of the subject or matter.

9. Each request of documents of Mexico has a particular justification. However, the Respondent develops below four general justifications, which should be read in conjunction with the particular justification for each request.

II. RESPONDENT’S GENERAL JUSTIFICATIONS

A. Documents related to the Injunction issued in the Mercantile Lawsuit 995/2022 (Objection 1 and 8 / Requests 1-4)²

10. There is no dispute that the Claimants breached Article 1119 by submitting their Notice of Intent two days before filing their Request for Arbitration instead of waiting the required 90 days. The 90-days waiting period is a mandatory requirement and a precondition for Mexico’s consent, as explained in the Memorial on Jurisdiction.³ This Claimants’ failure should result in the dismissal of their claim.

¹ For clarity, the entities referred to by the Respondent are: Cyrus Opportunities Master Fund II., Ltd., Cyrus Opportunities Fund II, L.P., Cyrus Opportunities Fund II, Cyrus Capital Advisors, L.L.C., Cyrus Capital Partners GP L.L.C., el Sr. Stephen C. Freidheim, Contrarian Capital Management, Sandpiper Limited, Contrarian Funds, L.L.C, Contrarian Emerging Markets, L.P., Boston Patriot Summer St. LLC, Contrarian EM II LP, EMMA 1 Master Fund L.P., and EMMA 2 Fund, L.P. *See* Counter-Memorial, Section II.A.

² For clarity, the headings identify to which jurisdictional objection and request of documents each general justification refers.

³ *See* Counter-Memorial on Jurisdiction, ¶ 52.

11. Despite this, in their Counter-Memorial on Jurisdiction, Claimants have suggested that their failure to comply with Article 1119 is excusable because, allegedly, they were not notified of the September 2022 Injunction until June 2023, and as a result, were unable to file their claim under NAFTA and Annex 14-C of the T-MEC earlier.⁴ The Respondent categorically rejects this argument and reiterates its position on the mandatory nature of compliance with the requirements of Article 1119.

12. As noted in the Memorial on Jurisdiction, the language of Article 1119 is simple and unambiguous: a claimant must wait to file a request for arbitration at least 90 days after filing its notice of intent. This is supported by the language of NAFTA itself, various investment tribunals and the declarations of the NAFTA Free Trade Commission, which compliance is mandatory.⁵ The Respondent wishes to emphasize that there is no reason to justify a breach of Article 1119.

13. In any event, the evidence submitted by Claimants indicates that they became aware of the Injunction at least as early as March 3, 2023 due to an article published by Michael O'Boyle in Bloomberg.⁶ Undoubtedly, Claimants were able to file their Notice of Intent in compliance with the requirements of NAFTA Article 1119.

14. The documents related to Mercantil Lawsuit 995/2022 are relevant and material to the issue of determining that Claimants had knowledge of the issuance of the Injunction prior to March 3, 2023.

15. In addition, the documents requested are relevant and material to Objection 8. Mexico's position is that Contrarian does not have standing to bring a denial of justice claim because Sandpiper was not a party to the proceedings before Mexican courts. Based on the evidence presented, Sandpiper acquired its Notes in March 2023, six months after the injunction was issued. The documents will help to clarify whether Sandpiper was involved in the proceedings and thus determine whether it has standing to bring a claim against the actions of Mexican courts.

⁴ Counter-Memorial, ¶ 115.

⁵ Memorial on Jurisdiction, ¶¶ 55-61.

⁶ Memorial on Jurisdiction, ¶ 34.

16. The Respondent considers that the documents exist and are in the possession of the Claimants because of what was stated in judicial documents that were filed by the Cayman Islands Funds in the proceedings before the United States courts.

B. Documents Supporting Claimants’ Alleged Investment (Objection 2 and 3 / Requests 5-6, 9, 11)

17. The Claimants have not submitted evidence demonstrating that they qualify as investors under NAFTA Article 1116, as they have merely claimed that they, allegedly, have control over Opportunities and Sandpiper.

18. The definition of “investor of a Party” under NAFTA Article 1139 implies that an investor contributes its own resources to the host State with the expectation of making a profit for itself.⁷ The Claimants have not submitted evidence that proves that they have committed their own resources to acquire the Notes.

19. Claimants have also failed to submit documents relating to the ownership or date of acquisition of the Notes by the purported Cayman Islands companies (*i.e.* Opportunities and Sandpiper) or the Notes themselves.

20. The documents are relevant and material to the resolution of the case because they will allow us to understand whether the Claimants committed any capital or resources of their own to the acquisition of the Notes and thus whether they qualify as investors under NAFTA. Likewise, these documents will help determine who owns the Notes and whether Claimants have an existing investment within the meaning of Annex 14-C of the USMCA.

21. In the same way, the requested documents are not in the possession, custody or control of the Respondent, since these documents should have been issued as a result of the alleged acquisition of the Notes by the Claimants, as reflected in the annexes to the Indenture.⁸

⁷ Memorial on Jurisdiction, ¶ 64.

⁸ See TV Azteca’s Indenture, August 9, 2017. C-0006.

C. Financial statements, business plans and risk analysis (Objection 2 and 5/ Requests 7, 8, 10, 12)

22. Pursuant to section 3 of the *Eight Amended and Restated Investment Management Agreement*,⁹ Cyrus Capital Partners, L.P., as *investment manager*, was required to submit periodic reports to Cyrus Opportunities Fund II, LTD, Cyrus Opportunities Fund II, L.P., and Cyrus Opportunities Master Fund II, LTD. with respect to the activities they had performed. Similarly, pursuant to Section 5 of the *Amended and Restated Investment Management Agreement*,¹⁰ Contrarian Capital Management, L.L.C. was obligated to provide periodic reports to Contrarian Emerging Markets Offshore Fund, Ltd. and Contrarian Emerging Markets, L.P.

23. Similarly, the Respondent considers that it is reasonable to assume that the Claimants conducted various analyses as part of their due diligence on the risks involved in acquiring the Notes for Cyrus Opportunities Fund II, LTD, Cyrus Opportunities Fund II, L.P., Cyrus Opportunities Master Fund II, LTD, Contrarian Emerging Markets Offshore Fund, Ltd. and Contrarian Emerging Markets, L.P.

24. The documents will prove that the risk assumed by Claimants constitutes only a commercial risk and not an investment risk. This is relevant and material to Mexico's Objection 5 in which it argues that the Notes do not qualify as an "investment" under Article 25 of the ICSID Convention and the *Salini test*.¹¹

25. Also, the requested documents are relevant and material to Respondent's Objection 2, as Mexico argues that Claimants were only acting as investment managers for Opportunities and Sandpiper, and therefore cannot be considered as investors under NAFTA Article 1139, since they did not contribute their own capital or resources to acquire the Notes.¹²

⁹ Eight Amended and Restates Investment Management Agreement (Cyrus Investment Management Agreement). **C-0072**.

¹⁰ Amended and Restated Investment Management Agreement (Contrarian Emerging Markets, L.P., Contrarian Investment Management Agreement). **C-0017**.

¹¹ Memorial on Jurisdiction, Section III.F

¹² Memorial on Jurisdiction, Section III.C.

26. Notwithstanding the foregoing, Claimants intend to argue that they have control over Opportunities and Sandpiper and consequently over the Notes.¹³ The requested documents will prove that Claimants' alleged control was conditioned to the guidelines established by the *Board of Directors* of Contrarian Emerging Markets Offshore Fund, Ltd. and Contrarian Emerging Markets, L.P, Cyrus Opportunities Fund II, LTD, Cyrus Opportunities Fund II, L.P., and Cyrus Opportunities Master Fund II, LTD, therefore they cannot qualify as investors within the meaning of NAFTA since they did not even have control over the Notes as they have tried to argue.

27. The requested documents are not in Respondent's possession, custody or control since they must have been generated as part of the Claimants' performance of their obligations under the Eight Amended and Restates Investment Management Agreement¹⁴ and the Amended and Restated Investment Management Agreement.¹⁵

D. Documents relating to Claimants' witness (Objection 4/ Requests (13-15))

28. The Claimants attached to their Counter-Memorial on Jurisdiction the Witness Statement of Mr. Kenneth Patrick Smith Ramos, who served as a public official of the Ministry of Economy during the negotiation of the USMCA and who has asserted to be independent of the parties to this arbitration.

29. In his Witness Statement, Mr. Smith states that "I can confirm that the Mexican position regarding the legacy investment claims provisions, and the intention of the negotiators of Mexico, Canada and the United States was to ensure that all of the substantive provisions of NAFTA Chapter 11, as well as the ISDS mechanism, would be extended for three years after the NAFTA had been replaced by the new agreement."¹⁶ Likewise, Mr. Smith attached to his Witness Statement internal documents such as reports or memoranda that, apparently, were prepared in the

¹³ Counter-Memorial on Jurisdiction, Section V.

¹⁴ Eight Amended and Restates Investment Management Agreement (Cyrus Investment Management Agreement). C-0072.

¹⁵ Amended and Restated Investment Management Agreement (Contrarian Emerging Markets, L.P., Contrarian Investment Management Agreement). C-0017.

