ADAPTING IOSCO INTERNATIONAL DISCLOSURE STANDARDS FOR SHELF REGISTRATION SYSTEMS

OICV-IOSCO

Report from the Technical Committee
of the International Organization of Securities Commissions

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I. Executive summary

IOSCO endorsed the International Disclosure Standards for Cross Border Offerings and Initial Listings (IDSs) in 1998, and since then, most of the jurisdictions represented on IOSCO's Technical Committee have reported that either they already are able to accept documents from cross border issuers prepared in accordance with those standards or are taking steps to be in a position to do so. Some of these jurisdictions also have begun adapting the IDSs for broader uses than those contemplated by the original IOSCO endorsement. Expanding the uses of the IDSs helps promote broader recognition of the IDSs as a set of high-quality standards covering core disclosure topics. This, in turn, may encourage broader use and acceptance of the IDSs globally and reduce the regulatory burden on multinational issuers.

As part of this trend, several IOSCO members have explored the concept of using the IDSs in conjunction with a "fast track" offering structure that provides issuers quicker access to the capital markets, referred to in this report as a "shelf" offering system. The shelf offering system described here refers generally to a registration system in which the issuer files a core disclosure document with the securities regulator, which contains basic information about the company and which is updated on a regular basis. If the issuer wants to issue securities, it may then file a brief supplemental document that discloses information specific to the offering and the securities to be offered. Although jurisdictions may differ in the specifics of these "fast track" offering systems, the IDSs have been adapted successfully into many of these shelf systems. The purpose of this report is to provide to jurisdictions that may have, or may be considering development of, a shelf offering system the benefit of these members' experience in adapting the IDSs for that purpose.

Shelf systems that provide the same level of investor protection as conventional offering methods can be a positive market development. The decision to adopt a shelf system, and whether that system is voluntary or mandatory, depends on each country's legal and regulatory system and the needs of its capital market, and this report is not intended to be an endorsement of shelf systems for all jurisdictions. However, since a growing number of jurisdictions have indicated an interest in making this type of offering system available for issuers, this report was developed to provide guidance on how the IDSs could be used as a component of such a system.

II. Background of IDSs

IOSCO has sought to reduce the barriers that multinational issuers can face in conducting offers and listings in more than one jurisdiction. In its 1989 report on International Equity Offers, IOSCO noted that the efficiency of the capital raising process would be enhanced by permitting an issuer to prepare one disclosure document for use in each jurisdiction in which it chose to sell securities. One of the report's recommendations was that regulators be encouraged, "where consistent with their legal mandate and the goal of investor protection," to facilitate the use of single disclosure documents. The Technical Committee Standing Committee on Multinational Disclosure and Accounting (TCSC-1) was charged with identifying ways to further that recommendation, and one important focus of its work has been non-financial statement disclosures in offering and listing documents.[1] The Technical Committee's efforts in this area resulted in the IOSCO Presidents' Committee endorsement of the "International Disclosure Standards for Cross Border Offerings and Initial Listings," or IDSs, in September 1998.

The IDSs endorsed by IOSCO were developed for use in cross border offers or initial listings of equity securities. They set out standards for the non-financial information to be provided in a prospectus, such as the description of an issuer's business and management and the securities it planned to offer or list. Since the IDSs were published in 1998, some IOSCO members also have adapted them for broader uses. Examples include using the IDSs for offerings or listings of non-equity securities, requiring or permitting their use by a jurisdiction's domestic issuers, and using the IDSs as the basis for corporate annual reports. Expanding the uses of the IDSs beyond their original purpose is a favorable development that should serve to promote their use by issuers and their acceptance by regulators and others around the world.

III. Shelf Offering Systems

A. Basic structure

The basic structures of most shelf systems share several common features. They permit issuers to disclose certain information in a core disclosure document (referred to in this report as a "shelf document") that is updated on a regular basis, usually once a year. This shelf document provides basic information about the company's business, management and capital structure. The shelf document also may contain financial information in the form of historical financial statements, as well as management's commentary on those historical results. The shelf document is filed with or submitted to the applicable securities regulatory authority. When the issuer wishes to offer securities, it files a relatively brief supplemental document (referred to in this report as an "offering note") that provides information about the specific securities being offered and details of the offering process. These two documents -- the shelf document and the offering note -- together provide all the information that would be contained in a conventional prospectus.

