

**INTERNATIONAL DISCLOSURE PRINCIPLES
FOR CROSS-BORDER OFFERINGS AND LISTINGS
OF DEBT SECURITIES BY FOREIGN ISSUERS**

FINAL REPORT



OICU-IOSCO

**TECHNICAL COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

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INTRODUCTION

In September 1998, the International Organization of Securities Commissions (IOSCO) published the *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers (International Equity Disclosure Standards or Standards)*, which apply to listings and public offers and sales of equity securities. In issuing the *International Equity Disclosure Standards*, IOSCO took an important step in enhancing the comparability of information provided by multinational issuers when conducting a cross-border public offering or listing, while also ensuring a high level of investor protection. IOSCO is taking another significant step in enhancing cross-border disclosure regulatory frameworks by issuing the *International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers (International Debt Disclosure Principles or Principles)*.

IOSCO believes that the *International Debt Disclosure Principles* are especially pertinent given the increased volume of public offerings and listings of debt securities in the international capital markets, and the increased participation of retail investors in these markets. The purpose of these *Principles* is not to override existing requirements, but rather to facilitate a better understanding of issues that should be considered in developing disclosure requirements for debt securities as a means of enhancing investor protection. High quality debt disclosures facilitate investors' access to appropriate investment opportunities, as well as issuers' access to capital. The *International Debt Disclosure Principles* should provide useful guidance to securities regulators who are developing or reviewing their regulatory disclosure regimes for cross-border offerings and listings of debt securities.

The *International Equity Disclosure Standards* are broadly accepted as a disclosure benchmark, and the equity disclosure regimes of many IOSCO members are based on these *Standards*. Building on its previous work, IOSCO considered how the *Standards* could be used in the development of substantive principles for public offerings and listings of "plain vanilla" debt securities issued by companies. IOSCO concluded that a principles-based project allows for greater flexibility and adaptability. The ten major sections in Part I of the *International Equity Disclosure Standards* were analyzed as a means of developing the *Principles*.

The disclosure topics highlighted in the *International Debt Disclosure Principles* are intended as a starting point for consideration and analysis by securities regulators. Some regulators may find it useful to incorporate all of the disclosure topics into their debt disclosure requirements. Others may conclude that the relevance of specific disclosure topics in their jurisdictions may vary according to the characteristics of the issuer or the securities involved, and may wish to incorporate the *Principles* on a more selective basis. The principles-based format of the *Principles* allows for a wide range of application and adaptation by securities regulators.

The *International Debt Disclosure Principles* occasionally refer to specific disclosure line items contained in the *International Equity Disclosure Standards* to

provide suggested guidance or examples of more detailed disclosure requirements that could be developed by securities regulators. Conversely, the insights provided in the *International Debt Disclosure Principles* may be helpful in analyzing the *International Equity Disclosure Standards* and explaining the purpose of those line item disclosure requirements. In essence, the *Principles* should be viewed as a companion project to the earlier *Standards*.

Scope of the Principles

The *International Debt Disclosure Principles* apply to listings and public offerings of “plain vanilla” corporate debt securities to retail investors for cash. If a jurisdiction permits multiple classes of debt securities to be offered or listed through use of the same debt disclosure document (“Document” as defined in the Glossary), the *International Debt Disclosure Principles* are intended to apply to each class offered or listed.

The *International Debt Disclosure Principles* would also apply if a Document is required: (a) when a financial intermediary that has participated in a public offering of securities later sells to the public the securities that were unsold in the original public offering, or (b) when the issuer has sold securities in a private placement to any party who then resells those securities to the public.

IOSCO recognizes that there are a large variety of debt securities issued by many types of entities in specialized industries (such as banking, insurance, mining and oil and gas companies). In many jurisdictions, these issuers may be subject to different, additional, or even reduced disclosure obligations.

The *International Debt Disclosure Principles* address non-financial statement disclosure, and not the issue of which bodies of accounting or auditing principles may be followed by the issuer in preparing its financial statements. The *International Debt Disclosure Principles* assume that the issuer will be required under national laws and regulations to prepare consolidated financial statements according to high quality internationally accepted accounting standards. IOSCO has been undertaking separate projects on international accounting and auditing.¹

¹ In May 2000 IOSCO announced that it had completed its assessment of 30 accounting standards of the International Accounting Standards Committee (IASC 2000 standards). As a result, the IOSCO Presidents’ Committee recommended that its members permit incoming multinational issuers to use the 30 IASC 2000 standards to prepare their financial statements for cross-border offerings and listings, as supplemented by reconciliation, disclosure and interpretation where necessary to address substantive outstanding issues at a national or regional level. In February 2005, the IOSCO Technical Committee further encouraged its members to continually evaluate such supplemental treatments as the implementation of International Financial Reporting Standards (IFRS, previously referred to as the IASC standards) continues and as the global financial reporting infrastructure is enhanced to encourage the consistent application and enforcement of IFRS. IOSCO is currently engaged in a number of projects regarding the International Standards of Auditing (ISAs), including consultations with the ISA standard-setting body on further developing and improving ISAs, and a continuing assessment of ISAs as they are developed.

The *International Debt Disclosure Principles* assume that the issuer will prepare a Document used for a public offering or listing of debt securities that will contain all information necessary for full and fair disclosure, so that investors can make their investment decision.

The *Principles* do not address the suitability criteria that stock exchanges and some securities regulators may impose in connection with listings of certain types of securities. These criteria can include, for example, the issuer's operating history, asset size, profitability, market share, and price. In addition, the *Principles* do not apply to "start up" companies with no history of operations. The *International Debt Disclosure Principles* also do not address continuous reporting disclosure mandates, requirements to disclose material developments or antifraud prohibitions.

Materiality

In addition to specific disclosures, most countries rely on an overriding principle that, in connection with a listing of securities or a public offering of securities, a company should disclose all information that would be material to an investor's investment decision and that is necessary for full and fair disclosure. As a result, information called for by specific disclosures may need to be expanded under this general principle, where supplemental information is deemed to be material to investors and necessary to keep the mandated disclosure from being misleading.

Presentation

Information that is disclosed in a Document used in connection with a public offering or listing of debt securities should be presented in a clear and concise manner without reliance on boilerplate language. A table of contents provided at the beginning of the Document would enhance its accessibility to investors. The information covered by these *Principles* may be included in the financial statements or elsewhere in the Document, as appropriate.

In addition to requiring certain disclosures to be made in the Document, the securities and company laws and regulations of many countries require issuers that are offering and/or listing securities in those jurisdictions to file additional documents as documents on display or exhibits. The issuer is usually not required to distribute these documents directly to investors or the general public, although the issuer may be required to provide copies upon request. However, these documents may be available to the public through the facilities of the regulatory authority or the stock exchange on which the debt securities are listed, or kept on file at the issuer's offices. The Document should indicate where these additional documents may be inspected and whether copies may be obtained.

Supplementary Information

Any significant change or any inaccuracy in the contents of the Document which may materially affect the issuer or its debt securities that occurs between the date of

publication of the Document and the date of listing or closing of the public offering must be adequately disclosed and made public.

GLOSSARY OF DEFINED TERMS

Unless the context indicates otherwise, the following definitions apply to certain terms used hereinafter in the *International Debt Disclosure Principles*:

Affiliate – A person or entity who, directly or indirectly, either controls, is controlled by or is under common control with, a specified person or entity.

Beneficial Owner – Any person or entity who, even if not the record owner of the securities, has or shares the underlying benefits of ownership. These benefits include the power to direct the voting or the disposition of the securities or to receive the economic benefit of ownership of the securities. Beneficial owners include persons or entities who hold their securities through one or more trustees, brokers, agents, legal representatives or other intermediaries, or through companies in which they have a “controlling interest,” which means the direct or indirect power to direct the management and policies of the entity.

Collateral – Asset that is pledged to secure the Debt Securities.

Company or Issuer – Company whose Debt Securities are being offered to the public or listed.

Cross-Border – An offering or listing of debt securities that is made outside the Issuer’s Home Market, regardless of whether or not the offering or listing is also being made concurrently in the issuer’s Home Market. The Home Market may be a market that, by treaty or some other agreement or arrangement, encompasses two or more jurisdictions.