¹⁶ Witness Statement of Mr. Smith Ramos, ¶ 24.

framework of the USMCA negotiations, despite the fact that some of these documents are not in Mexico's possession.¹⁷

30. Despite having made these assertions, and having various reports and memoranda on the USMCA negotiations, Mr. Smith does not submit any document that confirms his now claimed interpretation of Annex 14-C. Nor did he submit any document that would support his asserted interpretation of Annex 14-C. Nor did he submit any documents that would strengthen his reasoning for adopting such interpretation.¹⁸ Nor did he submit any "written notes" on which he relied in drafting his Witness Statement.¹⁹

31. Therefore, Mexico requests all documents, statements, reports, notes, memoranda that may have been in Mr. Smith's possession and that are related to the negotiations regarding Chapter 14 of the USMCA, including those related to Annex 14-C of the USMCA. These documents are highly relevant and material to corroborate the truth of the assertions made in Mr. Smith's Witness Statement and the dispute between the parties regarding the interpretation of Annex 14-C (Objection 3). A witness cannot selectively choose to present some documents and withhold others that may be contrary to his testimony. Mexico is entitled to review all documents that Mr. Smith had in his possession when he drafted his Witness Statement.

32. In addition, although Mr. Smith has stated that he is independent of the parties to this arbitration, the Respondent is aware that the firm representing the Claimants in this arbitration (Akin Gump Strauss Hauer & Feld LLP) and the firm in which Mr. Smith works (Agon Derecho y Economía) have collaborated in different fora and cases. It is even known that they have worked in a case that recently ended on December 14, 2022, being published the decision of this case a

¹⁷ The Respondent states that, although under Mexican law every public official who leaves office is required to submit a "Handover and Reception of Authority Act" in which is going to give a detailed report of the matters that he was in charge of, as well as to deliver the information related to the activities he performed in accordance with his duties, Mr. Smith's testimony makes it clear that he left the Mexican government at least before January 2019, that is, approximately 6 years ago, a period that makes it difficult the search of information. Respondent has conducted an exhaustive search for Mr. Smith's "Handover and Reception of Authority Act", however, it has not found any documents related to it in its records.

¹⁸ See Witness Statement of Mr. Smith Ramos, ¶ 26.

¹⁹ See Witness Statement of Mr. Smith Ramos, ¶ 28.

few months before the Claimants filed their Notice of Intent (June 28, 2023). The requested documents will allow us to verify whether Mr. Smith has any conflict of interest.

Claimants ‘general objections to the Respondent’s First Request for Production of Documents.

1. Pursuant to Section 15.7 and Annex A of Procedural Order No. 1 (PO No. 1), Claimants hereby submit their general objections to the Respondent’s Request for Documents (“RD” or “Mexico’s Requests”) provided to Claimants on September 12, 2024. Where applicable, Claimants have produced the non-objected documents at the following ShareFile Link, organized in accordance with Mexico’s Request numbers: <https://akingump.sharefile.com/i/i3596c1799c646788>
2. PO No. 1 provides in section 15.1 that the Tribunal shall be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) (“IBA Rules”), in relation to document production in this case.
3. Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration clarifies that “Article 3 deals with documents that the parties wish to introduce as evidence into the arbitral proceedings”²⁰ and “Articles 9.2 and 9.3 provide the limitations on admissible evidence, whether oral or written. These limitations also apply to the production of documents pursuant to Article 3 and inspections pursuant to Article 7.”²¹
4. Particularly, pursuant to section 15.4 of PO1:

All requests for the production of documents shall be in writing and shall set forth the specific reasons for the request with respect to each document or class of documents requested **that specifies why the documents sought are relevant to the dispute and material to the outcome of the case.** Each request shall include a date or range of dates and the subject matter, and the identity of the recipients and senders to the greatest extent possible. For greater certainty, requests such as ‘all documents related to’ a particular subject or matter shall not be sufficient under this rule.
5. Claimants’ general objections are based on the Respondent’s failure to satisfy: (1) the requirements set forth in Article 3.3 of the IBA Rules; (2) the requirements cited above pursuant to PO No. 1; and/or (3) the grounds identified in Article 9.2 of the IBA Rules.²²

²⁰ See, Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, available at <https://www.ibanet.org/MediaHandler?id=4F797338-693E-47C7-A92A-1509790ECC9D>.

²¹ *Id.*

²² The Commentary clarifies that “The scope of the permissible document request is also limited by certain objections described in Article 9.2 and (as added by the 2020 Review Task Force) 9.3 (see the discussion of these objections below) or the failure to satisfy the requirements set forth in Article 3.3. A party may raise any of the reasons for objection in opposing the document request.” See, *Id.* in p. 8.

6. Article 3.3 of the IBA rules requires that a request to produce documents shall contain:
 - a) (i) a description of each requested Document sufficient to identify it, or
 - (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;
 - (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
 - (c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and
 - (ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party

7. Among the grounds to object to a request identified by Article 9.2 of the IBA Rules includes:
 - (a) lack of sufficient relevance to the case or materiality to its outcome;
 - (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;
 - (c) unreasonable burden to produce the requested evidence;
 - (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
 - (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
 - (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
 - (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.

8. Mexico's Requests are either: (i) excessively broad and/or do not provide sufficient specificity (requests 1, 2, 8, 9, 15); (ii) are not relevant to the case or material to the outcome (requests 3, 4, 7, 8, 9); (iii) are documents in a possession, custody or control of Mexico as Respondent based on Claimants' previous inclusion of these documents as Exhibits or based on Mexico's original custody (requests 1, 2, 3, 5, 14) ; or (iv)

contain privileged and confidential information that is not otherwise relevant to the material outcome of the case (requests 13 and 15).

9. The following grounds of objection are raised in detail in the Redfern Schedule below. Rather than repeating these objections *verbatim* in each instance, the references to the following grounds of objection in the Redfern Schedule should be read together with the applicable narrative that follows each title below.

A. Mexico’s Requests are excessively broad and/or lack specificity.

10. In the first instance, as it stated in item 15.4 of the PO1, requests such as “All documents related to a particular subject or matter” are not sufficient under the rule.²³ In the RD submitted by Mexico, terms such as “[t]odos los documentos y comunicaciones (all documents and communications)”, “[t]odas las Comunicaciones y documentos (all communications and documents)”, and “[t]odos los documentos escritos o comunicaciones (all documents, writings or communication)” are mentioned in requests 1, 2, 8, 9 and 15. These unduly broad requests therefore violate both Procedural Order No. 1 and the IBA Rules on their face.
11. Moreover, Art. 3.3 of the IBA Rules provides certain requirements regarding the content of a request to produce, which are generally designed to have the request specifically describe the documents being sought. Article 3.3 is designed to prevent broad “fishing expeditions,” while at the same time permitting parties to request documents that can be identified with reasonable specificity, and which can be shown to be relevant to the case and material to its outcome. This specificity of the information required by Article 3.3 is also designed to help the receiving party decide whether it wants to comply with the request voluntarily (as provided in Article 3.4), or if it wants to raise objections (Article 3.5). Hence, the requests 1, 2, 8, 9 and 15 must be rejected by the Tribunal for being overly broad and not complying with either section 15.4 of the PO1, or Article 3.3 of the IBA Rules.

B. Mexico’s Requests are not relevant to the case or material to the outcome and therefore are unreasonably burdensome to Claimants.

12. Under Article 3.3(b) of the IBA Rules, parties are entitled to request documents that are relevant to the case and substantial for its resolution. Several of Mexico’s Requests are irrelevant to the Tribunal’s resolution of the legal jurisdictional issues at hand, including the notification requirements under NAFTA Article 1119, and the scope of investment under NAFTA Articles 1116 and 1139. Factual information related to these requests have already been conceded or established by Claimants by documents previously produced (including requests 1, 2, 4, 6, 7, 8, 9, 10 and 12).

²³ Procedural Order 1 item 15.4

Further production would therefore be unreasonably burdensome under IBA Rule 9.2(c).

13. Furthermore, documents requested by Mexico refer to the misconception of the legal nature of the Notes (requests 7 and 8). The Notes are debt security instruments issued by a Mexican Company to raise income. Business plans, due diligence documentation or internal analysis and/or valuation by Claimants with respect to debt securities are not relevant or material documents required for the Tribunal to conduct this legal analysis.
14. Finally, requests relating to Mr. Smith's witness testimony are not relevant or material to the outcome of this case because there is no prohibition on counsel entering into an agreement with a witness for the provision of testimony (requests 13 and 15). These requests are furthermore redundant to the disclosures that Mr. Smith made in his witness statement, as required by Procedural Order No. 1.

C. Mexico's Requests are for documents in the possession of the Respondent, either as documents already produced pursuant to this arbitration or as originating documents in Mexico's custody.

15. As it is stated in article 3.3 (c) (i) of IBA Rules, the Requesting Party must not be in possession or custody of the requested documents. Requests Nos. 1, 3, 10, 11, and 12 each seek documents that are already in Mexico's possession or custody.
16. With respect to Request No. 14, Claimants object in full because these USMCA documents should be in the original control of Mexico as the negotiating party involved. Claimants confirm that Mr. Kenneth Smith Ramos has produced all the documents that remain in his possession relating to this matter as appendices to the witness statement, i.e. Exhibits KS-0001-KS-0005.
17. Finally, with respect to the form of the Notes, Claimants have already produced documents demonstrating Opportunities Master Fund II Ltd.'s ("Opportunities") and Sandpiper Limited's ("Sandpiper") (collectively, "the Funds") ownership of the Notes for the relevant time period. As a factual matter, there are no physical "Notes" that would satisfy Mexico's request No. 5. All records regarding ownership of the Notes are handled electronically, which Claimants have already produced. Where applicable, Claimants produce additional and/or updated documents that further establish this ownership. However, Claimants object in part insofar as Respondent already has these documents in its possession pursuant to previous productions.

