

CEMEX SAB DE CV
Form F-3ASR
September 08, 2009
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As filed with the Securities and Exchange Commission on September 8, 2009

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM F-3

REGISTRATION STATEMENT

UNDER THE SECURITIES ACT OF 1933

CEMEX, S.A.B. de C.V.

(Exact name of Registrant as specified in its charter)

United Mexican States
(State or other jurisdiction of
incorporation or organization)

N.A.
(Translation of Registrant's name into English)

N.A.
(I.R.S. Employer
Identification No.)

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CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin Zozaya #325
Colonia Valle del Campestre, Garza García
Nuevo León, México 66265
(011-5281) 8888-8888
(Address and telephone number of Registrant s
principal executive offices)

Corporate Creations Network Inc.
1040 Avenue of the Americas # 2400
New York, NY 10018
New York County
(845)-510-9655
(Name, address and telephone number
of agent for service)

Copy of all communications, including communications sent to the agent for service, to:

Robert M. Chilstrom, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this form are to be offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, please check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.C. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.C. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered⁽¹⁾	Proposed maximum offering price per unit⁽¹⁾⁽²⁾	Proposed maximum aggregate offering price⁽¹⁾⁽²⁾	Amount of registration fee⁽³⁾
Ordinary Participation Certificates (<i>Certificados de Participación Ordinarios</i> (CPOs)), each representing two Series A shares and one Series B share of CEMEX, S.A.B. de C.V. ⁽⁴⁾				
Series A shares of CEMEX, S.A.B. de C.V. ⁽⁵⁾				
Series B shares of CEMEX, S.A.B. de C.V. ⁽⁵⁾				

(1) Not applicable pursuant to Form F-3 General Instruction II(F).

(2) An indeterminate aggregate initial offering price or number of the securities is being registered as may from time to time be issued at indeterminate prices.

(3) In accordance with Rule 456(b) and Rule 457(r), the registrant is deferring payment of the entire registration fee.

(4) American Depositary Shares (ADSs) issuable on deposit of the CPOs, each ADS representing the right to receive ten CPOs, have been registered pursuant to a separate Registration Statement on Form F-6 (Reg. No. 333-135725).

(5) The Series A Shares and Series B Shares comprise the CPOs registered hereby and are not being offered separately.

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Prospectus

CEMEX, S.A.B. de C.V.

CPOs

ADSs

CEMEX, S.A.B. de C.V. may offer from time to time (1) Ordinary Participation Certificates (*Certificados de Participación Ordinarios*), or CPOs, each CPO representing two Series A shares and one Series B share of its common stock; or (2) American Depositary Shares, or ADSs, each ADS representing the right to receive ten CPOs.

We may offer the securities separately or together, in separate series or classes and in amounts, at prices and on terms to be described in one or more supplements to this prospectus as well as the documents incorporated or deemed to be incorporated by reference in this prospectus. This prospectus describes only some of the general terms that may apply to these securities. The specific terms of any securities to be offered, and any other information relating to a specific offering, will be set forth in a supplement to this prospectus, in other offering material related to the securities, or in one or more documents incorporated or deemed to be incorporated by reference in this prospectus. You should read this prospectus and any prospectus supplement, as well as the documents incorporated or deemed to be incorporated by reference in this prospectus, carefully before you invest.

Investing in these securities involves risks. See Risk Factors in our most recent Annual Report on Form 20-F, which is incorporated by reference in this prospectus.

We may offer and sell these securities directly to purchasers, through agents designated from time to time by us, or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of any of these securities, their names, and any applicable purchase price, fee, commission or discount arrangement between or among them, will be set forth in the applicable prospectus supplement or other offering materials.

Our CPOs are listed on the Mexican Stock Exchange (*Bolsa Mexicana de Valores*) under the symbol CEMEX CPO. Our ADSs are listed on the New York Stock Exchange under the symbol CX.

This prospectus may not be used to sell securities unless accompanied by a prospectus supplement.

Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus or any accompanying prospectus supplement is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is September 8, 2009.

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About this prospectus

This prospectus is part of a registration statement that we filed with the U.S. Securities and Exchange Commission, or SEC, using a shelf registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering and the manner in which the securities will be offered. The prospectus supplement may also add, update, or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement or other offering materials together with additional information described under the headings "Where you can find more information" and "Incorporation by reference."

You should rely only on the information contained or incorporated by reference in this prospectus and in any supplement to this prospectus or, if applicable, any other offering materials we may provide you. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information appearing in this prospectus, the accompanying prospectus supplement or any other offering materials is accurate only as of the date on their respective covers, and you should assume that the information appearing in any document incorporated or deemed to be incorporated by reference in this prospectus or any accompanying prospectus supplement is accurate only as of the date that document was filed with the SEC. Our business, financial condition, results of operations and prospects may have changed since those dates.

In addition, this prospectus does not contain all the information set forth in the registration statement, including exhibits, that we have filed with the SEC on Form F-3 under the U.S. Securities Act of 1933, as amended. Statements made in this prospectus as to the contents of any contract, agreement or other document are not necessarily complete. We have filed certain of these documents as exhibits to our registration statement and we refer you to those documents. Each statement in this prospectus relating to a document filed as an exhibit is qualified in all respects by the filed exhibit.

References in this prospectus to CEMEX, we, us or our refer to CEMEX, S.A.B. de C.V., a Mexican publicly traded stock corporation with variable capital (*sociedad anónima bursátil de capital variable*), and, unless the context otherwise requires, its consolidated subsidiaries.