Debt Securities – “Plain vanilla” debt securities, such as unsecured bonds, and bonds secured by collateral that are issued by corporate Issuers. The *Principles* do not apply, for example, to debt that is convertible into or exercisable or redeemable for equity securities, asset-backed securities, structured bonds, or reverse convertible notes. The reference to “secured debt” in the *Principles* does not include asset-backed securities, but rather debt that is secured by collateral, such as the Company’s real property.

Directors and Senior Management – This term includes (a) the Issuer’s directors, (b) its executive officers, and (c) members of its administrative, supervisory or management bodies.

Document – Prospectuses or other types of offering documents used in connection with a public offering of Debt Securities, and registration statements or prospectuses used in connection with the listing of Debt Securities or admission to trading on a regulated market.

Expert – A person who is named in a Document as having prepared or certified any part of such Document, or as having prepared or certified any report or valuation for use in connection with that Document.

Group – A parent and all its subsidiaries. References to an Issuer’s group mean the group of which it is a member.

Home Market – The jurisdiction in which the Company is legally organized, incorporated or established.

Host Country – The jurisdictions, other than the Home Market, in which the Company is seeking to offer, register, list or admit to trading on a regulated market its Debt Securities.

INTERNATIONAL DEBT DISCLOSURE PRINCIPLES

I. IDENTITY OF PARTIES RESPONSIBLE FOR THE DOCUMENT

Purpose: Investors and other interested parties need to know who is responsible for the information provided in the Document. The applicable laws and regulations establish which parties have such responsibility. Those responsible may include the Directors, members of Senior Management, advisers and auditors.

- A. Directors and Senior Management.** With respect to those Directors and Senior Management who are responsible, information about their business addresses and functions may be helpful.
- B. Advisers or Other Parties.** The nature of the advisers or other parties who are responsible may vary from jurisdiction to jurisdiction. Depending on the applicable legal requirements, the information provided could include the names and business addresses of the Issuer's principal bankers, or legal advisers to the extent they were involved with the public offering.
- C. Auditors.** The names and business addresses of the external auditors who have audited the Issuer's financial statements contained in the Document are also highly relevant information.

II. DESCRIPTION OF THE DEBT SECURITIES

Purpose: Investors need to have information about the terms and conditions of the Debt Securities that are being offered or listed. Some material terms would include, for example, information such as the interest rate, terms of the payment of interest, and whether any covenants or restrictions exist to help protect Debt Security holders from potential default by the Issuer and to provide some assurance that the Issuer will be able to make the required payments on the Debt Securities. All of this information about the Debt Securities enables investors to determine whether the Debt Securities are being offered on terms and conditions that are acceptable to them, and to compare the Debt Securities offered with other available investment options. The list that follows is illustrative of the provisions that may be relevant to Debt Security holders.

- A. Economic Terms of the Debt Securities.** Disclosures that may have a significant impact on an investor's investment decision include information about the terms of the Debt Securities that will be offered, such as the interest and any other payments (e.g., premium) that will be paid on the Debt Securities; the maturity date; and provisions relating to redemption, amortization, and retirement of the Debt Securities. Also relevant is whether the Debt Securities are registered or bearer securities. Information about the form of the security, such as whether investors can

obtain physical certificates or whether their interests will be recorded via a book-entry system, is also useful. Other highly relevant disclosures include the total nominal amount of the Debt Securities to be issued, the individual face value of each type of Debt Security offered or listed, the interest to be paid during the life of the Debt Securities, and the dates on which such payments are due. In addition, any arrangements for transfer and any restrictions on the free transferability of the Debt Securities may also be viewed as material to investors.

An essential aspect of the Debt Securities to many investors is the currency in which the Debt Securities are denominated, as well as the currency in which any amounts are payable on the Debt Securities. This information is relevant because if investors have to exchange the payments they receive on the Debt Securities into their domestic currency, they will be exposed to foreign exchange risk on their investment. Occasionally, payments on the Debt Securities may be payable in two or more currencies. In that case, disclosure about who has the option to determine the currency conversion, as well as what the basis for that determination will be, is also highly relevant.

- B. Covenants Relating to the Issuance of the Debt Securities.** Debt Securities may be created with covenants that are aimed at protecting Debt Security holders. Information about these covenants may significantly affect an investor's evaluation of the Debt Securities. Covenants or contractual agreements can require the Issuer to take certain actions, or to refrain from taking certain actions. The breach of certain covenants can trigger the renegotiation of the terms of the Debt Securities before a default occurs, and may give Debt Security holders an indication that the Issuer's financial condition may be deteriorating. Examples of covenants include provisions that restrict the declaration of dividends in certain circumstances, such as if the Issuer's tangible net worth declines below a certain amount. A prohibition on the payment of dividends if certain conditions are met prevents depletion of the Issuer's funds that are available to pay Debt Security holders. Other provisions may require the Issuer to maintain certain financial ratios, such as debt-equity ratios or a ratio of assets, so that any Debt Securities issued by the Company are limited to a specific percentage of the Company's assets to help assure the solvency of the Company. In addition, provisions that restrict the Issuer from incurring additional debt under certain conditions help prevent the Issuer from engaging in unrestricted borrowing that could bankrupt it. Still other covenants may restrict the Issuer from creating a lien on its assets or that of its subsidiaries to secure a debt issue without equally securing the Debt Securities covered by the Document, so that other creditors cannot obtain a senior position to the Debt Security holders. Some covenants may prohibit the Company from issuing other types of

securities under certain circumstances, which can help prevent the Company from taking on too many payment obligations.

For secured Debt Securities, other covenants may also be relevant. For example, provisions requiring the maintenance of properties help assure the availability of assets for payment in case of a liquidation, as do provisions that permit or restrict the withdrawal of cash that has been deposited as a basis for the issuance of additional securities. Provisions regarding the release or substitution of assets securing the issue also provide assurance that there is adequate security for the Debt Security holders.

- C. **Guarantees.** The existence of a guarantee for the Debt Securities may increase the probability that Debt Security holders will recoup their investment in the Debt Securities. If the Debt Securities are guaranteed, identification of the guarantor, and an outline of the main features of the guarantee would be viewed as important to many investors. Information about the guarantor also helps investors to make an informed decision about whether or not the guarantor will be able to fulfill its obligations under the guarantee. Because investors may be looking to the guarantor for payments on the Debt Securities, the same types of disclosures that are provided in the Document about the Issuer are also highly relevant with respect to the guarantor. As a result, regulators should consider applying the *Principles* to the disclosures provided in the Document about the guarantor, to the extent relevant.
- D. **Liens.** In some cases, a Company may issue Debt Securities that are secured, in which the Debt Security holders have a claim against the Company's Collateral if the Company is unable to make payments on the Debt Securities. The kind and priority of any lien securing the issue, as well as the principal properties or assets subject to the lien, would be highly relevant to investors. Holders of secured, as compared to unsecured, Debt Securities have a stronger bargaining position relative to other creditors in case a default occurs. Information about liens enables investors to assess the likelihood that they can recoup their investment in the Debt Securities.
- E. **Subordination and Limitation of Rights.** The ability of Debt Security holders to enforce their rights as creditors of the Issuer depends on whether other security holders or creditors have claims that would be viewed as senior, as having priority, or otherwise limiting the rights of the Debt Security holders to any payments on the Debt Securities. Information about the existence or possible creation of other securities and other indebtedness with seniority to the Debt Securities to be offered or listed would help investors assess the priority of their claims as creditors, and thus the risks of investing in the Debt Securities. If the rights of the

Debt Security holders will be subordinated to other security holders or creditors, information in the Document about the aggregate amount of outstanding indebtedness that is senior to the subordinated Debt Securities, as of the most recent practicable date, would be viewed by investors as highly relevant. Any limitations on the issuance of additional senior indebtedness, or the lack thereof, would also be viewed as very significant information.

In order to fully understand their rights as Debt Security holders, investors in the Debt Securities need information about whether the rights evidenced by the Debt Securities are or may be materially limited or qualified by the rights of any other class of securities.

