

# **IOSCO NONFINANCIAL DISCLOSURE STANDARDS**

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Prepared for

**OECD's Second Southeastern Europe Corporate Governance  
Roundtable**

Istanbul

May 30, 2002

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# BACKGROUND

- The standards were adopted by the International Organization of Securities Commissions (IOSCO) at its 1998 Annual Meeting
- By virtue of IOSCO membership, countries' regulators undertake to use best efforts to implement the standards
- The standards are intended for use in a single disclosure document for cross border offerings and initial listings of equity securities by foreign issuers, subject to the host country review or approval process
- However, the standards also serve as an excellent point of reference for development of emerging market countries' domestic disclosure standards
- The standards may be found on IOSCO's web site:  
[[www.iosco.org](http://www.iosco.org)]
- There follows a summary of the standards

# GLOSSARY OF DEFINED TERMS

- “Affiliate” is any person directly or indirectly controlling, controlled by, or under common control with another person
- “Beneficial Owner” of securities includes any person who directly or indirectly has or shares the underlying benefits of ownership, including the power to direct the voting or disposition of the securities or to receive the economic benefits of ownership
- “Company” unless the context indicates otherwise means the company and its consolidated subsidiaries
- “Equity securities” include common and preferred shares, options or warrants to subscribe for equity securities, and any securities, other than debt securities, convertible into, or exercisable or redeemable for equity securities

# IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISERS

- Purpose: To identify company management and others involved in the listing and registration process
- Directors and Senior Management
  - Names, business addresses and functions
- Advisers
  - Names and addresses of principal bankers and legal advisers with whom the company has a continuing relationship
  - Names and addresses of the listing sponsor (where applicable) and legal advisers for the issue
- Auditors
  - Names and addresses of auditors for the preceding three years and membership in a professional body

# OFFER STATISTICS AND EXPECTED TIMETABLE

- Expected dollar amount, number and price of securities to be issued and method of determining price
- Offering period and subscription procedures, including possible extensions and how they will be publicized
- Payment and delivery terms
- For preemptive rights offerings, procedures for exercising rights, negotiability of rights and treatment of unexercised rights
- How results of offering will be made public

# KEY INFORMATION

- **Selected financial data** should conform to line items in the financial statements and include, at a minimum:
  - Net sales or operating revenues
  - Income (loss) from operations
  - Income (loss) from continuing operations (total and per share)
  - Net income (loss) from operations (total and per share)
  - Diluted net income per share
  - Dividends per share
  - Total assets
  - Net Assets
  - Capital Stock
  - Outstanding Shares as adjusted for capital changes
- Generally, presented for five years and any interim period, giving effect to restatements
- Disclosure of exchange rate history required where data is presented in currency other than that of the host country

# KEY INFORMATION - CONTINUED

- **Capitalization and indebtedness** showing:
  - Secured vs. unsecured indebtedness
  - Guaranteed vs. non-guaranteed indebtedness
  - Includes indirect and contingent indebtedness
  - Current within 60 days and giving pro forma effect to any use of proceeds
- **Purpose of the Offering; Use of Proceeds**
  - Breakdown required for each principal use; E.g., describe any
    - Assets to be acquired and, if other than in ordinary course of business, their cost;
      - Basis for determining cost in related party transactions
    - Businesses to be acquired, including status of acquisition
    - The terms of any debt to be retired, including use of proceeds of debt incurred within past year
  - Address prioritization if proceeds may be inadequate for all purposes; any related financing plans

# KEY INFORMATION – RISK FACTORS

- Objective: To prominently disclose risk factors that are specific to the company or industry and make an offering speculative
- Intended to summarize more detailed discussion elsewhere in document
- Prioritization of risks encouraged but not required
- Examples of risk factors
  - Business specific risks; unusual competitive conditions; reliance upon patents, trademarks; dependence upon limited number of customers or suppliers
  - Country risks
  - Absence of profitable operations
  - Financial condition
  - Possible absence of a liquid trading market; offering dilution
  - Dependence on the expertise of management