References in this prospectus to U.S.\$ and Dollars are to U.S. dollars, and, unless otherwise indicated, references to Ps and Pesos are to Mexican pesos.

Where you can find more information

We file reports, including annual reports on Form 20-F, and other information with the SEC pursuant to the rules and regulations of the SEC that apply to foreign private issuers. You may read and copy any materials filed with the SEC at its Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Our SEC filings are also available over the Internet at the SEC's website at <http://www.sec.gov>. Our ADSs are listed on the New York Stock Exchange under the symbol CX. These reports and other information can also be read at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

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Incorporation by reference

The SEC allows us to incorporate by reference information into this prospectus. This means that we can disclose important information to you by referring you to another document filed by us with the SEC. Any information referenced this way is considered part of this prospectus, and any information that we file after the date of this prospectus with the SEC will automatically update and supersede this information. We incorporate by reference into this prospectus the following documents:

Our annual report on Form 20-F for the year ended December 31, 2008, filed with the SEC on June 30, 2009;

Our report on Form 6-K filed with the SEC on July 7, 2009; and

The description of our ADSs, CPOs, series A shares and series B shares contained in Amendment No. 1 to our registration statement on Form 8-A/A (SEC File No. 1-14946), filed with the SEC on July 1, 2005, and any amendment or report filed for the purpose of updating such descriptions.

In addition, any future filings on Form 20-F made with the SEC under the U.S. Securities Exchange Act of 1934, as amended, after the date of this prospectus and prior to the termination of the offering of the securities made under this prospectus, and any future reports on Form 6-K furnished by us to the SEC during such period or portions thereof that are identified in such forms as being incorporated into the registration statement of which this prospectus forms a part, shall be considered to be incorporated in this prospectus by reference and shall be considered a part of this prospectus from the date of filing of such documents.

We will provide, without charge upon written or oral request, a copy of any and all of the information that has been incorporated by reference in this prospectus and that has not been delivered with this prospectus. Requests should be directed to Eduardo Rendón, Investor Relations, CEMEX, S.A.B. de C.V., Av. Ricardo Margáin Zozaya #325, Colonia Valle del Campestre, Garza García, Nuevo León, México 66265, Tel: +011-5281-8888-8888 or toll-free: 1-877-729-6973.

Enforceability of civil liabilities

We are a publicly traded stock corporation with variable capital (*sociedad anónima bursátil de capital variable*) organized under the laws of Mexico. Substantially all our directors and officers and some of the experts named in this prospectus reside in Mexico, and all or a significant portion of the assets of those persons may be, and the majority of our assets are, located outside the United States. As a result, it may not be possible for investors to effect service of process within the United States upon such persons or to enforce against them or against us in U.S. courts judgments predicated upon the civil liability provisions of the federal securities laws of the United States. We have been advised by our General Counsel, Ramiro G. Villarreal, that there is doubt as to the enforceability in Mexico, either in original actions or in actions for enforcement of judgments of U.S. courts, of civil liabilities predicated on the U.S. federal securities laws.

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Cautionary statement regarding forward-looking statements

This prospectus, including the information incorporated by reference, contains forward-looking statements within the meaning of the U.S. federal securities laws. We intend these forward-looking statements to be covered by the safe harbor provisions for forward-looking statements in the U.S. federal securities laws. In some cases, these statements can be identified by the use of forward-looking words such as may, should, could, anticipate, estimate, expect, plan, believe, predict, potential and similar words. These forward-looking statements reflect our current expectations and projections about future events based on our knowledge of present facts and circumstances and assumptions about future events. These statements necessarily involve risks and uncertainties that could cause actual results to differ materially from our expectations. Some of the risks, uncertainties and other important factors that could cause results to differ, or that otherwise could have an impact us or our subsidiaries, include:

the cyclical activity of the construction sector;

competition;

general political, economic and business conditions;

our ability to satisfy our obligations under the financing agreement recently entered into with our major creditors;

weather conditions;

natural disasters and other unforeseen events; and

the other risks and uncertainties described under Risk Factors in our most recent Annual Report on Form 20-F, which is incorporated by reference in this prospectus.

Readers are urged to read this entire prospectus, including the information incorporated by reference, and carefully consider the risks, uncertainties and other factors that affect our business. The information contained or incorporated by reference in this prospectus is subject to change without notice, and we are not obligated to publicly update or revise forward-looking statements. Readers should review future reports filed by us with the SEC.

Market data

This prospectus and the documents incorporated in this prospectus by reference also include statistical data regarding the production, distribution, marketing and sale of cement, ready-mix concrete, clinker and aggregates. We generated some of these data internally, and some were obtained from independent industry publications and reports that we believe to be reliable sources. We have not independently verified these data nor sought the consent of any organizations to refer to their reports in this prospectus and the documents incorporated in this prospectus by reference.

About CEMEX, S.A.B. de C.V.

We are the third largest cement company in the world, based on annual installed cement production capacity as of June 30, 2009 of approximately 97.6 million tons. We are the largest ready-mix concrete company in the world with annual sales volumes of approximately

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77.3 million cubic meters and one of the largest aggregates companies in the world with annual sales volumes of approximately 241 million tons, in each case based on our annual sales volumes in 2008. We are also one of the world's largest traders of cement and clinker, having traded approximately nine million tons of cement and clinker in 2008. We are a holding company primarily engaged, through our operating subsidiaries, in the production, distribution, marketing and sale of cement, ready-mix concrete, aggregates and clinker throughout the world.