D. Certain of Mexico's Requests contain privileged legal information.

18. Article 9.2(b) provides protection for documents and other evidence that may be covered by certain privileges, under the appropriate applicable law, such as the

attorney-client privilege, professional secrecy or the without-prejudice privilege.²⁴ This includes Requests 13 and 15, relating to contractual agreements between Claimants' counsel and Mr. Smith.

²⁴ See, Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration in page 28, available at <https://www.ibanet.org/MediaHandler?id=4F797338-693E-47C7-A92A-1509790ECC9D>.

RESPONSE TO THE OBJECTIONS MADE BY THE CLAIMANTS TO THE REQUEST FOR DOCUMENT PRODUCTION PRESENTED BY THE UNITED MEXICAN STATES

(NOVEMBER 7, 2024)

I. INTRODUCTION

1. This Response is made in accordance with §15.7.3 of Procedural Order No. 1 (PO1) dated on April 3, 2024.

2. Contrary to what the Claimants allege, Mexico contends that its requests for production of documents (the “Requests”) comply with the requirements provided in Articles 3.3 and 9.2 of the IBA Rules, as well as with what was established in the PO1. The Respondent provided a detailed description of the documents it was requesting, as well as the search period and the entities or persons that could have them, and also specified the documents in the arbitration file that refer to the requested documents.

3. The majority of the objections raised by the Claimants are repeated on multiple occasions, therefore, and in order to avoid unnecessary repetitions, the Respondent proceeds to submit a series of general replies that are applicable to various objections. Notwithstanding the above, the Respondent in the same way will address the particularities of each of the objections raised by the Claimants.

4. As a general remark, on October 10, 2024, the Claimants partially produced documents related to Requests 5, 6 and 11. However, in Respondent’s view, these do not address Respondent’s Requests.

II. GENERAL REPLIES

A. Contrary to what the Claimants allege in their objections, the Requests presented by Mexico are narrow and specific

5. The Claimants object the Requests of the Respondent on the basis of Article 3.3 of the IBA Rules arguing that they are “excessively broad and/or lack specificity”. In this regard, Article 3(3)(a) of the IBA Rules provides as follows:

“3. A Request to Produce shall contain:

- (a) (i) a description of each requested Document sufficient to identify it, or
- (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner”

6. The Commentaries to the IBA Rules recognize the possibility that the requests of some documents may not be particularly identifiable. In such cases, requests may be accepted “if they were carefully tailored to produce relevant and material documents”.²⁵

7. In this sense, the description of the documents, the alluded context, the examples of the requested documents, as well as the explanation on the relevance and materiality are elements that enable to clearly identify the nature of the requested documents.

8. In particular, the Claimants state that the Respondent’s Requests 1, 2, 8, 9 and 15 are “overly broad and [did] not compl[y] with either section 15.4 of the PO1, or Article 3.3. of the IBA Rules”.

9. Claimants’ assertions are incorrect. The Tribunal may note that Requests 1, 2, 8, 9 are specific. The fact that the Requests 1, 2, and 8 refer to “all documents and communications” does not mean they are ultra vires of § 15.4 of the PO1. The Requests 1, 2, and 8 contain sufficient context to limit the documents requested and Respondent has also explained the relevance and materiality thereof.

10. In addition, the language used in requests 9 and 15 is different from that to which the Claimants seek to object, so it is unclear to Respondent why the Claimants consider these requests are broad or lack specificity.

11. Therefore, the Tribunal should reject the objections raised by the Claimants and order the production of the documents requested by the Respondent.

²⁵ 1999 IBA Working Party, & 2010 IBA Rules of Evidence Review Subcommittee & 2020 IBA Rules of Evidence Review Task Force, Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, January 2021, p. 10.

B. The Requests formulated by Mexico are relevant to the case and material to its outcome

12. The Claimants object to a significant number of Respondent’s Requests on the grounds that they are “irrelevant to the Tribunal’s resolution of the legal jurisdictional issues at hand.”²⁶

13. In this regard, the Claimants argue that “[...] Claimants have already produced documents conceding to constructive knowledge of the September 2022 Injunction as early as late February 2023 or early March 2023.”²⁷ However, they fail to explain why these documents are not relevant or material to the case pursuant to Article 3(3)(b) of the IBA Rules.

14. Throughout its Requests, Respondent explained in detail and with precision both the “relevance” and the “materiality” standards for the requested documents. The Claimants do not dispute the details provided by the Respondent with respect to these standards.

15. Instead, the Claimants insist that these documents are not relevant only because they do not strengthen their position in this arbitration. For example, they point out that “the requested documents are not material to the outcome of the Tribunal’s decision on jurisdiction because the Tribunal must find that failure to satisfy NAFTA Article 1119 does not result in the loss of jurisdiction”, or they argue that they do not need to demonstrate that: (i) under Article 1116 “they acquired the Notes or made specific financial or economic contributions for the purpose of acquiring the Notes”; (ii) based on the definition of investment under Article 1139, Claimants are not required to demonstrate a “risk, commercial or otherwise to satisfy this definition and allow the Tribunal to rule in [its] favor”; “[e]conomic loss is not an element relevant to the Tribunal’s jurisdictional analysis under NAFTA Article 1116(1), as the Tribunal must only find that Claimants controlled the Notes”. The foregoing cannot be considered a proper explanation.

16. The Claimants do not consider all the elements that are related to the *litis* of the case, which would have an impact on the outcome of the arbitration. For example, the underlying elements

²⁶ Claimant’s Objections to the Respondent’s Request for Document Production, October 10, 2024, ¶12.

²⁷ Claimants objection to Request 1 of production of documents of the Respondent.

related to the control of the Notes, the economic resources committed for the acquisition of the Notes, or the *due diligence* that the Claimants should have performed prior to acquiring the Notes.

17. In relation to Requests 13 and 15, the Claimants allege that the aspects related to Mr. Smith’s Witness Statement are not relevant and material to the outcome of the case, as there is no “prohibition on counsel entering into agreement with a witness for the provision of testimony”.

18. The Respondent does not share Claimants’ view, as any compensation that Mr. Smith or his firm received for the submission of his Witness Statement is important to determine whether he has or had any economic incentive in the form of either financial compensation or a business arrangement that could undermine Mr. Smith’s credibility in this proceeding. These issues are not addressed in Mr. Smith’s Witness Statement, nor in Claimants’ Counter-Memorial on Jurisdiction, therefore this Request is not redundant.

19. In addition, the Tribunal should not lose sight of the fact that these documents are material to the outcome of the arbitration as they regard key aspects of the case, such as the interpretation of Exhibit 14-C, which are based on the witness statement of Mr. Smith, who: (i) served as a public official; (ii) has had an employment relationship with the Claimants’ representatives, and (iii) everything suggests that he currently has a contractual relationship with the Claimants or their legal representatives. This obviously affects his credibility.

20. In view of the foregoing, it is clear that the requested documents in this category are relevant to the case and material to its outcome.

C. The requested documents are not in possession nor custody of the Respondent

21. Contrary to what Claimants allege, the fact that they have submitted in the arbitration certain documents that may be related to Respondent’s Requests does not mean that the Respondent has all of these documents.

22. With respect to the requested documents that are related to Mr. Smith, Respondent only requested those documents on which he based and/or referred to in his own Witness Statement. The Respondent has already explained that it has made an exhaustive search on the files of the Ministry of Economy, however, and despite Mr. Smith’s obligation to do a Handover and

Reception of Authority Act, it has not located the files related to the commission of the witness of the Claimants.

23. In addition, contrary to Claimants’ position at this document production stage, Respondent produced more than one hundred (100) documents in its custody relating to the negotiations of the USMCA, particularly about Chapter 14.

24. Finally, in connection with the “Form of Notes”, Respondent has used the terms set forth in the *Indenture* itself, particularly Exhibit A of the *Indenture*.²⁸ According to this contract, documents with the characteristics set forth therein should have been issued.

<p style="text-align: center;">ASSIGNMENT FORM</p> <p>To assign this Note, fill in the form below:</p> <p>(I) or (we) assign and transfer this Note to:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p style="text-align: center;">(Print or type assignee’s name, address and zip code)</p> <p>_____</p> <p style="text-align: center;">(Insert assignee’s Social Security or Tax I.D. Number)</p> <p>and irrevocably appoint _____ as agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.</p> <p>Date: _____ Your Signature: _____</p> <p style="text-align: center;">Sign exactly as your name appears on the other side of this Note</p> <p>Signature Guarantee*: _____ (Signature must be guaranteed)</p> <p>_____</p> <p>* The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15 (or other signature guarantor acceptable to the Trustee).</p> <p style="text-align: center;">NAI-102882142v7 A-6</p>	<p style="text-align: center;">FORM OF FACE OF NOTE</p> <p>No. [] Principal Amount U.S.\$[]</p> <p style="text-align: center;">[If the Note is a Global Note include the following two lines: as revised by the Schedule of Increases and Decreases in Global Note attached hereto]</p> <p style="text-align: right;">Common Code [] ISIN []</p> <p>TV Azteca, S.A.B. de C.V., a publicly traded variable capital corporation (sociedad anónima bursátil de capital variable) organized and existing under the laws of the United Mexican States, promises to pay to The Bank of New York Depository (Nominees) Limited, or registered assignee, the principal sum of U.S.\$ [] [If the Note is a Global Note, add the following, as revised by the Schedule of Increases and Decreases in Global Note attached hereto], on August 9, 2024.</p> <p>Interest Rate: 8.250% per annum</p> <p>Interest Payment Dates: August 9 and February 9, commencing on []</p> <p>Record Dates: July 26 and January 26</p> <p>Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which will for all purposes have the same effect as if set forth at this place.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">¹ February 9, 2018 for Initial Notes.</p> <p style="text-align: center;">NAI-102882142v7 A-1</p>
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25. For ease of reference, the Respondent attaches a screenshot about the “Form of Notes”, in accordance to what is established by Indenture itself.²⁹

28 Indenture. C-0006.

29 C-0006, pp. 126, 131.

26. In view of the foregoing, it is clear that the requested documents shall be in the possession and custody of the Claimants, and it is reasonable that the Respondent has understood this. Therefore, the Tribunal must dismiss its objections and order the production of such documents.