- F. Default.** If the Issuer is in default on the Debt Securities, the Debt Security holders may be able to pursue claims against the Issuer. As a result, disclosure in the Document about the events that would constitute a default, as well as the remedies under the terms and conditions of the Debt Securities that would be available in the event of default, would be viewed as essential information to investors. For example, default may result in the acceleration of maturity of the Debt Securities if certain conditions are satisfied. Also, investors should know when they would be able to take action to enforce their claims.
- G. Consequences of a Failure to Make Payments.** Not all failures to make payments are classifiable as events of default, such that Debt Security holders can pursue claims against the Issuer. For example, a failure to make an interest payment may not constitute an event of default, but may result in additional amounts of interest being payable to Debt Security Holders. Disclosure in the Document about the consequences of such a failure would enable investors to more fully assess their rights.
- H. Representation of Debt Security Holders (Through Trustees or Any Other Representative of the Debt Security Holders).** Investors in the Debt Securities should know if their interests will be represented by an authorized party, such as a trustee or other entity who acts in a fiduciary capacity for the Debt Security holders. If such a representative has been selected, identification of the party that is acting as the Debt Security holders' official representative, its address, as well as the provisions applying to this representation, would help investors know who is representing their interests. Information about the nature of any material relationship between the representative and the Issuer or its Affiliates helps to indicate whether a conflict exists between its interest as a representative of the Debt Security holders and any other interest that it may have. Investors also need to know if there are any requirements that must be satisfied before the representative can act on behalf of the Debt Security holders, such as a requirement that the holders of a certain

percentage of the Debt Securities first instruct the representative to take action. In some cases, the representative may also require indemnification before proceeding to enforce a lien against the Issuer's property or before taking any other action at the request of the Debt Security holders. This information is also highly relevant.

In addition, the main terms of the contract governing the representation of the Debt Security holders, as well as where investors may obtain access to the contract, would give investors highly relevant information about how their interests would be represented. If no such contract exists, a brief summary of the applicable provisions of the law governing the representation of the Debt Security holders would be equally relevant. For example, the Issuer may be required by the terms of the contract between the Issuer and the official representative of the Debt Security holders to disclose evidence periodically that the Issuer is not in default, or that it is in full compliance with the terms of that contract. Information about whether the Issuer is required to make this type of periodic disclosure is helpful to investors, as it indicates that Debt Security holders may get an early indication of any deterioration in the Issuer's financial condition.

- I. **Meeting of Debt Security Holders.** Information about the requirements for convening, attending or voting at a meeting of Debt Security holders, if such a meeting can be held, is highly relevant. Such meetings may be called, for example, to change the terms and conditions of the Debt Security in light of a potential default by the Issuer. Disclosure of the conditions governing the manner in which such a meeting would be convened, such as quorum requirements, the conditions for being admitted to the meeting and the minimum number of votes required to adopt certain types of resolutions, would inform investors about some of the protections that would be available to them as Debt Security holders.
- J. **Modification of Terms.** Disclosure of any provisions relating to how the terms of the Debt Security or rights of the Debt Security holders may be modified is important because it enables investors to ascertain how the crucial terms of the Debt Security (such as the Debt Security holders' right to receive interest and principal on stated due dates) can be changed even after they have invested in the Debt Security.
- K. **Paying Agent.** It is important for Debt Security holders to know who is responsible for making payments on the Debt Securities, and who they can contact to collect any payments due. Relevant information includes the name and address of the Issuer's appointed entity for that purpose.
- L. **Credit Rating.** Information about any credit rating that may have been assigned to the Issuer or the Debt Securities at the request or with the cooperation of the Issuer can provide investors with a useful evaluation of

the Issuer's ability to fulfill its obligations on the Debt Securities. Evaluation of the credit rating may be affected by the status or reputation of the rating agency.

- M. Applicable Law.** Identifying the law applicable to the Debt Securities being publicly offered and/or listed is important, particularly if an Issuer issues Debt Securities under the law of a jurisdiction other than its home jurisdiction.

III. RISK FACTORS

Purpose: In order to make an investment decision about securities that are being offered or listed, investors need information to understand the risks involved.

A description of risk factors that are specific to the Issuer or its industry, and/or specific to the Debt Securities to be offered or listed is valuable information that may affect an investor's investment decision. However, the Document should not identify so many risk factors that the value of the disclosure would be undermined, but rather include information that is useful to investors in assessing whether the Issuer will be able to fulfill its obligations. This section may contain cross-references to more detailed discussion contained elsewhere in the Document. In addition, legal boilerplate should be avoided as this does not provide investors with concrete information about the specific risks applicable to the particular issuance at hand.

This disclosure is particularly useful to investors if it is provided in a separate section, which is distinctively titled "Risk Factors," to bring it to the investors' attention. Separating different types of risk factors into different subsections may also be helpful to investors. In addition, for unusually risky debt issuances, it may be useful to investors if the riskiness of the Debt Securities is highlighted on the cover page of the Document with a cross-reference to the full risk factors discussion in the Document.

Examples of risk factors can be found in Item III.D. of the *International Equity Disclosure Standards*.

IV. MARKETS

Purpose: Disclosure of all the exchanges or regulated markets on which the Debt Securities are or are intended to be traded, as well as any arrangements with respect to secondary market trading, may provide an indication of possible liquidity in the Debt Securities. If there are several markets available, this could enhance the ability of Debt Security holders to resell their Debt Securities.

- A. **Identity of Exchanges and Regulated Markets.** Identification of all the exchanges and/or regulated markets on which the Debt Securities are listed and/or admitted to trading, or are intended to be listed or admitted to trading is highly relevant information for investors. In the latter case, the dates on which the Debt Securities will be listed and/or admitted to trading are also important information.
- B. **Entities Providing Liquidity.** If any entities have made a firm commitment to act as intermediaries for the Debt Securities in secondary market trading, such as market makers providing liquidity through bid and offer rates, disclosure of the names and addresses of these entities and the main terms of their commitment would provide investors with useful information about the potential secondary market liquidity of the Debt Securities. In some circumstances, the Issuer may act in this capacity, and investors would find this information very relevant.

V. INFORMATION ABOUT THE PUBLIC OFFERING

Purpose: The types of disclosures contained in this section are relevant when the Document is used for a public offering of Debt Securities. When Debt Securities are publicly offered, key information about the manner in which the offering will be conducted, such as the total amount of the issue and the offering period is important for investors. All of this information enables investors to determine whether the Debt Securities are being offered on terms that are acceptable to them.

- A. **Offer Statistics.** The Document should include information about the size of the Issuer's public offering. Refer to Section II.A. for information about the type of details to be provided.
- B. **Pricing.** Key pricing information about the expected issue price or the method of determining the price includes information about who is formally responsible for determining the price, the various factors considered in that determination, and the parameters used as a basis for establishing the price. Investors would also find highly relevant information about the amount of any expenses that will be charged to them. In some jurisdictions, the Document could also include information about the yield and method by which it has been calculated. If the offering price is not already determined, information about how the price will be disclosed to the public is also important.
- C. **Method and Expected Timetable.** Information about the manner in which the Debt Securities will be offered and the relevant dates of the public offering helps investors know, as a practical matter, how they can participate in the offering. Relevant information includes the time period

during which the offer will be open, and to whom any purchase or subscription applications should be addressed. If the purchase period may be extended or shortened, details about the method by which the offering period may be extended or shortened and the duration of possible extensions, as well as how this information will be made public, is important disclosure. Occasionally, the exact dates of the offering period are not known. In those cases, disclosure about the arrangements for announcing the definitive dates is highly relevant.

Other relevant details about participating in the public offering should also be clearly disclosed in the Document. For instance, this could include information about how investors may pay for the Debt Securities, as well as the time limits for making any payments. In addition, this could include disclosure about the method and time limits for delivery of the Debt Securities that are purchased in the public offering.

- D. Underwriting Arrangements.** Disclosure about how the Debt Securities will be underwritten gives investors valuable information about the underwriters' financial stake and potential liability in the offering. For these reasons, the names and addresses of the entities underwriting the public offering, and a description of the material features of the underwriting relationship would be highly relevant information for investors. If the amount of the offering could be increased, such as by the exercise of an over-allotment option, disclosure of this information could also be useful.