We are a global cement manufacturer with operations in North America, Europe, South America, Central America, the Caribbean, Africa, the Middle East, Australia and Asia. As of June 30, 2009, we had total assets of approximately Ps599,037 million (U.S.\$45,450 million) and an equity market capitalization of approximately Ps99,856 million (U.S.\$7,576 million).

As of June 30, 2009, our assets, cement plants and installed capacity, by region, were as set forth below. Installed capacity, which refers to theoretical annual production capacity, represents gray cement equivalent capacity, which counts each ton of white cement capacity as approximately two tons of gray cement capacity.

	Assets after eliminations (in billions of Pesos)	Number of cement plants	As of June 30, 2009 Installed cement production capacity (millions of tons per annum)
North America			
Mexico	Ps 69	15	29.2
United States	260	14	18.0
Europe			
Spain	56	8	11.4
United Kingdom	40	3	2.8
Rest of Europe(1)	60	8	13.1
South America, Central America and the Caribbean(2)			
	31	11	11.2
Africa and the Middle East(3)	19	1	5.3
Australia and Asia(4)	44	4	6.6
Cement and Clinker Trading Assets and Other Operations	20	N/A	N/A

The above table includes our proportional interest in the installed capacity of companies in which we hold a minority interest.

(1) Includes our subsidiaries in Germany, France, Ireland, Poland, Croatia, Austria, Hungary, the Czech Republic, Latvia and other assets in the European region, and, for purposes of the columns labeled "Assets" and "Installed Cement Production Capacity," includes our 33% interest, as of June 30, 2009, in a Lithuanian cement producer that operated one cement plant with annual installed capacity of 1.3 million cement tons as of June 30, 2009.

(2) Includes our subsidiaries in Colombia, Costa Rica, the Dominican Republic, Panama, Nicaragua, Puerto Rico, Guatemala, Argentina and other assets in the Caribbean region.

(3) Includes our subsidiaries in Egypt, the United Arab Emirates and Israel.

(4)

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Australia includes 0.9 million cement tons of annual installed capacity corresponding to our 25% stake in the Cement Australia Holdings Pty Limited joint venture, or Cement Australia, which operates four cement plants, with total annual installed capacity of approximately 3.8 million cement tons per year. On June 15, 2009, we announced our agreement to sell all our Australian operations to Holcim Ltd, or Holcim.

- (4) Asia includes our subsidiaries in the Philippines, Thailand, Malaysia, Bangladesh and other assets in the Asian region.

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We are a publicly traded stock corporation with variable capital (*sociedad anónima bursátil de capital variable*) organized under the laws of Mexico, with our principal executive offices at Av. Ricardo Margáin Zozaya #325, Colonia Valle del Campestre, Garza García, Nuevo León, México 66265. Our main phone number is (011-5281) 8888-8888. CEMEX's agent for service, exclusively for actions brought by the SEC pursuant to the requirements of the United States federal securities laws, is Corporate Creations Network Inc., 1040 Avenue of the Americas #2400, New York, NY 10018.

Use of proceeds

Unless otherwise set forth in a prospectus supplement, we intend to use the proceeds of any securities sold for general corporate purposes, including debt reduction, working capital and the strategic growth of our business as opportunities arise.

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Description of common stock

The following description of our common stock is a summary of the material terms of our by-laws (*estatutos sociales*) and applicable Mexican law in effect as of the date of this prospectus. Because it is a summary, it does not describe every aspect of our common stock, our by-laws or Mexican law and may not contain all of the information that is important to you. References to provisions of our by-laws are qualified in their entirety by reference to the full by-laws, an English translation of which has been filed as an exhibit to the registration statement of which this prospectus is a part. See [Where you can find more information](#) for information on how to obtain copies of our by-laws.

General

Pursuant to the requirements of Mexican corporation law, our articles of association and by-laws (*estatutos sociales*) have been registered with the Mercantile Section of the Public Register of Property and Commerce in Monterrey, Mexico, under entry number 21, since June 11, 1920.

We are a holding company engaged, through our operating subsidiaries, primarily in the production, distribution, marketing and sale of cement, ready-mix concrete and clinker. Our objectives and purposes can be found in article 2 of our by-laws.

We have two series of common stock, the series A common stock, with no par value, or A shares, which can only be owned by Mexican nationals, and the series B common stock, with no par value, or B shares, which can be owned by both Mexican and non-Mexican nationals. Our by-laws state that the A shares may not be held by non-Mexican individuals, corporations, groups, units, trusts, associations or governments that are foreign or have participation by foreign governments or their agencies. Our by-laws also state that the A shares shall at all times account for a minimum of 64% of our total outstanding voting stock and that our B shares shall at all times account for a minimum of 36% of our total outstanding voting stock. Other than as described herein, holders of the A shares and the B shares have the same rights and obligations.

In 1994, we changed from a fixed capital corporation to a variable capital corporation in accordance with Mexican corporation law. As a result, we established a fixed capital account and a variable capital account and issued one share of variable capital stock of the same series for each eight shares of fixed capital stock held by any shareholder. Each of our fixed and variable capital accounts is comprised of A shares and B shares. Under the Mexican securities market law (*Ley del Mercado de Valores*) and our by-laws, holders of shares representing variable capital are not entitled to withdraw those shares.

Shareholder authorization is required to increase or decrease either the fixed capital account or the variable capital account. Shareholder authorization to increase or decrease the fixed capital account must be obtained at an extraordinary meeting of shareholders. Shareholder authorization to increase or decrease the variable capital account must be obtained at an ordinary general meeting of shareholders.