D. Contrary to what the Claimants’ established in their objections, the Requests made by Mexico do not refer to documentation involving legal impediment or privilege.

27. The Claimants object to Mexico’s Requests on the basis of Article 9.2 (b) of the IBA Rules on the Taking of Evidence in International Arbitration (IBA Rules), however, they do not clearly explain how Requests 13 and 15 fall into this category.

28. As such, Article 9(2)(b) of the IBA Rules provides:

“The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection, in whole or in part, for any of the following reasons:

[...]

(b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable (see Article 9.4 below);

[...]”.

29. The Commentaries to the IBA Rules recognize that such provision “provides protection for documents and other evidence that may be covered by certain privileges, under the appropriate applicable law, such as the attorney-client privilege, professional secrecy or the without-prejudice privilege”.³⁰

30. Both arbitral tribunals and doctrine have also been emphatic in pointing out that the party asserting the privilege has the burden of proving that such privilege applies to each document request.³¹

³⁰ 1999 IBA Working Party, & 2010 IBA Rules of Evidence Review Subcommittee & 2020 IBA Rules of Evidence Review Task Force, Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, January 2021, p. 28.

³¹ *Glamis Gold v United States of America*, Decision on Parties’ Requests for Production of Documents Withheld on Grounds of Privilege, November 17, 2005, ¶ 23.

In fact, such evidentiary burden applies to demonstrate both the legal privilege to be applied and the factual basis for the assertion of the privilege.³²

31. In *Merrill and Ring Forestry L.P. v. Canada*, the tribunal recognized that objections based on privilege grounds must meet certain parameters, in particular, identifying the specific documents and explaining in detail and clearly the reasons for invoking the privilege:

The Tribunal is also persuaded, however, that the privilege, as held in *Pope & Talbot* and the *Canada-Aircraft* decisions invoked by the Investor, can only be asserted in respect of sufficiently identified documents together with a clear explanation about the reasons for claiming such privilege. The parties would need such information in order to assess whether they agree or disagree about a refusal on these grounds, just as the Tribunal needs it to decide in case of disagreement between the parties.³³

32. The Claimants object to some Requests, particularly Requests 13 and 15, solely on the grounds that they relate to “contractual agreements between Claimants’ counsel and Mr. Smith”. However, the Claimants appear to simply assume that the requested documents are somehow protected by privilege. Moreover, the Claimants fail to explain why these documents involve any confidential information and, even if they did contain such information, they have not identified what type of information would be confidential and what would be the legal basis for classifying the information as such or claiming privilege in order for the Tribunal to properly treat such information.

33. As mentioned *supra*, the Claimants allege that the contracts entered into with Mr. Smith are protected by certain privileges such as “attorney-client privilege, professional secrecy or the without-prejudice privilege”; in that sense, it is evident that the Claimants recognize their contractual relationship with Mr. Smith, which strengthens the Respondent’s doubts about the credibility of Mr. Smith’s witness statement.

34. Notwithstanding the foregoing, the Claimants do not clearly identify the privilege enjoyed by the contracts entered into with Mr. Smith or the legal basis for such privilege. If Claimants seek to excuse the production of these documents on the basis of this privilege, Mexico requests that

³² Nathan D. O’Malley, *Rules of Evidence in International Arbitration: An Annotated Guide*, p. 290 (2nd ed. 2019).

³³ *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Decision on Production of Documents, July 18, 2008, ¶ 19.

the Tribunal order Claimants to produce a privilege log of all documents related to the Request, detailing the date of the document, the parties to the document (*e.g.*, sender, recipient, contracting parties), and a description of the document.

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N°	Document or categories of documents requested (Requesting Party)	Relevance and materiality, including references to the brief (Requesting Party)		Reasoned Objections to a Request for Production of Documents (Objecting Party)	Response to Objections to Request for Production of Documents (Requesting Party)	Decision (Tribunal)
		References to the main documents, documentary annexes, testimonial statements or expert reports	Comments			
1	<p>All documents and communications within Claimants’ custody or control that reference the proceedings initiated by TV Azteca in the Sixty-Third Superior Civil Court in Mexico City or the Injunction issued by said Court on September 22, 2022.</p> <p>The time frame for this request is September 22, 2022 to June 27, 2023.</p> <p>For clarity, the scope of “Claimants’ custody or control”</p>	<ul style="list-style-type: none"> - Counter Memorial on Jurisdiction ¶¶ 115, 141-146. - Memorial on Jurisdiction, ¶ 34. - In re TV Azteca, Statement in Support of Involuntary Bankruptcy Petition, Bankruptcy Case No. 23- 	<p><i>See</i> General Justification A.</p> <p>The requested documents are relevant and material to Objection 1.</p> <p>Although Article 1119 is mandatory, Claimants argue that its non-compliance is excusable, both in fact and in law. However, Mexico’s position has been that a failure to comply with Article 1119 is not excusable for any reason.</p> <p>Regarding these facts, the Claimants claim that they could not reasonably comply with the 90-day deadline because they</p>	<p>Claimants object to this request consistent with General Objection A and under IBA Rule 3.3(a)(ii) on the basis that the request is excessively broad and does not identify a sufficiently “narrow and specific” category of documents.</p> <p>Furthermore, as noted by Respondent in its own request, Claimants have already produced documents conceding to constructive knowledge of the September 2022 Injunction as early as late February 2023 or early March 2023. <i>See</i> Counter-Memorial at ¶¶ 51-52; 128; C-0028; C-0029.</p>	<p>Mexico will respond to the Claimants’ objections based on:</p> <ul style="list-style-type: none"> - General Reply A, given that Mexico’s Request is narrow and specific. - General Reply B, given that the requested documents are relevant for the present case and material for its outcome. <p>Mexico made specific Requests for documents in possession of the Claimants or their related companies, that refer to either a specific proceeding before the Sixty-Third Superior Court of Mexico City or a specific injunction issued by the court. The Claimants are</p>	<p>Granted (in part) as relevant to Objection No 1: all non-privileged documents generated from September 22, 2022 to June 28, 2023, in the custody or control (as defined by the Respondent) of the Claimants relating to the injunction granted on September 22, 2022.</p>

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<p>as used above includes the custody or control of any entities supposedly controlled by the Claimants, including Opportunities, Sandpiper, Contrarian Emerging Markets, L.P., Cyrus Opportunities Fund II, L.P., Cyrus Opportunities Fund II, Ltd., and Contrarian Funds L.L.C.</p>	<p>10385, ECF No. 8 (S.D.N.Y.) R-0003, p. 4.</p>	<p>were not formally notified of the September 2022 injunction until June 27, 2023, and the deadline to submit their claims under Annex 14 of the USMCA was June 30.</p> <p>However, the evidence presented by Mexico demonstrates that the Claimants were aware of the precautionary measure on March 3, 2023 (and perhaps earlier). Therefore, Claimants had enough time to prepare and file a Notice of Intent pursuant to Article 1119.</p> <p>Furthermore, the requested documents would help to clarify when the Claimants first learned of the proceedings in Mexico and of the injunction.</p>	<p>Further production would therefore be unreasonably burdensome under IBA Rule 9.2(c) because (1) the relevant documents are already in Respondent’s possession and (2) Claimants have already stipulated to the facts regarding constructive knowledge of the September 2022 Injunction.</p> <p>Finally, consistent with General Objection B and under IBA Rules 3.3(b) and 9.2(a), the requested documents are not material to the outcome of the Tribunal’s decision on jurisdiction because the Tribunal must find that failure to satisfy NAFTA Article 1119 does not result in the loss of jurisdiction.</p>	<p>undoubtedly aware of the subject matter of these documents.</p> <p>In addition, the requested documents are undoubtedly of particular relevance and material to the outcome of the case as they demonstrate that the Claimants did have knowledge of Mercantil Lawsuit and the September 2022 Injunction.</p> <p>Although the Claimants “may have arguably had informal, constructive notice of the Injunction based on the service of process on The Trustee”, as Claimants contend, they go on to suggest that in their view, this knowledge is not sufficient for the Tribunal to lack jurisdiction and, therefore, their breach of Article 1119 may be excusable. (Counter-Memorial on Jurisdiction, ¶115).</p> <p>In Respondent’s view, the “constructive notice” argument is incorrect. Assuming, arguendo, that</p>	
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					<p>the content of Article 1119 is not mandatory (which it is not), the documents requested by Mexico would demonstrate that the Claimants, in fact, had knowledge of the Mercantil Lawsuit and the Injunction before April 1, 2023.</p> <p>Regarding Claimants’ last argument related the jurisdiction of the Tribunal, this is a legal issue that should not be prejudged at this stage of the proceedings.</p>	
2	<p>All communications and documents exchanged between the Claimants (including the companies they claim to control) and Bank of New York Mellon, in its capacity as (“trustee”) under the Indenture of August 2017, in which it mentions or has been discussed: Mercantil Lawsuit 995/2022,</p>	<p>- Request for Arbitration, ¶ 58. - In re TV Azteca, Opinion and Order dated November 20, 2023, Bankruptcy Case No. 23-10385, ECF 81 (S.D.N.Y.). R-0001, p.1</p>	<p><i>See</i> General Justification A The documents are relevant and substantial, mainly with regard to Objection 1. Based on the exhibits provided in this arbitration and what was argued by the Claimant, Bank of New York Mellon, in its capacity as “trustee”, became aware of the Injunction on February 21, 2023).</p>	<p>Claimants object to this request consistent with General Objection A and under IBA Rule 3.3(a)(ii), on the basis that it is excessively broad and it does not identify a sufficiently “narrow and specific” category of documents. Furthermore, as noted by Respondent in this request, Claimants have already produced documents conceding to constructive knowledge of the September 2022</p>	<p>Mexico applies <i>mutatis mutandis</i> the arguments put forward in the Response to Objection No. 1.</p>	<p>Granted (in part) as relevant to Objection No 1: all non-privileged documents generated from September 22, 2022 to June 28, 2023, in the custody or control (as defined by the Respondent) of the Claimants relating to the injunction granted on September 22, 2022.</p>