From the disclosures provided, investors should be able to assess the underwriters' financial interest in the success of the public offering and listing. If the underwriters are or have committed to take and pay for the entire allotment of Debt Securities offered ("firm commitment offering"), disclosure of this information is important because this means that the underwriters will have a substantial financial incentive to market the Debt Securities aggressively. Occasionally, underwriters act as agents for the Issuer or are only required to use their "best efforts" to sell the Debt Securities, so that they are only required to take and pay for the Debt Securities that they actually sell to the public. Disclosing this type of underwriting arrangement is important because this indicates that the underwriters have not assumed any underwriting risk with respect to the public offering. In any case, if the underwriter has a material relationship with the Issuer, the nature and terms of that relationship would be viewed as highly relevant information for investors.

Other parties may be involved in distributing the Debt Securities to the public. For instance, a selling group of brokers or dealers may be appointed by the underwriters to market the issue to the public. In that case, a brief outline of the plan of distribution and an indication of the

amount of any Debt Securities that are to be offered other than through the underwriters would enable investors to get a clearer picture of who will be involved in the actual sales to the public. If the Debt Securities are to be offered through the selling efforts of brokers or dealers, a description of the plan of distribution and the terms of any agreement with such entities would also be relevant. This would include terms relating to any volume limitations on sales and conditions under which the agreement may be terminated. If known, identification of the broker(s) or dealer(s) that will participate in the public offering, as well as the amount of Debt Securities to be offered through each, would be useful information for investors.

- E. Targeted Investors.** If the Issuer expects to offer Debt Securities to certain selected investors, disclosure of this information would indicate to potential investors whether they can participate in the public offering, and enable them to assess whether their opportunities for participation are the same as for other investors. To that end, it would be helpful if the Document identified any group of targeted potential investors to whom the Debt Securities are being offered and noted any allocation that is reserved to any group of targeted investors. If the offering is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain markets, information about the tranche and details of any other allocation arrangements would be useful.
- F. Expenses of the Issue.** Disclosure of the expenses to be paid in relation to the public offering enables investors and others to assess how much of the offering proceeds will be available for the Issuer. Disclosure in the Document of a reasonably itemized statement of the major categories of expenses incurred in connection with the issuance and distribution of the Debt Securities to be offered can be useful to show the amount that is being paid to parties involved in the transaction. For example, this could include the total amount of the discounts or commissions agreed to by the underwriters or other placement or selling agents and the Issuer or offeror, as well as the percentage that the commissions represent of the total amount of the offering. If parties other than the Issuer are paying the expenses, such as the underwriters or selling security holders, disclosure of this information would be highly relevant to investors.
- G. Reasons for the Offer and Use of Proceeds.** Disclosure of the Issuer's expected use of the proceeds from the public offering provides investors with an indication of the Issuer's proposed use of funds, which may help them assess the Issuer's ability to make payments on the Debt Securities. Investors may also find it useful to ascertain whether the stated purpose is consistent with the general business purpose of the Issuer as described elsewhere in the Document. Relevant disclosures include the estimated net amount of the proceeds, broken down into each principal intended use. If the expected proceeds will be insufficient to fund all of the proposed

purposes, an indication of the order of priority for each purpose identified, including the amount and sources of other funds that would be needed, would help investors assess the Issuer's ability to meet its financing objectives. If the Issuer has no specific plans for the offering proceeds, a discussion of the principal reasons for the offering would still be useful.

More detailed disclosure of certain types of proposed uses can be particularly helpful for investors. If the proceeds are being used directly or indirectly by the Issuer to acquire assets, other than in the ordinary course of business, the Document could describe these assets and their costs. Information about whether the proceeds will be used to acquire assets from related parties, as well as whether the acquisition will be transacted on an arm's-length basis, would be viewed as highly relevant information for investors. If the Issuer intends to use any material part of the proceeds to discharge, reduce or retire other indebtedness, information about the interest rate and maturity of that indebtedness could also be useful. The Document may also contain disclosure about whether the proceeds will be used by other entities within the Issuer's group. For indebtedness incurred within the past year, an indication of how the proceeds of that indebtedness were applied helps investors assess the Issuer's funding priorities.

On occasion, the Issuer may be planning to use the offering proceeds to finance the acquisitions of other businesses. The risk profile of the acquired businesses may affect the risk profile of the Issuer overall, as well as its future ability to make payments on the Debt Securities. As a result, if the Issuer intends to use the proceeds to finance acquisitions of other businesses, information about the businesses and the status of the acquisitions would be very relevant, unless the acquisition is not yet probable and the Issuer reasonably determines that public disclosure would jeopardize the acquisition.

- H. Resales by Selling Security Holders.** The Document may relate to resales by holders of the Issuer's Debt Securities who acquired the Debt Securities in a private placement, and who wish to sell the Debt Securities in the public markets. Information about selling security holders enables investors to know who is reselling the Debt Securities and delivering the Debt Securities upon resale. Relevant information would include the name and address of the person or entity offering to sell the Debt Securities and whether the selling security holder has a material relationship with the Issuer or any of its predecessors or Affiliates.

In addition, disclosure of the amount and percentage of the Debt Securities beneficially held by each selling security holder before and immediately after the offering indicates whether or not the selling security holders

intend to resell all or a large portion of their interests in that class of securities through the offering.

VI. TAXATION

Purpose: The purpose of this disclosure is to provide information about tax provisions that Debt Security holders in the Host Country may be subject to and that may materially affect investors' decision whether or not to invest in the Issuer's Debt Securities.

Information about whether the Issuer will be responsible for the withholding of tax on any payments made on the Debt Securities, and salient details about any reciprocal tax treaty between the home country and Host Country may be highly relevant to investors. Reciprocal tax treaties may reduce the amount of tax that is withheld on any payments that are made to investors residing in the Host Country. In some jurisdictions, these investors may also be eligible for a foreign tax credit with respect to the withholding tax paid.

VII. SELECTED FINANCIAL INFORMATION

Purpose: The purpose of this disclosure is to provide, in a convenient format, selected financial data that highlight significant trends in the Issuer's financial condition, capitalization, and indebtedness. If the financial statements included in the Document are restated to reflect material changes in the structure of the Issuer's Group or the Issuer's accounting policies, the selected financial data included in the Document must also be restated.

- A. **Selected Financial Data.** By providing selected historical financial information about the Issuer for the Issuer's most recent financial years, the Document would give investors a useful summary of key financial information about the Issuer. This section of the Document would essentially highlight some of the most salient information from the financial statements. If interim financial statements are included in the Document, updated information for that interim period, which may be unaudited as long as this is disclosed in the Document, would be highly relevant. If selected financial data for interim periods is provided, regulators should consider requiring comparative data from the same period in the prior financial year, except that the requirement for comparative balance sheet data should be satisfied by presenting the year-end balance sheet information. All of the selected financial data should be presented in the same currency as the financial statements themselves.

Selected financial data that include specific line items expressed in the same manner as the corresponding line items in the Issuer's financial

statements would be most useful to investors. For example, the information could include such items as: net sales or operating revenues; income (loss) from operations; income (loss) from continuing operations; net income (loss); total assets; and net assets.

If the financial statements provided in the Document are prepared in a currency other than the currency of the Host Country, regulators should consider requiring the exchange rate between the financial reporting currency and the currency of the Host Country. If the Host Country has designated an official exchange rate for this purpose, this exchange rate should be used. Exchange rate information is a useful aid for investors in the Host Country when analyzing the financial information presented in the Document. The Document could include the exchange rates for the latest practicable date, for each of the years for which historical information is required by the Host Country regulator, and any subsequent interim period for which financial statements are presented in the Document. Item III.A.3. of the *International Equity Disclosure Standards* provides a detailed discussion as to how the exchange rates could be calculated.

- B. Capitalization and Indebtedness.** Information about capitalization and indebtedness may be useful to investors in assessing the financial position of the Issuer. Section XIII.B. of these *Principles* provides guidance as to how Issuers can disclose any subsequent significant changes that have occurred since the date of the annual financial statements, and/or since the date of the most recent interim financial statements in the capitalization and indebtedness. In this case, a statement of capitalization and indebtedness that provides current information about the Issuer's guaranteed/unguaranteed and secured/unsecured indebtedness would help investors compare the amount of indebtedness that the Issuer has already incurred to the amount of capital that it has raised through equity offerings.