Issuers usually are not required to update the entire shelf document at the time they make an offering, but they will need to report any material changes to the information in the shelf

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[1] The TCSC-1 efforts also have focused on the financial statement disclosures in an offering or listing document. TCSC-1 has focused those efforts on the work of the International Accounting Standards Committee (IASC). *See* the May 2000 Technical Committee IASC Standards - Assessment Report on Assessment of IASC Standards.

document since it was published and any material recent developments. This discussion of material changes or recent developments usually is contained in the offering note.

There are many possible variations on the basic shelf structure described above, as well as other issues that may arise in structuring a shelf system. Some of these include:

- **Eligibility for use of the shelf system.** A jurisdiction's shelf system may be open to all listed or registered companies, to those which have been listed or registered for a certain period, or may be limited to companies that meet certain eligibility criteria. For example, use of the system may be limited to companies that meet certain size criteria based on assets, capitalization, trading volume or some other measure, or to companies that offer securities frequently.

- **Delivery of documents.** A jurisdiction may permit an issuer to deliver the offering note to prospective investors without delivering the shelf document at the same time, as long as the shelf document has been delivered previously or is publicly available and is provided upon request. Alternatively, issuers may be required to deliver to prospective investors both the shelf document and the offering note for each offering.

- **Timing of regulatory review.** Securities regulatory authorities must decide the timing for review of the shelf document --- usually any review is done at the time the shelf document is filed in order to expedite the processing of offerings.

- **Using other documents as the basis for shelf documents.** Documents intended for other purposes may serve the same function as a shelf document. For example, an issuer eligible to use a shelf system may find that its annual report may satisfy substantially all the requirements of a shelf document and that expanding that report or combining it with a supplemental document results in a document that can function as a shelf document.

Whether a jurisdiction adopts a shelf system, and the details of that system, will be dictated by a variety of factors, such as the jurisdiction's legal framework, its regulatory structure, the amount of issuer interest, and the degree of investor receptivity.

B. Considerations relating to shelf systems

The benefit most often cited for shelf systems is that they provide issuers with quicker access to the capital markets. Issuers can prepare the shelf document without the pressures of an impending offering, and can prepare the offering note quickly when a specific offering is planned, due to the limited contents. If the shelf document is reviewed when it is filed, the time it takes for regulatory review or clearance of an offering note often is shorter than the time required for processing a conventional, full prospectus. Shelf systems also may reduce the issuer's costs associated with producing prospectuses.

The basic shelf structure permits investors to become familiar with the company through its shelf document and focus on the specific information relevant to an offering when they receive the offering note. Investors and the capital markets benefit because, through the shelf document, the issuer provides fundamental information about its business, management and operating history that is updated on a regular basis, usually annually. Since the volume of trading in the secondary markets far exceeds the volume of securities issued in new offerings, investors have a need for current company information. The shelf document provides a way for issuers to satisfy that demand for information that is updated annually, while at the same time reducing the cost, both in time and resources, of preparing a prospectus.

Shelf systems may not be feasible or desirable in every jurisdiction. This report takes no position on whether a particular jurisdiction should seek to implement a shelf system. Because an increasing number of jurisdictions have this type of offering system or are considering adopting such a system, however, the work already done by TCSC-1 members in adapting the IDSs for this purpose may be of interest to those jurisdictions.

IV. Use of IDSs in shelf systems

The IDSs consist of disclosure requirements for information on the basic topics that would be covered in an offering or initial listing document.[2] In adapting the IDSs for a shelf system, the disclosure requirements can be divided into information that would be included in a shelf document and information that would be included in an offering note.[3] The jurisdictions that have undertaken to divide the IDS requirements on this basis produced very similar results. Appendix A to this report includes a table showing the IDS requirements and a consensus view of which of those requirements would apply to the shelf document and which to the offering note.

This division of the IDSs into shelf document information and offering note information is based on work done by the Forum of European Securities Commissions (FESCO) and the U.S. Securities and Exchange Commission (SEC). The Japanese Financial Services Agency (FSA) also volunteered to compare its requirements for annual reports with the IDS requirements to provide another view on what type of company information should be updated on an annual basis.

The FESCO shelf registration project. Domestic shelf registration systems already exist in Belgium, France, Italy, Spain and the UK that are all broadly similar in style and

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[2] The IDSs cover basic disclosure topics, but jurisdictions may have additional requirements on other disclosure topics or for specialized industries. Some of these additional requirements are described in Part II of the IDSs.