As described below under [Description of CPOs](#), each CPO consists of two A shares and one B share. As of December 31, 2008, approximately 97.2% of our outstanding share capital was represented by CPOs, a portion of which is represented by ADSs.

On September 15, 1999, our shareholders approved a stock split, and for every one of our shares of any series we issued two A shares and one B share. Concurrently with this stock split, we also

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consummated an exchange offer to exchange new CPOs and new ADSs representing the new CPOs for our then existing A shares, B shares and ADSs, and converted our then existing CPOs into the new CPOs.

On June 1, 2001, the Mexican securities market law was amended, among others, to increase the protection granted to minority shareholders of Mexican listed companies and to commence bringing corporate governance procedures of Mexican listed companies in line with international standards.

On February 6, 2002, the Mexican securities authority (*Comisión Nacional Bancaria y de Valores*) issued an official communication authorizing the amendment of our by-laws to incorporate additional provisions to comply with the new provisions of the Mexican securities law. Following approval from our shareholders at our 2002 annual shareholders meeting, we amended and restated our by-laws to incorporate these additional provisions, which consist of, among other things, protective measures to prevent share acquisitions, hostile takeovers, and direct or indirect changes of control. As a result of the amendment and restatement of our by-laws, the expiration of our corporate term of existence was extended from 2019 to 2100.

On March 19, 2003, the Mexican securities authority issued new regulations designed to (i) further implement minority rights granted to shareholders by the Mexican securities law and (ii) simplify and consolidate in a single document provisions relating to securities offerings and periodic reports by Mexican listed companies.

On April 24, 2003, our shareholders approved changes to our by-laws, incorporating additional provisions and removing some restrictions. The changes that are still in force are as follows:

The limitation on our variable capital was removed. Formerly, our variable capital was limited to ten times our minimum fixed capital.

Increases and decreases in our variable capital now require the notarization of the minutes of the ordinary general shareholders meeting that authorize such increase or decrease, as well as the filing of these minutes with the Mexican National Securities Registry (*Registro Nacional de Valores*), except when such increase or decrease results from stock repurchases.

The cancellation of registration of our shares in the Securities Section of the Mexican National Securities Registry now involves an amended procedure, which is described below under Repurchase Obligation. In addition, any amendments to the article containing these provisions no longer require the consent of the Mexican securities authority and 95% approval by shareholders entitled to vote.

On December 30, 2005, a Mexican securities market law was published to continue bringing corporate governance requirements of Mexican listed companies in line with international standards. This new law includes provisions increasing disclosure information requirements, improving minority shareholder rights, and strengthening corporate governance standards including the introduction of new requirements and fiduciary duties (duties of care and loyalty), applicable to each director, officer, external auditor and major shareholder of publicly traded companies. The law also provides that each member of the audit committee must be an independent director, and requires the creation of corporate governance committees integrated by independent directors as well. In addition, the law clarifies directors duties, specifies safe harbors for directors actions, clarifies what is deemed as a conflict of interest and clarifies what are the confidentiality obligations for directors.

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Under the Mexican securities market law, we were required to adopt specific amendments to our by-laws within 180 days of the effective date of the new law. Following approval from our shareholders at our 2005 annual shareholders meeting held on April 27, 2006, we amended and restated our by-laws to incorporate these amendments. The amendments to our by-laws became effective on July 3, 2006. The most significant of these amendments were as follows:

The change of our corporate name from CEMEX, S.A. de C.V. to CEMEX, S.A.B. de C.V., which means that we are now called a publicly traded company (*sociedad anónima bursátil* or S.A.B.).

The creation of a corporate practices committee, which is a new committee of our board of directors and which is comprised exclusively of independent directors.

The elimination of the position of statutory examiner (*comisario*) and the assumption of its responsibilities by the board of directors through the audit committee and the corporate practices committee, as well as through the external auditor who audits our financial statements.

The express attribution of certain duties (such as the duty of loyalty and the duty of care) and liabilities on members of the board of directors as well as on certain senior executive officers.

The implementation of a mechanism for claims of a breach of a director's or officer's duties, to be brought by us or by holders of 5% or more of our shares.

The chief executive officer is now the person in charge of managing the company; previously, this was the duty of the board of directors. The board of directors now supervises the chief executive officer.

Shareholders are given the right to enter into certain agreements with other shareholders.

At a general extraordinary meeting of shareholders held on April 28, 2005, our shareholders approved a two-for-one stock split, which became effective on July 1, 2005. In connection with this stock split, each of our existing A shares was surrendered in exchange for two new A shares, and each of our existing B shares was surrendered in exchange for two new B shares. Concurrent with this stock split, we authorized the amendment of the CPO trust agreement pursuant to which our CPOs are issued to provide for the substitution of two new CPOs for each of our existing CPOs, with each new CPO representing two new A shares and one new B share. The number of our existing ADSs did not change as a result of the stock split. Instead, the ratio of CPOs to ADSs was modified so that each existing ADS represented ten new CPOs following the stock split and the CPO trust amendment.

At the 2005 annual shareholders meeting held on April 27, 2006, our shareholders approved a new stock split, which became effective on July 17, 2006. In connection with this new two-for-one stock split, each of our existing A shares was surrendered in exchange for two new A shares, and each of our existing B shares was surrendered in exchange for two new B shares. Concurrent with this stock split, we authorized the amendment of the CPO trust agreement pursuant to which our CPOs are issued to provide for the substitution of two new CPOs for each of our existing CPOs, with each new CPO representing two new A shares and one new B share. In connection with the stock split and at our request, Citibank, N.A., as depositary for the ADSs, distributed one additional ADS for each ADS outstanding as of the record date for the stock split. The ratio of CPOs to ADSs did not change as a result of the stock split; each ADS continued to represent ten CPOs following the stock split and the CPO trust amendment. The proportional equity interest participation of existing shareholders did not change as a result of this stock split.