VIII. INFORMATION ABOUT THE ISSUER

Purpose: In order to make an investment decision about the Issuer's Debt Securities, investors need information about the Issuer that provides a context for assessing the Issuer's ability to fulfill its obligations with respect to the Debt Securities. This includes information about the Issuer's business operations, the products it manufactures or services it provides, and other basic information about its historical development. The information provided could vary depending on the nature of the Issuer's business, such as if the Issuer is a manufacturing concern or a financial services company.

- A. General Information About the Issuer.** Basic information about the

Issuer includes its legal and commercial name and the address and telephone number of its registered office (or principal place of business, if this is different from its registered office). Other basic information includes the Issuer's domicile and legal form, the legislation under which it operates, its country of incorporation, its incorporation date and the length of its life (unless its life span is indefinite). In addition, if the Issuer has a website, it could be useful to investors if the website address is disclosed in the Document.

- B. History and Development of the Issuer.** Material events in the development of the Issuer's business that could have an impact on its ability to fulfill its obligations on the Debt Securities or affect its solvency would be highly relevant to investors. This type of information would include discussion about the nature and results of any material legal reclassification, merger or consolidation of the Issuer or any of its significant subsidiaries. Other examples of material events may include: acquisitions or disposals of material assets, other than in the ordinary course of business; material changes in the types of products produced or services rendered; name changes; or the nature and results of any bankruptcy, receivership or similar proceedings with respect to the Issuer or its significant subsidiaries.
- C. Legal Proceedings.** Information on any legal or arbitration proceedings (including any governmental proceedings pending or known to be contemplated) that may have, or have had in the recent past, significant effects on the Issuer's financial position or profitability provides an indication of whether the Issuer will be able to fulfill its obligations under the issue. This information is most useful if issuers provide sufficient disclosure to help investors assess the significance of the action and its potential impact on the Issuer's financial position.
- D. Business Overview.** A general overview of the Issuer's business provides important information for potential investors in the Debt Securities of the Issuer. The provision of information about the nature of the Issuer's operations and its principal activities, including the main categories of its products and/or services provided, helps investors assess the Issuer's ability to fulfill its obligations on the Debt Securities, and highlights factors that could have an impact on the market price of the Debt Securities. Item IV.B. of the *International Equity Disclosure Standards* contains a list of line item disclosures that can be referred to by securities regulators in developing or reviewing debt disclosure requirements in this area.

If the Document contains any statements regarding the Issuer's competitive position, support for those statements should be provided.

Requiring such support helps ensure that unsubstantiated statements that constitute mere puffery will not be included in the Document.

- E. **Group Structure.** If the Issuer is part of a Group, information about the Group and the Issuer's position within that Group is important. This information is particularly relevant if the Issuer is dependent on other members of the Group for its profitability and viability. Other relevant information includes whether and how the Issuer is dependent on other entities within the Group. See Item IV.C. of the *International Equity Disclosure Standards* for disclosures that could be provided in this area.
- F. **Property, Plants and Equipment.** For manufacturing companies and other types of businesses that invest heavily in property, plants and/or equipment, these fixed assets frequently constitute some of their most substantial assets. Information about an Issuer's significant investment in these assets may provide useful information about its long-term profitability.
- G. **Patents, Licenses or Contracts.** Information regarding the extent to which the Issuer is dependent, if at all, on patents or licenses, industrial, commercial or financial contracts (including contracts with customers or suppliers) or new manufacturing processes, where such factors are material to its business or profitability, could also be useful to investors.
- H. **Research and Development.** Disclosure in the Document about the Company's research and development policies, including the amount spent on Company-sponsored research and development activities, may provide investors with some indication of the degree to which the Company is focused on activities that may enhance its future profitability.

IX. OPERATING AND FINANCIAL REVIEW AND PROSPECTS

Purpose: The purpose of this disclosure is to provide a balanced explanation by management of factors that have affected the Issuer's financial condition and results of operations for the historical periods covered by the financial statements included in the Document. This disclosure provides a context within which the financial results and financial position portrayed in the financial statements can be interpreted, and enables investors to see the Issuer through the eyes of management. It may provide information about the quality and potential variability of the Issuer's earnings and cash flow. As a result, investors are in a position to have a better understanding of the Issuer's financial position.

Disclosure about the causes of material changes from year to year in financial statement line items, to the extent necessary for an understanding of the Issuer's business as a whole, would be highly relevant to investors. In addition, a discussion based on segment

information should be provided if it would be material to an understanding of the Issuer's business and its overall financial condition and operating performance.

- A. **Operating Results.** Disclosure about the significant factors that materially affected the Issuer's income from operations, including unusual or infrequent events or new developments and the extent to which income was affected by these factors, facilitates a better understanding of the Issuer's results of operations. Significant factors could include, for example, the impact of inflation, the impact of foreign currency fluctuations, and any governmental economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, the Issuer's operations. Disclosure about any significant components of revenues and expenses that are necessary to understand the Issuer's results of operations can also be useful.
- B. **Liquidity and Capital Resources.** Information about the Issuer's short-term and long-term liquidity, i.e., its ability to generate adequate amounts of cash to meet its cash obligations, provides useful information about whether the Issuer can fulfill its obligations on the Debt Securities. Relevant information includes the Issuer's internal and external sources of liquidity; any material, unused sources of liquidity; and any material restrictions on all sources of liquidity. This could include a discussion of why these material sources of liquidity are not being used. If a material deficiency is identified in the Issuer's ability to meet its cash obligations, the course of action that the Issuer has taken or proposes to take to remedy the deficiency is useful information for potential investors in the Debt Securities. Examples of disclosure that can be relevant include the level of borrowings at the end of the period covered by the financial statements and the maturity profile of borrowings.

Information about the Issuer's material commitments for capital expenditures as of the end of its latest financial year and any subsequent interim period provides important information about the Issuer's capital requirements. In addition, information about the general purpose of such commitments and the anticipated sources of funds needed to fulfill such commitments is highly relevant.

- C. **Trend Information.** Disclosure about the facts and circumstances surrounding known material trends and uncertainties can help investors have a better understanding of the Issuer's prospects. Highly relevant information in that regard includes the potential impact of currently known trends, events and uncertainties that are reasonably likely to have material effects on the Issuer's net sales or revenues, income from operations, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition. Useful information could, for example,

include disclosure of the most significant recent trends in production, sales and inventory, and costs and selling prices since the latest financial year. If a profit forecast is also included, a clear description of the assumptions upon which the Issuer has based its forecast would help investors assess the soundness of that forecast.

- D. Off-Balance Sheet Arrangements.** Through off-balance sheet transactions (contractual arrangements not included in the balance sheet), an Issuer can incur losses that are not fully transparent to investors. Disclosure of all material off-balance sheet arrangements that have, or are reasonably likely to have, a material effect on the Issuer's financial position, can be relevant to investors in the Debt Securities. Disclosure of such information that the Issuer believes is necessary for an understanding of these arrangements and their material impact on the Issuer's financial position can be important.
- E. Critical Accounting Estimates.** Estimates and assumptions involved in applying accounting policies can have a material impact on an Issuer's reported operating results, financial condition and changes in financial condition, as well as on the comparability of reported information over different reporting periods. Disclosure of these estimates and assumptions can be important for investors. In determining which critical accounting estimates or assumptions to disclose, the Issuer should consider whether the nature of the estimate or assumption is material because of the subjectivity and judgment required to account for highly uncertain matters, as well as whether the estimate or assumption will have a material impact on financial condition or operating performance.

X. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

Purpose: Information about the Issuer's Directors and Senior Management helps investors assess the quality of the Issuer's leadership and its potential performance in the future. This may reflect the Issuer's ability to fulfill its obligation on the Debt Securities being issued. Information about other non-management employees, particularly with respect to companies in labor intensive industries, can also be useful to investors who are assessing the impact of potential labor issues and disruptions on the Issuer and its ability to fulfill its obligations on the Debt Securities.

- A. Directors and Senior Management.** Because Directors and Senior Management of the Issuer play critical roles in the success of the Issuer's operations, it would be useful to investors if the Document identifies these individuals and discloses their business experience, functions, and areas of experience within the Issuer to provide information about their professional competence. If these individuals have a material interest in the offering or listing, other than in their official capacities, this could also

be disclosed. Investors may also find it useful to know if anything would impede the ability of these individuals to perform their required business activities for the Issuer. For example, this could include whether any of the Issuer's Directors also serve as Directors of other companies.