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<p>and the Injunction issued on September 27, 2022 by the 63rd Civil Court within the Mercantil Lawsuit 995/2022.</p> <p>The search period is from September 27, 2022 and June 28, 2023.</p>	<p>- Bank of New York Mellon v. TV Azteca, S.A.B. de C.V., et al., Joint Letter from the Parties dated October 11, 2023, District Court Case No. 22-cv-08164, ECF No. 27 (S.D.N.Y.). R-0002, p. 4.</p> <p>- In re TV Azteca, Statement in Support of Involuntary Bankruptcy Petition, Bankruptcy Case No. 23-10385, ECF No. 8 (S.D.N.Y.). R-0003.</p>	<p>Although Article 1119 is mandatory and its non-compliance cannot be excusable under any circumstances, it is reasonable to consider that under that capacity, Bank of New York Mellon informed to all the creditors of TV Azteca, including the Claimants or companies related to it, about the Injunction.</p> <p>Likewise, it is reasonable to assume that the documents exist since on March 27, 2023, some noteholders (including entities under the apparent control of the Claimants) initiated bankruptcy proceedings (Chapter 11) before the United States courts against TV Azteca, in which Bank of New York also participated (Notice of Intent ¶ 28).</p> <p>Pursuant to the Identure, Bank of New York</p>	<p>Injunction as early as late February 2023 or early March 2023 based on communications with The Trustee. <i>See</i> Counter-Memorial at ¶¶ 51-52; 128; C-0028; C-0029. Further production would therefore be unreasonably burdensome under IBA Rule 9.2(c).</p> <p>Finally, under IBA Rule Arts. 3.3(b) and 9.2(a) and consistent with General Objection B, the requested documents are not material to the outcome of the Tribunal’s decision on jurisdiction because the Tribunal must find only that failure to satisfy NAFTA Article 1119 does not result in the loss of jurisdiction.</p>		
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			<p>Mellon “shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs” (C-0006, p. 84). It is clear that a trustee would inform the creditors of TV Azteca about the existence of a judicial resolution such as the Injunction.</p> <p>The documents are necessary to demonstrate that the Claimants were aware of the Injunction before April 1, 2023.</p> <p>This is reasonable, since on March 27, 2023, entities that the Claimants claim to control filed a “Statement of the Petitioning” before the United States Bankruptcy Court</p>			
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			Southern District of New York, curiously through the same law firm that represents to the Claimants in this arbitration (see R-003).			
3	<p>All documents, writings or communications related to the participation of Contrarian, Sandpiper, Contrarian Emerging Markets L.P., Contrarian Funds, L.L.C. in Commercial Judgment 995/2022 and documents that demonstrate that the Sandpiper Notes are part of the subject matter of Commercial Judgment 995/2022.</p> <p>This request includes documents that have been prepared from September 27, 2022,</p>	<p>- Memorial on Jurisdiction, Section III.I.</p> <p>- Counter Memorial, Section XI.</p>	<p><i>See</i> General Justification A</p> <p>The request is relevant to the case and substantial for its resolution as it is related to Objection 8.</p> <p>The Claimants submit a claim for denial of justice pursuant to Article 1105 of the NAFTA, however, the Claimants have not presented evidence to demonstrate their participation in the Mercantil Lawsuit 995/2022 or whether the Notes held by Sandpiper are or were the subject of the referred judgment.</p> <p>The documents are relevant to the case and substantial for its resolution because they will allow to verify the</p>	<p>Claimants object to this request consistent with General Objection C and under IBA Rule Arts. 3.3(c)(i) and 9.2(a) because the requested documents are already in the possession of Respondent. Claimants have already produced the documents in its possession showing that the Sandpiper Notes are subject to the 995/2022 action is Mexico. The facts set forth in the Counter-Memorial establish the chain of ownership between Contrarian Emerging Markets, L.P., a named defendant in the Mexican Court Proceedings to Sandpiper Limited, an entity in which Contrarian Emerging Markets, L.P. holds an ownership interest. <i>See</i> Counter-</p>	<p>Mexico will respond to the Claimants’ objections based on:</p> <p>- General Reply B, since the requested documents are relevant for the present case and material for its outcome.</p> <p>Additionally, the Claimants object to Request 3 on the basis of the “chain of ownership” between Contrarian Emerging Markets, L.P. and Sandpiper Limited. However, the Claimants have failed to identify how this “chain of ownership” is relevant to the Request or how it gives Contrarian legal standing as to raise a claim for denial of justice.</p> <p>In any case, their objection includes arguments relating to legal aspects of the</p>	<p>Granted in part, as relevant to Objection No 8: all documents in the custody of control of the Claimants, other than as already supplied to the Respondent.</p>

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	the date on which Commercial Trial 995/2022 began until today.		legitimacy of the Claimants to submit a claim under Article 1105 of the NAFTA.	Memorial on Jurisdiction at ¶¶ 281-283; C-0013; C-0014; C-0018; C-0075; C-0024; C-0025.	dispute that should not be adjudicated at this procedural stage by the Tribunal.	
4	<p>All documents or communications in Claimant’s custody or control exchanged between them and Michael O’Boyle (Bloomberg).</p> <p>The search period for this Request 3 is from February 1, 2023 to April 1, 2023.</p> <p>For clarity, the scope of “Claimants’ custody or control” as mentioned above includes the custody or control of any entity purportedly controlled by Claimants, including Opportunities, Sandpiper, Contrarian</p>	<p>- Memorial on Jurisdiction, ¶ 34.</p> <p>- Counter Memorial, ¶ 52.</p> <p>- <i>In re TV Azteca</i>, Statement in Support of Involuntary Bankruptcy Petition, Bankruptcy Case No. 23-10385, ECF No. 8 (S.D.N.Y.). R-0003.</p>	<p><i>See</i> General Justification A</p> <p>According to court documents filed on behalf of Opportunities and Sandpiper (the bondholders), both “became aware of [the Injunction] upon the publication of a Bloomberg Law article” titled “TV Azteca bondholders face mexican ruling blocking payments.” on March 3, 2023. The article was written by Michael O’Boyle. It is reasonable to assume that Mr. O’Boyle communicated with the Noteholders or the Claimants prior to the March 3, 2023 publication.</p>	<p>Claimants object to this request on the basis that Claimants have already produced documents conceding to constructive knowledge of the September 2022 Injunction as early as late February 2023 or early March 2023, i.e., by the time of publication of the March 3, 2023 publication. <i>See</i> Counter-Memorial at ¶¶ 51-52; 128; C-0028; C-0029.</p> <p>In addition, consistent with General Objection B and under IBA Rule Arts. 3.3(b) and 9.2(a), the requested documents are not material to the outcome of the Tribunal’s decision on jurisdiction because the Tribunal must find only that failure to satisfy NAFTA Article 1119 does not result in the</p>	<p>Mexico incorporates <i>mutatis mutandis</i> the arguments put forward in the Reply to Objection No. 1.</p>	<p>Granted, as potentially relevant to Objection No 1.</p>

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	Emerging Markets, L.P., Cyrus Opportunities Fund II, L.P., Cyrus Opportunities Fund II, Ltd., and Contrarian Funds L.L.C.		<p>The requested documents would clarify whether Mr. O'Boyle, a reporter, informed the Claimants or the Bondholders of the proceedings before or after March 3, 2023, which is relevant and material as it relates to Objection No. 1 from Mexico.</p> <p>Without prejudice to the foregoing, the Respondent wishes to be emphatic about the mandatory nature of compliance with the requirements provided for in Article 1119 of the NAFTA, which cannot be excusable under any circumstances.</p>	loss of the Tribunal's jurisdiction.		
5	Form of the Notes, including: "Form of Face of Note, Form of reverse side of Note, Assignment Form, Schedule of increase or decreases in global	- TV Azteca Indenture, 9 de agosto de 2017. C-0006, p. 125.	<p><i>See</i> General Justification B</p> <p>The Request is relevant to the case and substantial for its resolution since it is related to Objection 2 and 3.</p>	Claimants object in part to this request consistent with General Objection C and under IBA Rule 3.3(c)(i) because documents establishing the Opportunities' and Sandpipers' ownership of the Notes are already in Respondent's possession.	Mexico responds to the Claimant's objection based on:	<i>The Tribunal takes note that there are no physical notes that satisfy this Request</i>
					- General Reply B, since the documents are relevant and substantial for the outcome of the case.	