[3] The IDSs originally were intended for use in cross border offers and listings, but, depending on how similar they are to a jurisdiction's domestic disclosure requirements, a shelf system based on the IDSs may be suitable for both cross border and domestic offers and listings.

operation. The systems are voluntary and allow an issuer registered or with a primary listing in those countries to produce, on an annual basis, a document called a "registration document" that contains most of the information required in a prospectus.[4] In some countries the registration document is published on the website of the supervisory authority. Then, if during the next 12 months the issuer wishes to issue and list additional securities, all that is necessary is the publication and circulation of a short document called a "securities note" containing the information required to complete the prospectus with respect to the securities issue in question and update the registration document.[5]

A registration document can be produced at any time during the year, although most issuers produce it in conjunction with their annual report and accounts, since much of the information required in the accounts under domestic statute and generally accepted accounting principles replicates the information required in a prospectus. Generally, the registration document will be current for 12 months. A copy must be made available without charge to the public for inspection, in addition to publication on the website in some countries as noted above. The securities note also must be made available to the public for inspection and, in some countries, is published on the supervisory authority's website.

The main objective of the FESCO initiative is to harmonize the contents of the registration documents and securities notes used in these countries in order to facilitate the mutual recognition of both documents to encourage cross border activity. This implies that the set of documents reviewed by the home country primary listing authority would be considered valid in other jurisdictions, subject only to a notice to the host country regulator.

Under the FESCO project, issuers may prepare the registration document and the securities note in English, but if the competent authority of the jurisdiction in which the offering is made so requires, a summary document must be prepared in a language accepted by the host country. To satisfy the disclosure requirements, issuers may incorporate by reference previously filed documents into either the registration document or the securities note.

Short-form registration of securities in the United States. The type of shelf system described in this report is similar to the SEC's short-form registration system, which is available for seasoned issuers that satisfy certain eligibility requirements based on the type of offering or the issuer's public float.[6] All issuers subject to the SEC's registration and reporting requirements must file an annual report, regardless of whether or not an issuer wishes to utilize

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4 The registration document includes all of the information contained in a prospectus, except for the terms and conditions that are included in Chapter 2 of the schedules of the European Directive 80/390/EC.

5 In some EU countries, like Germany, there are systems in place which, to a similar extent, facilitate issues for seasoned issuers. These systems do not require the production of registration statements on an annual basis, and thus are not included in this report.

6 The SEC also has what it refers to as a shelf system, which operates differently from the shelf system described in this report. Filing a prospectus under the U.S. shelf system involves the actual registration of the entire amount of securities expected to be sold during a period of up to two years. Issuers are required by statute to provide all the information required in an offering prospectus at the time the initial shelf document is filed. They are permitted to omit pricing information and other terms relating to the specific securities to be sold if that information is provided in the form of a supplement to the original prospectus when they "take down" securities off the shelf for sale.

the short-form registration system. This annual report must include information on topics such as the company's business, management and financial results. This type of information also is required in a prospectus when an issuer registers securities for offer and sale to the public. However, issuers eligible for short-form registration are permitted to incorporate that information into their short-form prospectus by referring to their latest annual report, as well as to any subsequent interim reports. Issuers have the same liability for information incorporated into the prospectus as they do for information set out in the prospectus. The information actually set out in the prospectus under the short-form registration system normally would be limited to information relating to the offering of securities, as well as any current developments in the issuer's business that have not been reported previously. In this system, the annual report (updated by subsequent interim reports) serves the function of a shelf document for issuers eligible for short-form registration. The annual report and interim reports are public when filed and, for issuers filing electronically, are accessible easily on the Internet. Issuers using the SEC's short-form registration system are not required to deliver a paper copy of their annual or interim reports to prospective investors along with the short-form prospectus, unless an investor requests a copy.

When the SEC revised its foreign issuer registration statements requirements to conform more closely to the IDSs, it also revised its annual report requirements for foreign issuers and its short-form registration system to reflect the IDS requirements. This project involved analyzing the IDS requirements and dividing them into information that should be provided annually in an issuer's annual report and information that only is required in connection with an offering or listing of securities. The information actually set out in the short-form prospectus could be limited to the latter category of information. The result of this analysis turned out to be very similar to FESCO's division of the European Union disclosure requirements contained in the IDSs.

Shelf registration in Japan. In Japan, shelf registration is available to issuers that satisfy certain criteria. For example, issuers must have stock listed on a stock exchange or traded in the over-the-counter market, and satisfy certain disclosure requirements for at least a year. To use the shelf registration system, eligible issuers must file a shelf registration statement, which contains information about the type of security that an issuer is offering, as well as the maximum amount of securities that are being offered. Normally, the shelf registration is current for one year, but if an issuer is offering stocks or bonds, the shelf registration statement may be viewed as current for two years.