- B. **Compensation.** Information about the remuneration paid to the Issuer's board of Directors and Senior Management that could have a material impact on the Issuer's ability to service the debt obligations is important. For example, this could include disclosure of salaries, stock options and amounts set aside to pay pension or other similar benefits.
- C. **Practices of the Board of Directors.** Good corporate governance practices help protect the interests of investors. Although corporate governance practices vary among different jurisdictions, certain disclosures would still be relevant irrespective of the model of corporate governance used. For example, a summary of the charter or terms of reference under which various board committees operate, in cases where the board delegates certain functions to committees, can be useful to investors.
- D. **Employees.** Information about the relations between the Issuer's management and the relevant labor unions can provide useful information about potential labor disruptions to the Issuer's operations, especially in labor-intensive industries.
- E. **Share Ownership.** Individuals with a vested financial interest in the Issuer and who are in a position to affect the Issuer's operations, such as Directors and members of Senior Management, can be expected to be particularly interested in the performance of the Issuer. To that end, current information about the amount of shares held by the Issuer's Directors and members of its Senior Management bodies may provide some indication of their interests in the Issuer's performance.

XI. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

Purpose: The purpose of this disclosure is to provide information regarding the major shareholders of the Issuer who may be able to influence or control the Issuer. This disclosure also provides information regarding transactions that the Issuer has entered into with persons affiliated with the Issuer who are potentially able to engage in abusive self-dealing with the Issuer, and whether the terms of these related party transactions are fair to the Issuer or could be viewed as negotiated on an arm's-length basis.

- A. **Major Shareholders.** The potential solvency of an Issuer and its ability to pay Debt Security holders depends on who is controlling the Issuer and who could influence the Issuer's business strategy. To that end, it is

important to obtain disclosure of whether an Issuer is directly or indirectly controlled by another entity or natural person, as well as the nature of such control. This information would include, to the extent known to the Issuer, whether the Issuer is directly or indirectly owned or controlled by another corporation, by any foreign government or by any other natural or legal person severally or jointly. If such control exists, the Issuer could disclose in the Document the names of the controlling corporations, government or other persons, as well as a brief description of the nature of the control, including the amount and proportion of capital held by each of them that confers a right to vote. In addition, any arrangements known to the Issuer that may, at a subsequent date, result in a change in control of the Issuer would be highly relevant to investors.

In addition, in certain jurisdictions in which there is wide dispersal of share ownership, disclosure of the major shareholders who beneficially own a certain threshold percentage of the Issuer's shares is also required. These shareholders are viewed as significant, and in a position to influence the Issuer because of their holdings. Significant changes in the percentage ownership held by any major shareholders in the past few years are also required to be disclosed in these jurisdictions.

- B. Related Party Transactions.** Related party transactions may be affected by considerations other than those that affect transactions conducted on a normal commercial basis with unrelated parties. Disclosure of such transactions identifies those that have not been completed on an arm's-length basis between independent parties. Related party information is viewed as relevant because it indicates whether the Issuer is engaging in transactions that may jeopardize its financial viability and affect its ability to make short-term and long-term payments on its debt obligations.

The source of this disclosure requirement and identity of entities or individuals who are viewed as related parties varies among jurisdictions. In some jurisdictions, both the applicable accounting standards and the prospectus requirements establish the disclosure requirements. In others, only the applicable accounting standards set forth the requirements, in which case any significant changes would be disclosed according to Section XIII.B. of these *Principles*. Although the exact types of related party transactions that must be disclosed depend on the requirements of the applicable accounting standards and/or securities regulation, in any case for those transactions that must be disclosed, disclosure about the nature, business purpose and amount of those transactions entered into by the Issuer with related parties is highly relevant. For a non-exclusive list of examples of the types of transactions that may be considered related party transactions, refer to Item VII.B. of the *International Equity Disclosure Standards*.

XII. INTERESTS OF EXPERTS AND COUNSEL

Purpose: The purpose of this disclosure is to indicate whether Experts and counsel, who play an influential advisory role in an Issuer's offering or listing, can be impartial in advising the Issuer.

If any of the Experts or counselors named in the Document has a material direct or indirect economic interest in the Issuer, or an interest that depends on the success of the Issuer's offering or listing or otherwise has a material conflict of interest in rendering its advice or opinion, the nature and terms of that interest or conflict of interest would be highly relevant to investors.

XIII. FINANCIAL INFORMATION

Purpose: Investors need information about the Issuer's financial position, performance and cash flows in order to assess its liquidity and solvency. This information is contained in the Issuer's financial statements. Investors in the Debt Securities are concerned about the Issuer's financial condition at the time an investment decision is made, as well as the likelihood that the Issuer will remain in good financial condition until the debt is repaid. Investor confidence in the integrity and reliability of publicly available financial information is essential in order to induce them to invest in the securities of public companies. The principles discussed in this section assume that the Issuer will be required under national laws and regulations to provide consolidated financial statements according to high quality internationally accepted accounting standards.

- A. Consolidated Statements and Other Financial Information.** Consolidated financial statements should be audited by an independent auditor and accompanied by an audit report to enable investors to make accurate assessments about the Issuer's financial position, and assist investors in making meaningful comparisons of an Issuer's current financial position to prior periods, as well as to other companies. A complete set of consolidated financial statements includes: a balance sheet; income statement; statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners, or (ii) all changes in equity (including a subtotal of all non-owner movements in equity); cash flow statement; related notes and schedules required by the comprehensive body of accounting standards pursuant to which the financial statements are prepared; and if not included in the financial statements, a note analyzing the changes in each caption of shareholders' equity presented in the balance sheet. Distributions to equity holders, such as dividends, are also normally included in the financial statements. Comparative financial statements that cover the Issuer's most recent financial years and that are audited in

accordance with a comprehensive body of auditing standards provide investors with material information about trends in the Issuer's performance and financial condition.

Audits that are conducted on the Issuer's financial statements by independent auditors play a crucial role in fostering investor confidence in the reliability of the financial statements. Such audits provide investors with critical assurance that the financial statements have been subjected to rigorous examination by an objective, impartial and skilled professional. Issuers should provide audit report(s) in the Document for each of the periods for which audited financial statements are required to be provided under the Host Country's regulations. If the auditors have refused to provide a report on the financial statements or if the report(s) contain qualifications or disclaimers, this information would be highly relevant to investors. Disclosure in the Document of the auditors' refusal, qualifications or disclaimers reproduced completely, as well as the reasons given for them, would help the Host Country regulator to determine whether or not to accept the Document.

The information provided in the financial statements should also be timely. To that end, Host Country regulators should establish a time period for which the audited financial statements prepared for the last year can still be included in the Document without being viewed as out-of-date. In any case, if the Document is dated more than nine months after the end of the last audited financial year, inclusion in the Document of consolidated interim financial statements that cover at least the first six months of the financial year would provide a more current picture of the Issuer's financial condition. If, at the date of the Document, the Issuer has published interim financial statements that cover a more current period, including the more current interim financial statements in the Document would help ensure that investors get the most up-to-date financial information about the Issuer.

Any interim financial statements contained in the Document usually include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information is viewed by many regulators as satisfied if Issuers present the year-end balance sheet. The interim financial statements also are most useful if they include selected note disclosures that will explain events and changes that are significant to an understanding of the changes in financial condition and performance of the issuer since the last annual reporting date.

If the interim financial statements are not audited or reviewed, regulators should consider requiring disclosure of this, as investors would find this information highly relevant. Issuers are encouraged to have any interim

financial statements included in the Document reviewed by an independent auditor to provide some assurance as to the reliability of the information presented. If an independent auditor has performed such a review and the review is referred to in the Document, regulators should consider requiring Issuers to provide a copy of the auditor's interim review report in the Document.

- B. Significant Changes.** An indication in the Document of whether any significant change has occurred since the date of the annual financial statements, and/or since the date of the most recent interim financial statements, if any, included in the Document as of the date of the Document helps ensure that the Document reflects all material events that could have an impact on an investor's decision making. Useful information includes changes that have a significant impact on the Issuer's financial condition, performance or its ability to fulfill its obligations under the relevant issue.