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<p>note” as provided in the Indenture.</p>		<p>The Claimants have not submitted evidence to corroborate that they qualify as investors under NAFTA or that they have made an investment.</p> <p>Such has been the omission of the Claimants that they have not even submitted evidence of the ownership of Opportunities and Sandpiper over the Notes.</p> <p>In that sense, in accordance with Exhibit A of the Indenture, the Notes had to be issued in accordance with the Forms provided for in the same Indenture.</p> <p>The required documents are relevant to the case and substantial for its resolution as they will allow to understand the holders of the Notes and those who have a beneficial interest in the Notes, as well as the date on which the Notes were</p>	<p>Claimants previously produced documents establishing ownership in the Notice of Arbitration. <i>See</i> Exhibits 8a and 8b.</p> <p>Indeed, Respondent directly concedes to the Funds’ ownership of the TV Azteca Notes in its own Memorial on Jurisdiction. <i>See</i> ¶ 26, citing to Notice of Arbitration Exhibits 8a and 8b. Specifically, the account and trading allocation statements within these documents establish the Funds’ ownership of the Notes.</p> <p>Furthermore, as described in Objection C, there are no physical “Notes” that would satisfy this request. All records regarding ownership of the Notes are handled electronically, which Claimants have already produced.</p> <p>For completeness, Claimants provide additional account statements that further</p>	<p>- General Reply C, since the requested documents are not in the possession or custody of the Respondent.</p> <p>The Claimants intend to support or allege the ownership of the Notes based on Exhibits 8a and 8b, however, these documents do not prove ownership of the Notes.</p> <p>Likewise, the requested documents, as explained in General Reply C, are referred to in the Indenture itself, which establishes that the holders of the Notes will have a “Form of Note” in which various aspects related to this are specified.</p>	
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			acquired by these entities.	establish the Funds' ownership of the Notes.		
6	Records of any financial or economic contributions or payments by the Claimants for the purpose of acquiring the Notes.	<ul style="list-style-type: none"> - Memorial on Jurisdiction ¶¶ 62-65. - Counter Memorial on Jurisdiction ¶ 161. 	<p><i>See</i> General Justification B</p> <p>The requested documents are material and relevant to Objection 2 regarding the Claimants' status as investors under NAFTA. Mexico argues that the Claimants do not qualify as investors because they did not "make" an investment as required by NAFTA. Instead, they simply acted as agents for Sandpiper and Opportunities. The Claimants dispute this description. The requested documents would clarify whether the Claimants made any financial contribution to acquire the Notes that qualified them as investors under NAFTA.</p>	<p>Claimants object in part to this request consistent with General Objection B and under IBA Rules 3.3(b) and 9.2(a) because the requested documents lack sufficient relevance and are not material to the outcome of the Tribunal's decision on jurisdiction. The Tribunal must only find that Claimants "control" the investments "directly or indirectly" under NAFTA Article 1116(1). Claimants are not required to show under Article 1116(1) that they acquired the Notes or made specific financial or economic contributions for the purpose of acquiring the Notes.</p> <p>As described in detail throughout Claimants' arguments in their previous submissions, Claimants readily meet the definition of "investor of a Party" based on a control analysis. Nevertheless,</p>	<p>Mexico responds to the Claimant's objection based on:</p> <ul style="list-style-type: none"> - General Reply B, since the documents are relevant and substantial for the resolution of the case. <p>Claimants object to Request No. 6 just because, in their opinion, they are not required "to show under Article 1116(1) that they acquired the Notes or made specific financial or economic contributions for the purpose of acquiring the Notes." This objection presents arguments related to legal aspects of the dispute that should not be judged at this procedural stage by the Tribunal.</p> <p>Mexico states in its Memorial on Jurisdiction that the Tribunal lacks jurisdiction because the Claimants do not meet the definition of an investor</p>	Granted, as potentially relevant to Objection No 2.

				Claimants produce in part in response to this Request additional documents that establish that their ultimate parents have an indirect interest in the Noteholders. This provides further support for the basis for the Tribunal’s jurisdiction under NAFTA Article 1116(1). <i>See</i> Counter-Memorial on Jurisdiction at ¶ 171-172.	due to their failure to have made any financial contribution to acquire the Notes. The requested documents are material and relevant to the factual basis of said objection. The Claimants do not dispute that the documents are relevant or substantial to the outcome of the case.	
7	Documents, reports, risk analysis, business plans or due diligence documentation prepared by the Claimants related to the acquisition of the Notes.	- Eight Amended and Restates Investment Management Agreement (Cyrus Investment Management Agreement). C-0072 . - Memorial on Jurisdiction, III.F y III.G.	<i>See</i> General Justification C Section 3 of the Eight Amended and Restates Investment Management Agreement established the obligation of investment managers (<i>i.e.</i> the Claimants) to prepare reports to inform the Cayman Islands Funds about the activities carried out with respect to their investments. The documents are relevant and substantial for the resolution of the case as they are related to	Claimants object to this request consistent with General Objection B and under IBA Rules 3.3(b) and 9.2(a) because it is not relevant or material to the outcome of the case. Claimants are required only under the NAFTA Article 1139 definition of “investment” to establish that the Notes are a “debt security of an enterprise ... where the original maturity of the debt security, regardless of original maturity, of a state enterprise.” Claimants are not required under this definition to demonstrate risk, commercial or	Mexico responds to the Claimant’s objection based on: - General Reply B, since the documents are relevant and substantial for the resolution of the case. Claimants object to Request No. 6 solely because, in their opinion, they are not required “to show under Article 1116(1) that they acquired the Notes or made specific financial or economic contributions for the purpose of acquiring the Notes.”	Granted, as potentially relevant Objections 5 and 6.

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			<p>Objections 5 and 6 raised by the Respondent.</p> <p>Regarding Objection 5, the documents will demonstrate that the Claimants have not made an investment in accordance with Article 25 of the ICSID Convention since, according to the analysis they have carried out, it will be possible to verify that the Notes did not have an investment risk since they were aware of the return that would have, so the only risk that they could or should have considered was the commercial one, such as the non-compliance of one of the parties participating in the operation.</p>	<p>otherwise, to satisfy this definition and allow the Tribunal to rule in Claimants' favor.</p> <p>Furthermore, under IBA Rule 3.3(b), Respondent fails to explain how the request is relevant or material to Objection 6, which relates only to Respondent's argument that the Tribunal lacks jurisdiction because Contrarian allegedly did not control the Notes at the time of the September 2022 Injunction. The requested documents are thus wholly irrelevant to that issue.</p>	<p>This objection presents arguments related to legal aspects of the dispute that should not be judged at this procedural stage by the Tribunal.</p> <p>Mexico maintains in its Memorial on Jurisdiction that the Tribunal lacks jurisdiction because the Claimants do not meet the definition of an investor due to their failure to have made any financial contribution to acquire the Notes. The requested documents are material and relevant to the factual basis of said objection.</p> <p>The documents produced by the Claimants do not satisfy this request because in their opinion the documents establish an alleged "indirect interest" in Sandpiper and Opportunities held by the "ultimate parent" of the Claimants. Whatever the "indirect interest" of the</p>	
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					<p>“ultimate parent”—which appears to be less than 1%—does not establish the necessary financial contribution for the Claimants to be considered investors.</p> <p>Likewise, the requested Documents will allow us to know whether in the analyzes carried out by the investment funds they considered the existence of the Mercantil Lawsuit and the Injunction of September 2022, which will also help to corroborate the Respondent’s argument related to Objection 6.</p>	
8	<p>Documents and communications prepared by the Claimants, the Cayman Islands Funds or any of the entities referred to in footnote 1 of this RfD, in which has been discussed any analysis, valuation, report or due</p>	<ul style="list-style-type: none"> - Memorial on Jurisdiction, ¶¶ 25-26, 99-100. - Counter Memorial, ¶ 168. - Indenture held between TV Azteca, 	<p><i>See General Justification C</i></p> <p>The requested documents are relevant and substantial for the resolution of the case since they are related to Objection 5 of the Respondent.</p> <p>As the Respondent has explained in its Memorial</p>	<p>Claimants object to this request consistent with General Objection A and under IBA Rule 3.3(a)(ii) on the basis that it is excessively broad and it does not identify a sufficiently “narrow and specific” category of documents.</p> <p>Furthermore, consistent with General Objection B</p>	<p>Mexico responds to the Claimant’s objection based on:</p> <ul style="list-style-type: none"> - General Reply A because the Requests are narrow and specific. - General Reply B, since the documents are relevant and material for the resolution of the case. 	<p>Granted, as potentially relevant to Objection No 5.</p>