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As of December 31, 2008, our capital stock consisted of 26,373,758,769 issued shares. As of December 31, 2008, A shares represented 67% of our capital stock, or 17,582,505,846 shares, of which 16,726,263,082 shares were subscribed and paid, 432,036,438 shares were treasury shares and 424,206,326 shares were issued pursuant to our employee stock option plans and subscribed to by Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, or Banamex, as trustee thereunder but had not yet been paid. These shares have been and will continue to be gradually paid upon exercise of the corresponding stock options. As of December 31, 2008, B shares represented 33% of our capital stock, or 8,791,252,923 shares, of which 8,363,131,541 shares were subscribed and paid, 216,018,219 shares were treasury shares and 212,103,163 shares were issued pursuant to our employee stock option plans and subscribed to by Banamex, as trustee thereunder but had not yet been paid. These shares have been and will continue to be gradually paid upon exercise of the corresponding stock options. Of the total of our A shares and B shares outstanding as of December 31, 2008, 13,068,000,000 shares corresponded to the fixed portion of our capital stock and 13,305,758,769 shares corresponded to the variable portion of our capital stock.

We did not declare a dividend for fiscal year 2008. At our 2008 annual shareholders meeting, held on April 23, 2009, our shareholders approved a recapitalization of retained earnings. New CPOs issued pursuant to the recapitalization were allocated to shareholders on a pro-rata basis. As of August 31, 2009, a total of 1,003,403,319 shares, representing 99.98% of all shares authorized for issuance at the shareholders meeting, had been issued. CPO holders received one new CPO for each 25 CPOs held and ADS holders received one new ADS for each 25 ADSs held. There was no cash distribution and no entitlement to fractional shares, fractional ADSs or fractional CPOs.

On September 4, 2009, we held an extraordinary general shareholders meeting in which our shareholders approved an increase in the variable portion of our capital stock of up to 4.8 billion shares (equivalent to 1.6 billion CPOs or 160 million ADSs). Pursuant to the resolution approved by our shareholders, the subscription and payment of the new shares represented by CPOs may occur through a public offer of CPOs and/or issuance of convertible bonds within a period of 24 months.

Changes in capital stock and preemptive rights

Subject to certain exceptions referred below, our by-laws allow for a decrease or increase in our capital stock if it is approved by our shareholders at a shareholders meeting. Additional shares of our capital stock, having no voting rights or limited voting rights, are authorized by our by-laws and may be issued upon the approval of our shareholders at a shareholders meeting, with the prior approval of the Mexican securities authority.

Our by-laws provide that shareholders have preemptive rights with respect to the class and in proportion to the number of shares of our capital stock they hold, in connection with any capital increase in the number of outstanding A shares, B shares, or any other existing series of shares, as the case may be. Subject to certain requirements, under article 53 of the Mexican securities market law, this preemptive right to subscribe is not applicable to increases of our capital through public offers or through the issuance of our own shares previously acquired by us. Preemptive rights give shareholders the right, upon any issuance of shares by us, to purchase a sufficient number of shares to maintain their existing ownership percentages. Preemptive rights must be exercised within the period and under the conditions established for that purpose by the

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shareholders, and our by-laws and applicable law provide that this period must be 15 days following the publication of the notice of the capital increase in the *Periódico Oficial del Estado de Nuevo León*.

Holders of ADSs that are U.S. persons or are located in the United States may be restricted in their ability to participate in the exercise of such pre-emptive rights. See Item 3 Key Information Risk Factors Preemptive rights may be unavailable to ADS holders in our annual report on Form 20-F for the year ended December 31, 2008.

Pursuant to our by-laws, significant acquisitions of shares of our capital stock and changes of control of CEMEX require prior approval from our board of directors. Our board of directors must authorize in advance any transfer of, or creation of any encumbrance or lien on, voting shares of our capital stock that would result in any person or group becoming a holder of 2% of more of our shares. Our board of directors shall consider the following when determining whether to authorize such transfer of voting shares: a) the type of investors involved; b) whether the acquisition would result in the potential acquirer exercising a significant influence or being able to obtain control; c) whether all applicable rules and our by-laws have been observed by the potential acquirer; d) whether the potential acquirers are our competitors and whether there is a risk of affecting market competition, or the potential acquirers could have access to confidential and privileged information; e) the morality and economic solvency of the potential acquirers; f) the protection of minority rights and the rights of our employees; and g) whether an adequate base of investors would be maintained. If our board of directors denies the authorization, or the requirements established in our by-laws are not complied with, the persons involved in the transfer shall not be entitled to exercise the voting rights corresponding to the transferred shares, and such shares shall not be taken into account for the determination of the quorums of attendance and voting at shareholders meetings, nor shall the transfers be recorded in the shareholder ledger and the registry undertaken by S.D. Indeval, Institución para el Depósito de Valores, S.A. de C.V., or Indeval, the Mexican securities depository, shall not have any effect.