XIV. ADDITIONAL INFORMATION

Purpose: In addition to the disclosure topics outlined above, regulators should consider whether to include the following disclosure topics in their debt disclosure regime.

- A. Memorandum and Articles of Association.** By learning about the Issuer's objectives and purposes, investors are better able to understand the basic framework for the Issuer's operations. Disclosure in the Document about where this information may be found in the Issuer's memorandum and articles of association is viewed by many regulators as important information to investors. If applicable, information about the register and the entry number for the Issuer can also be useful for investors who want to verify the legal validity of the Issuer.
- B. Material Contracts.** When the Issuer or any of its Affiliates enters into a material contract that is outside its ordinary course of business, the terms of that contract can have a significant impact on the operations and profitability of the business. In the context of public offerings and listings of Debt Securities, this information is especially relevant if it has an impact on the Issuer's ability to fulfill its obligations on the Debt Securities. As a result, many regulators require a brief summary of the material contracts to be included in the Document.
- C. Exchange Controls.** Some jurisdictions restrict the import or export of capital, which may affect the ability of Issuers located in those jurisdictions to make any payments, such as interest payments, to non-resident holders of the Issuer's Debt Securities. To the extent that the

governmental laws, decrees, regulations or other legislation of the Issuer's home country may restrict the import or export of capital, or affect the Issuer's ability to make payments to non-resident holders, disclosure of this in the Document would help investors know whether their investment returns would be restricted.

- D. Statement by Experts.** Issuers often rely on Experts to provide critical advice or information that is used in connection with the offering and listing. An Expert can be an accountant, engineer, appraiser or any person whose profession gives authority to a statement made by him/her. If the Document indicates that a statement or report included in it can be attributed to such an Expert, the person's name, business address and qualifications would be highly relevant to investors. In some cases, the Expert may be an organization, rather than an individual. Additionally, in some jurisdictions the consent of the Expert to be named is required for liability purposes and must be disclosed. In those cases, disclosure in the Document that the statement or report, in the form and context in which it is included, has been included with the consent of that person, who has authorized the contents of that portion of the Document is important.

APPENDIX

Feedback Statement on the Public Comments Received by the Technical Committee on the *Consultation Report – International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers*

The IOSCO Technical Committee (TC) published a final report on *International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers* (*International Debt Disclosure Principles* or *Principles*) after a public consultation process. These *Principles* apply to listings and public offerings of “plain vanilla” corporate debt securities to retail investors for cash. They are intended to provide useful guidance to securities regulators who are developing or reviewing their regulatory disclosure regimes for cross-border offerings and listings of debt securities.

This feedback statement describes the background to the publication of the *International Debt Disclosure Principles*, discusses the comments received by IOSCO from the international financial community, and the TC’s responses to those comments.

I. Background

The TC approved a project specification that would permit its Standing Committee on Multinational Disclosure and Accounting (SC1) to prepare disclosure guidance that could be used by corporate issuers who are making a cross-border public offering or listing of debt securities. Following this decision, SC1 prepared a set of disclosure principles after carefully considering how the 1998 *IOSCO International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers* (*International Equity Disclosure Standards*), which apply to public offerings and listings of equity securities, could be used in the development of guidance for public offerings and listings of corporate debt securities.

At its October 2005 meeting, the TC approved a draft of the *Principles* for public consultation, and published a Consultation Report later that month. In preparing this Consultation Report, SC1 considered the rapidly changing nature of the debt markets, the lessons learned from recent debt market failures and the priority given to this project in the February 2005 TC report entitled *Strengthening Capital Markets Against Financial Fraud*. After reviewing the public comments received, SC1 revised the *International Debt Disclosure Principles* to reflect the comments on the Consultation Report. The TC approved the *Principles* at its February 2007 meeting.

Ten organizations and one individual provided comments on the Consultation Report. (A list of the parties who provided comments is included at the end of this feedback statement.) Most of the comments received pertained to specific disclosure items that commenters believed should be added to, or excluded from, the *Principles*. The TC found the comments received from the public consultation to be very helpful and

useful, especially the comments that described current market practices. As a result of comments received, for example, the *Principles* have been revised to include an overriding materiality principle in the Introduction. The *Principles* have also been revised to include as a disclosure item under “Economic Terms of the Debt Securities” the form in which the Debt Securities will be traded (e.g., in certificated form or book-entry). In addition, the caption to the subordination section of the *Principles* has been changed to “Subordination and Limitation of Rights” to acknowledge the distinction between the ranking of payments, and the contractual terms and conditions of an issue that may affect what is available to satisfy claims under the debt issue. Also in response to comments, the “Markets” section of the *Principles* has been revised to refer to the exchanges or regulated markets on which the Debt Securities are traded or intended to be traded, rather than the entire universe of markets on which such securities may be traded in the future. Most of the comments requesting clarifications or noting technical drafting points have been incorporated into the final version of the *Principles*.

Other comments that focused on issues relating to the offering process, or issues other than the disclosure topics that should be contained in a Document were viewed as beyond the scope of the *Principles*. Because most commenters provided very detailed comments on several specific topics, the feedback statement focuses on those comments that were not incorporated into or addressed in the final version of the *Principles* and the reasons why.

II. Comments Received and Responses to those Comments

A. The format and desirability of a follow-up project dealing with other types of debt instruments

The Consultation Report invited the public to submit comments on the principles-based format, as well as the desirability of another IOSCO project dealing with debt instruments other than "plain vanilla" corporate debt. All of the commenters who commented on the format of the project supported the principles-based approach, and many noted the enhanced flexibility of the guidance as a result of this format. With respect to the desirability of a follow-on debt project, the comments were mixed. Although two commenters supported additional IOSCO work to address more complex debt instruments, other commenters indicated that additional work would not be necessary and could well be confusing. One commenter also expressed interest in a follow-on project to standardize the provision of summary information for non-professional investors in offering and listing documents.

The TC has concluded that the principles-based approach of the *International Debt Disclosure Principles* should enable securities regulators to adapt the *Principles* to a wide variety of debt instruments, so that additional work related to other types of debt securities would be superfluous. The TC has also concluded that it would not be advisable for IOSCO to pursue a project devoted to standardizing the provision of summary information in Documents because it is up to each individual securities regulator to determine what role such a summary would play within its jurisdiction.

B. Scope of the *Principles*

Several commenters suggested that the *Principles* should be expanded to cover a wide variety of issues beyond pure disclosure matters, as well as a broader range of debt instruments. These commenters suggested that the *Principles* cover issues related to the mechanics of the offering process (such as the timeliness of disclosure and the amount of time that retail investors are given to review Documents), that the *Principles* be expanded to cover debt securities that are more appropriate for professional investors, and that the *Principles* cover ongoing disclosure obligations of issuers and multi-term note programs. The TC has concluded that these suggestions are beyond the scope of this specific project, which is narrowly focused on developing principles of disclosure for debt securities offered and sold to retail investors.

Two commenters also urged that the *International Debt Disclosure Principles* provide a specific carve-out for debt instruments that are issued by banks and other credit institutions as they are also subject to prudential supervision and are frequent issuers. The “Scope of the *Principles*” section of the final version of the *Principles* acknowledges that there are a wide variety of debt securities issued by many types of entities in specialized industries. There is great variability in the approach that different jurisdictions take to regulating these industries, e.g., some securities regulators may impose fewer disclosure requirements because other regulators will also be involved in overseeing the issuer, other securities regulators may impose additional disclosure requirements because of special concerns associated with the issuer’s industry, others may not treat issuers from specialized industries differently at all. In any case, the *Principles* are not self-executing. Because the regulatory landscape differs so greatly among different jurisdictions, the TC concluded that it would be preferable to focus on developing basic disclosure principles that regulators could adapt as appropriate to reflect their own specific regulatory concerns.

Other commenters suggested that specific types of securities, such as secured debt and commercial paper, should be excluded from the definition of “Debt Securities” and from the scope of the *Principles*. The TC notes, however, that although secured bonds may not be as common in the international markets, they are still occasionally issued by certain asset-intensive industries. In those cases, disclosure of certain items, such as the collateral used to secure the Debt Securities, would be highly relevant to investors. With respect to commercial paper, the TC notes that the *Principles* were developed for “plain vanilla” corporate debt securities and each regulator could consider whether the *Principles* should apply to commercial paper.