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<p>diligence regarding TV Azteca's Indenture.</p> <p>The search period for this Request 8 is from August 2, 2017, the date on which TV Azteca's Offer Circular was issued as of March 13, 2023.</p>	<p>BNY and BNYM LB on August 9, 2017. C-0006.</p>	<p>on Jurisdiction, the Notes do not qualify as an investment under Article 25 of the ICSID Convention nor do they comply with the Salini Test, since, inter alia, they do not generate a contribution to the economic development of the host State, in this case Mexico, since in order to prove this, the territorial nexus between the investment and the State must be analyzed.</p> <p>In this case, the Notes do not have a territorial link with Mexico, since according to the terms of Indenture itself, they are listed on the Singapore Stock Exchange.</p> <p>The documents are relevant and substantial for the resolution of the case since they will allow us to understand where the Notes were issued or, failing that, confirm that they were not issued in</p>	<p>and under IBA Rules 3.3(b) and 9.2(a) Claimants further object to this request because it is not relevant or material to the outcome of the case. Claimants are required only under the NAFTA Article 1139 definition of "investment" to establish that the Notes are a "debt security of an enterprise ... where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise." The Tribunal only must find that the Notes were debt securities issued by a Mexican company, i.e., TV Azteca, and had a maturity date of more than three years, facts already established by documents previously produced by Claimants. <i>See C-0006.</i></p> <p>The relevance of Article 25 of the ICSID Convention is thus a legal issue to be decided by the Tribunal that does not require</p>	<p>The Claimants object to Request No. 8 because, in their opinion, they are not required to satisfy the Salini test. The objection presents a legal question that the Tribunal should not prejudge at this stage of the procedure.</p> <p>Mexico states in its Memorial that the Tribunal lacks jurisdiction because the Notes (the alleged investments) do not satisfy the Salini test because they do not meet the requirement of having made an economic contribution in Mexico. The requested documents are material and relevant to the factual basis of that objection. The Claimants do not object that these documents are relevant or substantial to the resolution of the case.</p> <p>Request No. 8 is not overly broad or burdensome. However, in an effort to make this Request as</p>	
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			Mexico but in a secondary market.	further factual development, and this request is therefore unnecessarily burdensome and broad under IBA Rules 3.3(a)(ii) and 9.2(c).	limited as possible, Mexico amends Request No. 8 as follows: Documents and communications prepared by the Claimants, the Cayman Islands Funds and any of the entities referred to in footnote 1 of this Document Request, identifying the entities that sold the Notes to the Claimants, the Cayman Islands Funds Caimán, as well as any of the entities referred to in the footnote.	
9	Audited, consolidated or unconsolidated financial statements of the Claimants, as well as the Cayman Islands Funds and the companies described in footnote 1 of this RfD for the years 2021 to 2023 including the notes thereto.	- Memorial on Jurisdiction, ¶ 62.	See General Justification B The Respondent has indicated that, pursuant to Article 1116(1), an investor of a Party may submit a claim to arbitration as long as it has incurred in losses or damages. The Claimants only act as investment agents, so they have not committed their own resources. The	Claimants object to this request consistent with General Objection A and under IBA Rule 3.3(a)(ii) on the basis that it is excessively broad, and it does not identify a sufficiently “narrow and specific” category of documents. Furthermore, consistent with General Objection B and under IBA Rule 3.3(b) and 9.2(a) Claimants further object to this	Mexico responds to the Claimant’s objection based on: - General Reply A because the Requests are concrete and specific. - General Reply B, since the documents are relevant and substantial for the resolution of the case. The Claimants object to Request 9 because in their	Refused as too wide and not sufficiently shown to be relevant.

	<p>In the event that the Claimant does not have the audited financial statements in its possession, the Respondent requests the unaudited financial statements for the years 2021, 2022, 2023 and 2024, including the notes thereto.</p>		<p>requested documents will allow to prove that the Claimants have not incurred in any loss or damage in accordance with Article 1116(1) of the NAFTA.</p>	<p>request because it is not relevant or material to the outcome of the case. Claimants are required only under the NAFTA Article 1139 definition of “investment” to establish that the Notes are a “debt security of an enterprise ... where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise.” Economic loss is not an element relevant to the Tribunal’s jurisdictional analysis under NAFTA Article 1116(1), as the Tribunal must only find that Claimants controlled the Notes. The requested documents are not material to this inquiry, and Claimants have already produced documents that establish their control over the Notes. <i>See</i> Counter-Memorial at ¶ 156; C-0009; C-0010; C-0011; C-0014; C-0015; C-0017; C-0018.</p>	<p>opinion “economic loss is not an element relevant to the Tribunal’s jurisdictional analysis under NAFTA Article 1116(1)”. This objection presents arguments related to legal aspects of the dispute that should not be judged at this procedural stage by the Tribunal.</p> <p>Mexico states in its Memorial that the Tribunal lacks jurisdiction because the Claimants have not suffered any economic loss. The requested documents are relevant and material to the factual basis of said objection. The Claimants do not dispute its relevance or materiality in this regard.</p> <p>Furthermore, Request No. 9 is neither excessive nor burdensome. Mexico only requests the audited financial statements of the Claimants and their subsidiaries for the years 2021 to 2023. This is a limited category of</p>	
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					documents that the Claimants surely have at their disposal.	
10	<p>Resolutions adopted by the Board of Directors of Contrarian Emerging Markets Offshore Fund, Ltd., Contrarian Emerging Markets, L.P., Cyrus Opportunities Fund II, LTD, Cyrus Opportunities Fund II, L.P., and Cyrus Opportunities Master Fund II, LTD, as well as any guidelines, policy or guidance issued by them or by the “general Partner” regarding the way in which investment managers should conduct themselves.</p> <p>The requested documents could be generated from</p>	<p>- Eight Amended and Restates Investment Management Agreement (Cyrus Investment Management Agreement). C-0072.</p> <p>- Amended and Restated Investment Management Agreement (Contrarian Emerging Markets, L.P., Contrarian Investment Management Agreement). C-0017.</p>	<p><i>See</i> General Justification C</p> <p>The requested documents are relevant as they are related to Objection 2 raised by the Respondent in its Memorial on Jurisdiction.</p> <p>The Claimants argue that, although they did not commit their own resources for the investment, they supposedly have control over the Notes by having entered into an “Investment Management Agreement”.</p> <p>However, in accordance with Section 3 of the Eight Amended and Restates Investment Management Agreement (C-0072), the activities carried out by them had to be performed in</p>	<p>Claimants object to this request consistent with General Objection C and under IBA Rule 3.3(c)(i) because documents establishing Claimants’ control of the Notes are already in Respondent’s possession. Claimants previously produced the Investment Management Agreements for both entities that establish the requisite control. <i>See</i> Counter-Memorial at ¶ 30, 36; C-0009; C-0017.</p> <p>Contrary to Respondent’s suggestion in this request, Claimants do not argue that they must have <i>exclusive</i> control of the Funds to qualify as investors under NAFTA. Thus, the documents requested are irrelevant and immaterial to the outcome of the Tribunal’s decision on jurisdiction under this objection, consistent with General</p>	<p>Mexico responds to the Claimant's objection based on:</p> <p>- General Reply C, since the requested documents are not in the possession or custody of the Respondent.</p> <p>Request No. 10 is highly relevant and material to Objection No. 2, by which Mexico argues that the Claimants do not qualify as investors under NAFTA. In response to this objection, the Claimants maintain that they qualify as investors because they exercise shared “control” over the Notes. The requested documents would help to clarify the level of control exercised by the Claimants, if any.</p> <p>Mexico emphasizes that the documents are more relevant in this case than in</p>	<p>Granted, insofar as the documents relate to the investments at issue in the arbitration, as potentially relevant to Objection No 2.</p>

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	August 28, 2015 to August 2024.	- Counter Memorial on Jurisdiction, ¶¶ 30, 36, 150, 156, 286.	accordance with the guidelines issued by the Board of Directors or the General Partner, as well as Section 1.b of the Contrarian Investment Management Agreement (C-0017). The foregoing is relevant to the case and substantial for its resolution, as it will clarify that the Claimants do not have ownership or control over the Notes through a “typical U.S. investment fund structure”, as they try to argue so they are not investors under NAFTA. (Counter-Memorial on Jurisdiction, ¶ 156).	Objection B and under IBA Rule 3.3(b) and 9.2(a).	others because the Claimants are investment managers that are part of a complex network of entities that raise funds from third parties. The “control” supposedly exercised by the Claimants is not clear and is undoubtedly shared with other entities. Indeed, the investment agreements confirm that the Claimants’ activities as investment managers are subject to review by other entities. C-009, ¶ 3. The documents are necessary to fully understand whether there is “control” as Claimants allege.	
11	The Opportunities statutes.	- Counter Memorial on Jurisdiction ¶ 35 y ¶ 29. - Sandpiper Limited Articles of Association. C-0015.	<i>See</i> General Justification B The Claimants submitted Sandpiper’s bylaws as evidence of its shareholding structure along with their Counter-	Claimants confirm that “bylaws” requested for Cyrus Opportunities Master Fund II, L.P. are already in Respondent’s possession. <i>See</i> C-0071 (Memorandum of Association of Cyrus Opportunities Master Fund II, Ltd.). Based on the	Mexico withdraws this Request.	Request withdrawn.