Any acquisition of shares of our capital stock representing 30% or more of our capital stock by a person or group of persons requires prior approval from our board of directors and, in the event approval is granted, the acquiror has an obligation to make a public offer to purchase all the outstanding shares of our capital stock. In the event the requirements for significant acquisitions of shares of our capital stock are not met, the persons acquiring such shares will not be entitled to any corporate rights with respect to such shares, such shares will not be taken into account for purposes of determining a quorum for shareholders meetings, we will not record such persons as holders of such shares in our shareholder ledger, and the registry undertaken by the Indeval shall not have any effect.

Our by-laws require the stock certificates representing shares of our capital stock to make reference to the provisions in our by-laws relating to the prior approval of the board of directors for significant share transfers and the requirements for recording share transfers in our shareholder ledger. In addition, shareholders are responsible for informing us within five business days whenever their shareholdings exceed 5%, 10%, 15%, 20%, 25% and 30% of the outstanding shares of a particular class of our capital stock. We are required to maintain a shareholder ledger that records the names, nationalities and domiciles of all significant shareholders, and any shareholder that meets or exceeds these thresholds must be recorded in this ledger if such shareholder is to be recognized or represented at any shareholders meeting. If a shareholder fails to inform us of its shareholdings reaching a threshold as described above, we

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will not record the transactions that cause such threshold to be met or exceeded in our shareholder ledger, and such transaction will have no legal effect and will not be binding on us.

Our by-laws also require that our shareholders comply with legal provisions regarding acquisitions of securities and certain shareholders' agreements that require disclosure to the public.

Repurchase obligation

In accordance with Mexican securities regulations, we are obligated to make a public offer for the purchase of stock to our shareholders if our registration with the Mexican securities registry (*Registro Nacional de Valores*) is canceled, either by resolution of our shareholders or by an order of the Mexican securities authority. The minimum price at which we must purchase the stock is the higher of:

the weighted average price per share based on the weighted average trading price of our CPOs on the Mexican Stock Exchange during the latest period of 30 trading days preceding the date of the offer, for a period not to exceed six months; or

the book value per share, as reflected in the last quarterly report filed with the Mexican securities authority and the Mexican Stock Exchange.

Our board of directors shall prepare and disclose to the public through the Mexican Stock Exchange, within ten business days after the day the public offer begins, and after consulting the corporate practices committee and audit committee, its opinion regarding the price of the offer and any conflicts of interests that each of its members may have regarding such offer. This opinion may be accompanied by an additional opinion issued by an independent expert.

Following the cancellation of our registration with the Mexican securities registry, we must place in a trust set up for that purpose for a six-month period an amount equal to that required to purchase the remaining shares held by investors who did not participate in the offer.

Shareholders' meetings and voting rights

Shareholders' meetings may be called by:

our board of directors, the corporate practices committee or the audit committee;

shareholders representing at least 10% of the then outstanding shares of our capital stock, by requesting the chairman of our board of directors or our corporate practices committee or audit committee;

any shareholder (i) if no meeting has been held for two consecutive years or when the matters referred to in Article 181 of the General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*) have not been dealt with, or (ii) when, for any reason, the required quorum for valid sessions of the corporate practices committee and audit committee was not reached and the board of directors failed to make the appropriate provisional appointments; or

a Mexican court of competent jurisdiction, in the event our board of directors or the corporate practices committee or audit committee do not comply with the valid shareholders' request described above.

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Notice of shareholders meetings must be published in the official gazette for the State of Nuevo León, Mexico or any major newspaper published and distributed in the City of Monterrey, Nuevo León, Mexico. The notice must be published at least 15 days prior to the date of any shareholders meeting. Consistent with Mexican law, our by-laws further require that all information and documents relating to the shareholders meeting be available to shareholders from the date the notice of the meeting is published.

General shareholders meetings can be ordinary or extraordinary. At every general shareholders meeting, each qualified holder of A shares and B shares is entitled to one vote per share. Shareholders may vote by proxy duly appointed in writing. Under the CPO trust agreement, holders of CPOs who are not Mexican nationals cannot exercise voting rights corresponding to the A shares represented by their CPOs in which case, the CPO trustee will vote the underlying A shares in the same manner as the holders of the majority of the voting shares. See Description of our CPOs Voting of A shares.

An annual general ordinary shareholders meeting must be held during the first four months after the end of each of our fiscal years to consider the approval of a report of our board of directors regarding our performance and our financial statements for the preceding fiscal year and to determine the allocation of profits from the preceding year. In addition, our annual general ordinary shareholders meeting must:

review the annual reports of our corporate practices committee and audit committee, our chief executive officer, and our board of directors;

elect, remove, or substitute the members of our board of directors;

determine the level of independence of the members of our board of directors;

approve any transaction that represents 20% or more of our consolidated assets; and

resolve any issues not reserved for extraordinary shareholders meetings.

A general extraordinary shareholders meeting may be called at any time to deal with any of the matters specified by Article 182 of the General Law of Commercial Companies, which include, among other things:

extending our corporate existence;

our voluntary dissolution;

increasing or reducing our fixed capital stock;

changing our corporate purpose;

changing our country of incorporation;

changing our form of organization;

a proposed merger;

issuing preferred shares;

redeeming our own shares;

any amendment to our by-laws; and

any other matter for which a special quorum is required by law or by our by-laws.

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In order to vote at a meeting of shareholders, shareholders must (i) appear on the list that Indeval and the Indeval participants holding shares on behalf of the shareholders prepare prior to the meeting, or (ii) prior to the meeting, deposit the certificates representing their shares at our offices or in a Mexican credit institution or brokerage house, or foreign bank approved by our board of directors to serve this function. The certificate of deposit with respect to the share certificates must be presented to our company secretary at least 48 hours before a meeting of shareholders. Our company secretary verifies that the person in whose favor any certificate of deposit was issued is named in our share registry and issues an admission pass authorizing that person's attendance at the meeting of shareholders.