Several commenters also supported the exemption of EU-only transactions from the definition of “Cross-Border” that was contained in the Consultation Report. One commenter went so far as to suggest that any offering solely directed to EU member countries, including offerings by non-EU issuers, should be excluded from the definition of “Cross-Border.” However, another commenter took the opposite approach, and suggested that all EU offerings, including those made by EU issuers to investors in

multiple EU member states, should be subject to the *Principles*. Instead of referring to explicit exemptions, IOSCO has decided to follow a more principles-based approach that is more consistent with the format of this project. As the principles-based approach also clarifies that the Home Market can comprise multiple jurisdictions – which is the case in the European Economic Area forming a single market under a treaty – it is no longer necessary to explicitly refer to the EEA/EU exemption, or to the other specific exemptions that were contained in the Consultation Report.

C. Identity of the parties responsible for the Document

Two commenters expressed concern that the *Principles* appeared to assign liability to specific parties. The *Principles* do not attempt to assign liability, but indicate explicitly that the applicable laws and regulations within each jurisdiction determine which parties have responsibility for the Document. The objective of this disclosure principle is to emphasize the importance of disclosing the identity of the parties who would be viewed as responsible for the disclosures made in the Document according to the laws and regulations of a particular jurisdiction.

D. Description of the Debt Securities

Most of the comments received on this section of the *Principles* focused on issues outside of the scope of the *Principles*, or read in obligations that were not intended. One commenter urged that IOSCO develop standardized interest rate calculations and a structured regime for disclosing the rules applied in calculating interest rates. This same commenter expressed concern that securities exchanges would be expected to monitor compliance with covenants, or to track the ownership of old versus new tranches of an existing note. Another commenter suggested that IOSCO create requirements establishing when Issuers would not be able to label bonds as senior unsecured debt.

Some commenters proposed that the *Principles* include specific covenants, such as covenants setting out how the Issuer would ensure continued communication with investors if it is taken over by another company. Other commenters focused on whether only material covenants should be disclosed, or whether all covenants should be disclosed. The covenants described in the *Principles* are simply examples of covenants that regulators could require Issuers to disclose in their Documents, and are not meant to be an exhaustive description of all possible covenants that could be disclosed. Moreover, the *Principles* merely provide useful guidance that can be adapted by securities regulators when developing a disclosure regime for Debt Securities. As a result, the TC decided it was not necessary to include some of the covenants proposed by commenters in the list of examples provided in the *Principles*. In addition, the Introduction to the *Principles* has been revised to include a discussion of materiality similar to what is contained in the *International Equity Disclosure Standards*. Irrespective of the specific disclosures required by a securities regulator, most countries rely on an overriding principle that an Issuer should disclose all information that would be material to an investor's investment decision and that is necessary for full and fair disclosure.

E. Risk Factors

One commenter suggested that highly rated Issuers do not need to include a discussion of risk factors in their Documents, and that as a result the *Principles* should clarify that Issuers only need to disclose risk factors “if appropriate.” The TC concluded that this proposed revision is not necessary, since securities regulators are free to adapt and incorporate the *Principles* into their disclosure regimes to the extent that they deem appropriate. Moreover, the TC noted that a good credit rating does not mean that there are no risks that should be considered by investors.

F. Information about the public offering

A couple of commenters noted that over-allotment options are rare in debt offerings. Although the TC recognizes this, it has concluded that an abbreviated discussion in the *Principles* about the use of over-allotment options is nonetheless warranted because such options are occasionally available in international debt offerings.

Two associations of underwriters expressed concern about including an itemized description of the offering or listing expenses in the Document, especially with respect to the disclosure of underwriting commissions and fees. The TC has decided to retain this disclosure topic, especially since the topics contained in the *Principles* are merely suggested disclosures for securities regulators to consider. In some jurisdictions, the disclosure of such commissions and other offering expenses has been viewed as useful disclosure that may help the markets assess the reasonableness of the commissions and fees.

Commenters were divided on the usefulness of use of proceeds information. Groups representing investors strongly favored a clear description of the use of proceeds, while groups representing underwriters or banks were equally adamant that such disclosure was excessive. On balance, the TC has concluded that it is useful to include this disclosure topic in the *Principles* for consideration and evaluation by securities regulators when developing or reviewing their disclosure regimes.

G. Selected Financial Information

One commenter questioned the need for disclosure of past exchange rates between the currency used to prepare the financial statements and the currency of the Host Country in those cases when the financial statements are prepared in a different currency than the Host Country’s. The TC concluded that this information could help investors and others interpret the historical financial statements that are included in the Document. The same commenter also suggested defining terms used in this section of the *Principles*, such as “subsequent significant changes” and “current information.” Because the *Principles* are intended to provide high level guidance to securities regulators, the TC has concluded that a detailed definition of “current information” or a more detailed definition of “subsequent significant changes” than what is provided in Section XIII.B. would be beyond the scope of the *Principles*.

H. Operating and Financial Review and Prospects (OFR)

A few commenters suggested that the *Principles* provide less extensive discussion of OFR. However, many securities regulators view OFR as highly relevant information, as evidenced by the OFR disclosure requirements currently contained in their debt disclosure regimes. Because the *Principles* are not mandating such disclosures, but merely suggesting disclosure topics that securities regulators should consider, the TC decided to retain the discussion of OFR contained in the Consultation Report.

One commenter proposed that the *Principles* suggest that the profit forecast should be audited. The TC decided not to include in the *Principles* any suggestion about the level of audit assurance that should be provided because this is beyond the scope of the *Principles*.

I. Directors, Senior Management and Employees

One commenter misconstrued the discussion about the disclosure that could be provided about Directors and Senior Management. This commenter expressed concern that disclosure about non-management employees would be irrelevant to investors and could be detrimental to these employees. The *Principles* do not suggest disclosure about non-management employees other than a discussion about the relations between the Issuer's management and the relevant labor unions. This same commenter also expressed concern about the relevance of information pertaining to share ownership of those persons who are in a position to affect the Issuer's operations, such as the Directors and members of Senior Management, unless those persons have a controlling interest in the Issuer. The TC notes that the *Principles* are suggesting such disclosure for individuals who are in a position to direct or significantly influence the activities of the Issuer.

The TC received mixed comments about the need for disclosure of corporate governance practices. Some commenters viewed the disclosure as not as relevant to debt investors, while one investor group urged more extensive disclosure on corporate governance practices. In its report *Strengthening Capital Markets Against Financial Fraud*, the TC underscored the importance of good corporate governance practices. After careful consideration, the TC concluded that disclosure about corporate governance practices could be relevant to debt investors.

J. Additional Information

One commenter proposed limiting disclosure of material contracts to instances when the information is relevant to the Issuer's ability to service the Debt Securities. The TC concluded that materiality could be viewed more expansively than in that limited context. For instance, materiality may also be viewed as information affecting the investor's investment decision, rather than the Issuer's ability to fulfill its obligations on the Debt Securities.

Another commenter proposed that the *Principles* suggest disclosure of the specific consequences if new withholding taxes are imposed after the issuance of securities. This information would most likely be disclosed in the terms and conditions and/or taxation section of the Document.

After considering the organization of the disclosure topics in the *Principles*, the TC decided to discuss the taxation issues under a separate caption, rather than include this topic with the other disclosure topics described under “Additional Information.” This organization is purely intended to reflect the fact that tax issues are not substantively related to other disclosure topics contained in the *Principles*.

Another commenter noted that statements by experts can be provided by both organizations and individuals. Although this is well-established practice in most TC member jurisdictions, a few TC members have indicated that it would be useful for the *Principles* to clarify this point, as regulators in their jurisdictions occasionally field questions on this issue. The *Principles* have been revised to include this clarification.

List of Commenters

Bond Market Association

Bundesverband der Deutschen Volksbanken und Raiffeisenbanken
BVR/National Association of German Cooperative Banks

BVI Bundesverband Investment und Asset management e.V.

CFA Institute Centre for Financial Market Integrity

Deutsche Boerse Group

Mark Fuhrmann

International Capital Market Association

Investment Management Association

London Investment Banking Association

TLX S.p.A.

Zentraler Kreditausschuss