During the period in which the shelf registration statement is current, an issuer may offer securities at any time by filing a supplementary document to the shelf registration statement. This supplement contains information concerning the securities to be offered, and incorporates by reference information that is contained in the issuer's most recent annual report, called a "securities report," or its latest semi-annual report. The information in a securities report is similar, in both content and degree of detail, to that found in an offering or listing document. All publicly traded companies must file a securities report and a semi-annual report. Both the securities report and the semi-annual report must include information about the issuer's business, management and financial results.

In the Japanese shelf registration system, the securities report serves the function of a shelf document. Upon IOSCO's endorsement of the IDSs, the requirements for foreign company disclosure forms (such as the securities report) were amended to be more comparable to the IDSs. In addition, the Japanese FSA will accept disclosure that complies fully with the IDSs under its discretionary authority.

If a material event occurs after the filing of the securities report or semi-annual report, information that explains the material event must be attached to the supplementary document. Each of the shelf registration statement, the supplement, and the securities report or semi-annual report must be available to the public for inspection.

The staff of the Japanese FSA volunteered to compare the disclosure requirements for a securities report with the IDS requirements, to determine whether the securities report requirements were similar to the shelf document requirements. As the accompanying table illustrates, there is much similarity between the two documents.

V. Conclusion

Although minor differences in the division of IDS requirements are noted in the accompanying table, there is a very high degree of consensus about the division of IDS items for purposes of a shelf offering system, particularly on the major disclosure topics. The IOSCO Technical Committee has concluded that its work in this area could be of significant use to jurisdictions that are considering a shelf offering system and notes that incorporating the IDSs as a basic component of such a system can help ensure that investors receive a high level of information on which to base their investment decisions, while providing issuers speedy access to the capital markets and other benefits of a shelf system.

Appendix A

PROPOSED DIVISION OF IDS REQUIREMENTS
FOR USE IN SHELF SYSTEMS[1]

	Shelf Document	Offering Note[2]
Item I. Identity of Directors, Senior Management and Advisors		
A. Directors and Senior Management	X	X
B. Advisors *[i.e., advisors to the offering]*	X[3,6]	X
C. Auditors	X	
Item II. Offer Statistics and Expected Timetable		X
Item III. Key Information		
A. Selected financial data	X	
B. Capitalization and indebtedness *[i.e., showing effect of the offering]*	X[3]	X
C. Reasons for the offer and use of proceeds		X
D. Risk Factors	X[6]	X
Item IV. Information on the Company	X	
Item V. Operating and Financial Review and Prospects	X	
Item VI. Directors, Senior Management and Employees		
A. Directors	X	
B. Compensation	X	
C. Board Practice	X[6]	
D. Employees	X	
E. Share Ownership	X	
Item VII. Major Shareholders and Related Party Transactions		
A. Major Shareholders	X	
B. Related Parties	X	
C. Interests of Experts	X[3,6]	X
Item VIII. Financial Information	X	
Item IX. The Offer and Listing		
A. Offer and Listing Details	[7]	X
B. Plan of Distribution		X
C. Markets	[7]	X
D. Selling Shareholders		X
E. Dilution		X
F. Expenses of the Issue		X

	Shelf Document	Offering Note
Item X. Additional Information		
A. Share capital	X[3]	[8]
B. Memorandum and articles of incorporation	X	
C. Material contracts	X	
D. Exchange Controls	[7]	X
E. Taxation	[7]	X
F. Dividends and paying agents	[4]	X
G. Statement by experts	X[3]	X
H. Documents on display	X	X
I. Subsidiary information	X[6]	

1 If there is no consensus among the participating jurisdictions on whether an item of information should be provided in the shelf document or in the offering note, the table follows the FESCO project recommendations and notes the alternative requirements of the SEC or Japanese FSA in a footnote.

2 In addition to the information required to be provided in the offering note, information that normally would be provided in the shelf document may be included in the offering note if there has been a material change or recent development since the shelf document was published.

3 This information is not required in an SEC annual report.

4 This information must be provided in a Japanese FSA securities report.

5 This information must be provided in an SEC annual report.

6 This information is not required in a Japanese FSA securities report.

7 This information must be provided in both a Japanese FSA securities report and an SEC annual report.
With respect to Item IX, the only information required in the shelf document is the historical stock price information, called for by Item IX.A.4, and the identity of the markets upon which the issuer's securities trade, called for by Item IX.C.

8 This information may be provided in the SEC's short-form prospectus.