Our by-laws provide that a shareholder may only be represented by proxy in a shareholders' meeting with a duly completed form provided by us authorizing the proxy's presence. In addition, our by-laws require that the secretary acting at the shareholders' meeting publicly affirm the compliance by all proxies with this requirement. A shareholders' resolution is required to take action on any matter presented at a shareholders' meeting.

At an ordinary meeting of shareholders, the affirmative vote of the holders of a majority of the shares present at the meeting is required to adopt a shareholders' resolution. At an extraordinary meeting of shareholders, the affirmative vote of at least 50% of the capital stock is required to adopt a shareholders' resolution, except that when amending Article 7 (with respect to measures limiting shareholding ownership), Article 10 (relating to the register of shares and significant participations) or Article 22 (specifying the impediments to being appointed a member of our board of directors) of our by-laws, the affirmative vote of at least 75% of the voting stock is needed.

The attendance quorum for a general ordinary meeting of shareholders is 50% of our outstanding and fully paid shares, and for the second ordinary meeting is any number of our outstanding and fully paid shares. If the quorum is not met upon the first call, a subsequent meeting may be called and the quorum for the second ordinary meeting is any number of our outstanding and fully paid shares represented at the meeting. The quorum for the first extraordinary shareholders' meeting is 75% of our outstanding and fully paid shares, and for the second extraordinary meeting is 50% of our outstanding and fully paid shares.

Rights of minority shareholders

At our annual general shareholders' meeting, any shareholder or group of shareholders representing 10% or more of our voting stock has the right to appoint or remove one member of our board of directors, in addition to the directors appointed by the majority. Such appointment may only be revoked by other shareholders when the appointment of all other directors is also revoked.

Our by-laws provide that holders of at least 10% of our capital stock are entitled to demand the postponement of the voting on any resolution of which they deem they have not been sufficiently informed.

Under Mexican law, holders of at least 20% of our outstanding capital stock entitled to vote on a particular matter may oppose any resolution at a shareholders' meeting, by filing a petition for a court order to suspend the resolution temporarily with a court of law within 15 days after the adjournment of the meeting at which that action was taken and showing that the challenged action violates Mexican law or our by-laws and provided the opposing shareholders deliver a

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bond to the court to secure payment of any damages that we suffer as a result of suspending the resolution in the event that the court ultimately rules against the opposing shareholders. Relief under these provisions is only available to holders who were entitled to vote on, or whose rights as shareholders were adversely affected by, the challenged shareholder action and whose shares were not represented when the action was taken or, if represented, voted against it.

Under Mexican law, an action for civil liabilities against directors may be initiated by a shareholders' resolution for violation of their duty of loyalty to shareholders. In the event shareholders decide to bring an action of this type, the persons against whom that action is brought will immediately cease to be directors. Additionally, shareholders representing not less than 33% of the outstanding shares may directly exercise that action against the directors; provided that:

those shareholders shall not have voted against exercising such action at the relevant shareholders' meeting; and

the claim covers all of the damage alleged to have been caused to us and not merely the damage suffered by the plaintiffs. Under our by-laws, shareholders representing 5% or more of our outstanding capital stock may initiate actions exclusively on behalf of CEMEX against members of our board of directors, our corporate practices committee and audit committee, our chief executive officer, or any relevant executives, for breach of their duty of care or duty of loyalty to shareholders or for committing illicit acts or activities. The only requirement is that the claim covers all of the damage alleged to have been caused to us and not merely the damage suffered by the plaintiffs. Actions initiated on these grounds have a five-year statute of limitations.

Any recovery of damage with respect to these actions will be for our benefit and not that of the shareholders bringing the action.

Registration and transfer

Our common stock is evidenced by share certificates in registered form with registered dividend coupons attached. Shareholders who have not deposited their shares into the CPO trust may hold their shares in the form of physical certificates or through institutions that have accounts with Indeval. Accounts may be maintained at Indeval by brokers, banks and other entities approved by the Mexican securities authority. We maintain a stock registry, and, in accordance with Mexican law, only those holders listed in the stock registry and those holding certificates issued by Indeval and by Indeval participants indicating ownership are recognized as our shareholders.

Pursuant to Mexican law, any transfer of shares must be registered in our stock registry, if effected physically, or through book entries that may be tracked back from our stock registry to the records of Indeval.

Redemption

Our variable capital stock is subject to redemption upon approval of our shareholders at an extraordinary shareholders' meeting.

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Share repurchases

If approved by our shareholders at a general shareholders meeting, we may purchase our outstanding shares for cancellation. The economic and voting rights corresponding to repurchased shares cannot be exercised during the period the shares are owned by us and the shares will be deemed outstanding for purposes of calculating any quorum or vote at any shareholders meeting. We may also repurchase our equity securities on the Mexican Stock Exchange at the then prevailing market prices in accordance with Mexican securities law. If we intend to repurchase shares representing more than 1% of our outstanding shares at a single trading session, we must inform the public of such intention at least ten minutes before submitting our bid. If we intend to repurchase shares representing 3% or more of our outstanding shares during a period of twenty trading days, we are required to conduct a public tender offer for such shares. We must conduct share repurchases through the person or persons approved by our board of directors, through a single broker dealer during the relevant trading session, and without submitting bids during the first and the last 30 minutes of each trading session. We must inform the Mexican Stock Exchange of the results of any share repurchase no later than the business day following any such share repurchase.