		<p>Memorial on Jurisdiction as C-0015.</p> <p>The Claimants did not submit a similar document for Opportunities, and their claims about its shareholding structure are not supported by any evidence. The requested documents would confirm these statements and clarify who are the true owners of Opportunities, which is relevant to Objection 2.</p> <p>Additionally, the documents required in Request 11 are relevant and material to this case, because they will demonstrate whether the Claimants have standing to bring claims against Mexico, pursuant to NAFTA, and whether they do in fact control the Notes. Both aspects are part of Objections 2, 3, 4 and 5.</p>	<p>organizational structure of Opportunities’ Fund (in contrast to Sandpiper) – a limited partnership as opposed to a limited company, this is the parallel organizational document requested and no further documentation exists within the scope of Respondent’s request.</p> <p>For completeness, Claimants also provide in the scope of this production the Sixth Amended and Restated Limited Partnership Agreement of Cyrus Opportunities Fund II, L.P., which provides the organizational structure for the Funds’ domestic feeder, Cyrus Opportunities Fund II, L.P. <i>See</i> Counter-Memorial at ¶ 29.</p>		
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12	<p>All documents and communications in the custody or control of the Claimants that discuss, reference or record (in future, present or past tense) the exchange of the Notes between Contrarian Emerging Markets, L.P. and Sandpiper on March 13, 2023.</p> <p>The timeframe for this request is from September 27, 2022 to April 1, 2023.</p> <p>For clarity, the scope of “Claimants’ custody or control,” as noted above, includes custody or control of any entity purportedly controlled by Claimants, including Opportunities, Sandpiper, Contrarian Emerging Markets,</p>	<ul style="list-style-type: none"> - COUNER Memorial on Jurisdiction ¶¶ 263, 281-282. - Memorial on Jurisdiction, ¶ 69. - Final Offer Circular of TV Azteca R-0016. - Indenture held between TV Azteca, BNY and BNYM LB on August 9, 2017. C-0006. 	<p><i>See</i> General Justification C</p> <p>Mexico has raised several objections based on Sandpiper’s acquisition of the Notes on March 13, 2023. Specifically, the Tribunal lacks <i>ratione temporis</i> jurisdiction over Sandpiper and its investment because Sandpiper acquired the Notes after the default occurred (Objection 6) and, separately, Contrarian lacks standing to bring claims against Mexico because Sandpiper was not a party in the Mexican legal proceedings (Objection 8).</p> <p>Contrarian opposes these objections by asserting that another subsidiary controlled by Contrarian, Contrarian Emerging Markets, L.P., transferred the Notes to Sandpiper on March 13, 2023 after being named in the</p>	<p>Claimants object to this request under IBA Rule 3.3(c)(i) because documents establishing Claimants’ control of the Notes are already in Respondent’s possession. Claimants previously produced documents that establish the ownership chain between Contrarian Emerging Markets, L.P. and Sandpiper. <i>See</i> Counter-Memorial on Jurisdiction at ¶ 281-282; C-0013; C-0014; C-0017; C-0018.</p> <p>Furthermore, consistent with General Objection B and under IBA Rule 3.3(b) and 9.2(a) Claimants further object to this request because it is not relevant or material to the outcome of the case. The documents governing the legal transfer of the Notes on the secondary market, as provided above, are not relevant to Claimants’ eligibility to bring this claim as investors under NAFTA. <i>See</i> Counter-</p>	<p>Mexico responds to the Claimant’s objection based on:</p> <ul style="list-style-type: none"> - General Reply B, since the documents are relevant and material for the outcome of the case. - General Reply C, since the requested documents are not in the possession or custody of the Respondent. <p>The requested documents are relevant and material to various objections raised by Mexico. Claimants’ response is misplaced and inadequate. Their control argument is irrelevant to whether the Notes were unlawfully transferred.</p> <p>The control is equally irrelevant to determining whether Sandpiper acquired the Notes after the default, a fact that relates to issues regarding the Tribunal’s <i>ratione temporis jurisdiction</i> and Contrarian’s standing. The</p>	<p>Granted, as potentially relevant to Objections 6 and 8.</p>
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	L.P., Cyrus Opportunities Fund II, L.P., Cyrus Opportunities Fund II, Ltd., and Contrarian Funds L.L.C.		September 2022 Injunction. Assuming that is the case, then Contrarian - a US entity - acquired the Notes illegally and in violation of the US ownership prohibition. Additionally, the requested documents will clarify whether the Claimant (Contrarian) transferred the notes to Sandpiper to avoid the effects of the Injunction.	Memorial on Jurisdiction at ¶ 168.	Claimants rely on the fact that another entity in their complex network – Contrarian Emerging Markets – transferred the Notes to Sandpiper, but notably the Claimants do not control Contrarian Emerging Markets, meaning that the Claimants did not own or have “control” of the Notes at the time of default.	
13	Internal documents and copies of all contracts, including amending agreements, entered into between Mr. Smith and representatives of the Claimants, the Claimants, including Opportunities, Sandpiper, Contrarian Emerging Markets, L.P., Cyrus Opportunities Fund	- Witness Statement of Mr. Smith.	As explained by the Respondent in General Justification D, the requested documents are relevant and substantial to the outcome of the case. The requested documents will make it possible to know the compensation received by the Claimants’ witness by the Claimants’ legal representatives, or by the Claimants themselves or any of the related entities	Claimants object to this request under IBA Rule 9.2(b) on the basis of privileged communications between Mr. Smith and Claimants’ counsel regarding this matter. Furthermore, consistent with General Objection B, request is irrelevant and immaterial to the outcome of the dispute under IBA Rule 3.3(b) and 9.2(a) because it is not prohibited under the Procedural Order or governing rules	Mexico responds to the Claimant’s objection based on: - General Reply D because the documents do not refer to documentation involving estoppel or privilege. The Claimants cannot assert that certain documents enjoy the protection of a “privilege” without describing the nature of that privilege or its legal basis. If the	Refused, as privileged.

	<p>II, L.P., Cyrus Opportunities Fund II, Ltd., and Contrarian Funds L.L.C. regarding his participation as a witness in this arbitration.</p> <p>This request is limited to the period between June 30, 2023 and today.</p>		<p>described in footnote 1 of this RfD. Likewise, the requested documentation will allow us to know if Mr. Smith is incurring any conflict of interest.</p>	<p>for counsel to enter into contractual arrangements to compensate for the time expended by witnesses to prepare their testimony. This request redundant to the disclosure statements already provided in Mr. Smith’s statement pursuant to Procedural Order No. 1, Art. 17.7.</p>	<p>Claimants seek to assert privilege, Mexico requests the presentation of a confidential document register (i.e., privilege register) each particular document, the applicable Request, the date of the document, its author or sender, the recipient, a description of the matter or matters identified and the reason for the privilege.</p> <p>Furthermore, any compensation from Claimants to Mr. Smith and/or his law firm is relevant to the weight of their testimony. This is true whether such compensation takes the form of financial compensation or future business dealings. Neither Mr. Smith’s witness statement nor the Counter-Memorial on Jurisdiction addresses the compensation Mr. Smith or his law firm will receive as a result of his testimony.</p>	
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14	<p>Documents, reports, written accounts, notes that would have been in Mr. Smith’s possession at the time of preparing his Witness Statement related to the negotiation of Chapter 14 of the USMCA, including those on Annex 14-C.</p>	<p>- Witness Statement of Mr. Smith.</p>	<p>Derived from the documentary annexes that accompanied Mr. Smith’s Witness Statement, it is certain that the Claimant’s witness has in his possession various documents particularly related to the negotiation of Chapter 14 of the USMCA, including Annex 14-C, despite no longer being a public official of the Ministry of Economy since January 2019.</p> <p>The requested documents are relevant and substantial for the case as they will allow the interpretation of the Claimants as well as Mr. Smith to be confirmed.</p>	<p>Claimants object to this request consistent with General Objection C and IBA Rule 3.3(c)(i) because the requested documents are wholly in the possession and control of Respondent. As stated in the Witness statement, Mr. Smith produced the sole documents examined and relied upon in connection with his testimony in Exhibits KS-0001 – KS-0005. However, for avoidance of doubt, Mr. Smith does not maintain other documentation relating to the negotiating history relevant to this dispute.</p> <p>Indeed, Claimants expect that Respondent will produce these documents in connection with Claimants’ document requests relating to these jurisdictional objections and the interpretation of USMCA Annex 14-C.</p>	<p>Mexico responds to the Claimant’s objection based on:</p> <p>- General Reply C, since the requested documents are not in the possession or custody of the Respondent.</p> <p>Mexico recognizes the Claimants’ assertion that Mr. Smith “does not maintain other documentation relating to the negotiating history relevant to this dispute.” It is obvious that the Claimants have other documents relevant to the Chapter 14 negotiations. Their assertion about what is “relevant to the dispute” is based entirely on their own interests because the Claimants cannot determine for themselves which documents are relevant and which are not.</p> <p>For this reason, Mexico requested all documents in Mr. Smith’s possession</p>	<p>Refused as not relevant to the Objections.</p>
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					related to the negotiation of Chapter 14 of the USMCA. The other documents in Mr. Smith's possession will demonstrate that Mr. Smith selectively chose documents that support his position and ignored other documents that do not support his position. Mexico claims it does not have access to Mr. Smith's files.	
15	Internal documents and copies of all contracts, including amending agreements, entered into between Mr. Smith and the representatives of the Claimants, i.e. Akin Gump Strauss Hauer & Feld LLP) that demonstrate the employment relationship or provision of services between them or the firm to which the Claimants' witness belongs (Agon	- Witness Statement of Mr. Smith	See General Justification D The Respondent is aware that the firm that represents the Claimants in this arbitration (Akin Gump Strauss Hauer & Feld LLP) and the firm in which Mr. Smith works (Agon Derecho y Economía) have collaborated in different forums and cases. It is even known that they have worked on a case that recently ended on December 14, 2022, with the decision in that case being published a few months before the	Claimants object to this request in connection with General Objection A and as excessively broad under IBA Rule 3.3(a)(i), and as irrelevant and immaterial to the outcome of the case under IBA Rule 3.3(b) and 9.2(a). This request redundant to the disclosure statements already provided in Mr. Smith's statement pursuant to Procedural Order No. 1, Art. 17.7.	Mexico incorporates <i>mutatis mutandis</i> the arguments put forward in the Reply to the Objection to Request 13.	Refused, as not relevant to the Objections.

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	Derecho y Economía). This request is limited to the period from January 1, 2019 to date.		Claimants' Notice of Intent was submitted (June 28, 2023). The requested documents are relevant and substantial for the resolution of the case since they will allow us to know if Mr. Smith is incurring any conflict of interest.			
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