Directors and shareholders conflict of interest

Under Mexican law, any shareholder who has a conflict of interest with us with respect to any transaction is obligated to disclose such conflict and is prohibited from voting on that transaction. A shareholder who violates this prohibition may be liable for damages if the relevant transaction would not have been approved without that shareholder's vote.

Under Mexican law, any director who has a conflict of interest with us in any transaction must disclose that fact to the other directors and is prohibited from participating and being present during the deliberations and voting on that transaction. A director who violates this prohibition will be liable for damages and lost profits. Additionally, our directors may not represent shareholders in our shareholders meetings.

Withdrawal rights

Whenever our shareholders approve a change of corporate purpose, change of nationality or transformation from one form of corporate organization to another, Mexican law provides that any shareholder entitled to vote on that change who has voted against it may withdraw from CEMEX and receive an amount equal to the book value (in accordance with the latest balance sheet approved by the annual ordinary general shareholders meeting) attributable to such shareholder's shares, provided that such shareholder exercises that right within 15 days following the meeting at which the change was approved.

Dividends

At the annual ordinary general shareholders meeting, our board of directors submits, for approval by our shareholders, our financial statements together with a report on them prepared by our board of directors and the statutory auditors. Our shareholders, once they have approved the financial statements, determine the allocation of our net income, after provision for income taxes, legal reserve and statutory employee profit sharing payments, for the preceding year. All shares of our capital stock outstanding at the time a dividend or other distribution is declared are entitled to share equally in that dividend or other distribution.

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Liquidation rights

In the event we are liquidated, the surplus assets remaining after payment of all our creditors will be divided among our shareholders in proportion to the respective shares held by them. The liquidator may, with the approval of our shareholders, distribute the surplus assets in kind among our shareholders, sell the surplus assets and divide the proceeds among our shareholders or put the surplus assets to any other uses agreed to by a majority of our shareholders voting at an extraordinary shareholders meeting.

Differences between our corporate governance practices and NYSE standards for domestic companies

For a description of significant ways in which our corporate governance practices differ from those required of domestic companies under NYSE standards, please see Item 16G Corporate Governance in our most recent Annual Report on Form 20-F, which is incorporated by reference in this prospectus, or visit our website at www.cemex.com (under the heading Investor Center/Corporate Governance).

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Description of CPOs

Our CPOs are issued under the terms of a CPO trust agreement. The CPOs and the CPO trust agreement are governed by Mexican law. Set forth below is a summary description of the material terms of the CPOs and of a CPO holder's material rights. Because it is a summary, it does not describe every aspect of the CPOs and the CPO trust agreement. For more complete information, you should read the entire CPO trust agreement. Banamex is the CPO trustee. A form of the CPO trust agreement is incorporated by reference as an exhibit to the registration statement of which this prospectus forms a part. See [Where you can find more information](#) for information on how to obtain copies of the CPO trust agreement.

General

The CPO trust agreement established a master trust that, among other things, enables non-Mexican investors to acquire CPOs representing financial interests in our common stock, of which the A shares may otherwise be acquired directly only by Mexican investors. CPOs, which are negotiable instruments under Mexican law, are issued by the CPO trustee pursuant to the terms of the CPO trust agreement.

Transfer and withdrawal of CPOs

Under the terms of the CPO trust agreement, the CPO trustee may accept A shares and B shares against the issuance and release of CPOs. Each CPO represents two A shares and one B share. All A shares and B shares underlying the CPOs are held in trust by the CPO trustee in accordance with the terms and conditions of the CPO trust agreement. Those shares are registered in the name of the CPO trustee, which is the owner and holder of record of those shares.

The CPO trustee will deliver CPOs in respect of the shares as described above. All CPOs are evidenced by a single certificate, the global CPO. CPOs are issued to and deposited in accounts maintained by the purchasers at Indeval. Ownership of CPOs deposited with Indeval is shown on, and transfer of the ownership of CPOs is effected through, records maintained by Indeval and Indeval participants. Holders of CPOs are not entitled to receive physical certificates evidencing their CPOs but may request certificates issued by Indeval and the relevant Indeval participants indicating ownership of CPOs. Holders of CPOs, including Mexican nationals, are not entitled to withdraw the A shares or B shares that are held in the CPO trust.

Dividends, other distributions and rights

Holders of CPOs are entitled to receive the economic benefits to which they would be entitled if they were the holders of the A shares and B shares underlying those CPOs at the time that we declare and pay dividends or make distributions to holders of A shares and B shares. The CPO trustee will distribute cash dividends and other cash distributions received by it in respect of the A shares and B shares held in the CPO trust to the holders of CPOs in proportion to their respective holdings, in each case in the same currency in which they were received. The CPO trustee will distribute those cash dividends and other cash distributions through Indeval as custodian of the CPOs. Dividends paid with respect to CPOs deposited with Indeval will be distributed to the holders on the business day following the date on which the funds are received by Indeval.

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If we pay a dividend in shares of our stock, those shares will be distributed to the CPO trustee who will hold those shares in the CPO trust for the benefit of CPO holders entitled thereto, and the CPO trustee, if the shares so received constitute units identical to the unit of securities then represented by a CPO, will distribute to the holders of outstanding CPOs, in proportion to their holdings, additional CPOs representing economic interests in the total number of shares received by the CPO trustee as that dividend. If the shares of stock so received do not constitute units of securities identical to the unit of securities then represented by a CPO, the CPO trustee will cause the securities received to be delivered to the CPO holders