# INFORMATION ON THE COMPANY

- History and development, including:
  - Legal form, domicile, registered office, principal place of business, agent (if any) in host country
  - Important events in the development of business; e.g. acquisitions
  - Capital expenditures and divestitures during past three years and currently
- Business overview for last three years
  - Information regarding business segments and main categories of products and services; marketing practices – may be based upon presentation in financial statements; e.g, IAS line of business disclosure
  - Sources, availability and price volatility of raw materials
  - Competitive position; dependence upon material contracts and proprietary information
  - Effects of governmental regulation
- If the company is part of a group, a description of the group and the company's position in the group, including significant subsidiaries
- Description of property plant and equipment, including location, adequacy, capacity, utilization, capital improvement plans, and environmental considerations
  - Owned vs. leased; associated indebtedness

# OPERATING AND FINANCIAL REVIEW AND PROSPECTS

- Substantially the same as U.S. Management's Discussion and Analysis (MD&A) Requirements
- Should cover the annual and interim periods for which financial statements are provided and be presented separately for each business segment
- Requires a trend analysis and explanation of causes of material changes in financial statement line items, including impact of unusual or infrequent events
- Requires an analysis of liquidity and capital resources (internal and external), sources and amounts of cash flows, existing and planned expenditure and borrowing levels and use of financial instruments
- Requires management's assessment of factors anticipated to affect financial condition and results of operation in future periods
- Recognizes that some countries may require forecasts or a statement of prospects for the current year and/or future periods

# OPERATING AND FINANCIAL REVIEW AND PROSPECTS - CONTINUED

- Impact of inflation must be disclosed, if material; if the currency in which financial statements are presented is of a country with hyperinflation, a five year history and discussion of inflation is required
- Research and development policies within the past three years must be described, if significant, including annual expenditures on company-sponsored R&D
- Trend information is also required for the latest year regarding production, sales and inventory, including selling prices, costs and order backlog

# DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

- Disclosure is intended to allow investors to assess management's experience, qualifications, levels of compensation and relationship with the company
- Management covered is determined by host country law
- Directors and senior management
  - Name, business experience, functions and experience in the company
  - Business activities outside the company, including directors' other directorships
  - Nature of any family relationships
  - Arrangements or understandings with others by which the persons serve as directors or officers

# DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES - CONTINUED

- Compensation for the last fiscal year
  - Aggregate compensation of group must be disclosed unless individual compensation is required disclosure or made public in the home country
  - Includes cash compensation and benefits in kind, accrued deferred or contingent compensation payable in a later year
  - Includes bonus or profit sharing compensation, including a description of the plan
  - Includes stock options – amount, exercise price, expiration date and purchase price, if applicable
  - Includes amounts accrued or set aside for pension, retirement, etc.
- Board Practice
  - Applies to directors and members of administrative, supervisory or management bodies
  - Term of office, length of prior service, terms of any service contracts, including compensation payable upon termination
  - Identities of audit and remuneration committee members and committees' terms of reference

# DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES - CONTINUED

- Employees
  - Year end or average number for each of last three years
  - Any significant use of temporary employees within past year
  - If practicable, a breakdown by activity and geographic region
  - Information regarding management-union relationships
- Share Ownership
  - Requirement applies to directors and senior management
  - Same rule as for compensation re individual vs. aggregate disclosure
  - Amount and percentage of outstanding shares owned as of most recent practicable date, including options
  - Any differences in voting rights must be disclosed

# MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

- Major shareholders – objective is to provide information regarding who may be control persons
  - Beneficial ownership of 5% or more of company's outstanding shares must be disclosed – name, number and percentage of outstanding shares
    - Also, any changes in such ownership during past three years
    - Any disparate voting rights
- Portion of each class of securities held in the host country and number of record holders in host country must be disclosed
- Nature of any control, directly or indirectly, by individuals, governments, or other companies must be disclosed
- Arrangements that may lead to a future change in control must be disclosed

# RELATED PARTY TRANSACTIONS

- More comprehensive than IAS requirements. Applies to transactions since the beginning of the company's three preceding fiscal years
- Applies to transactions, directly or indirectly through one or more intermediaries, between the company and:
  - Key management personnel
  - Individuals owning beneficially 10% or more of the company's voting power
  - Affiliates or associates of any of the above
- Applies to past and proposed transactions involving goods services or tangible or intangible assets that are:
  - Transactions material to the company or the related party, or
  - Transactions unusual in their nature or conditions
- Applies to past and proposed loans, including guarantees, and requires disclosure of the largest and latest amounts outstanding, interest rate, and nature of the transaction or loan
- Separate disclosures required regarding any employment on a contingent basis or share ownership of experts and counsel

# FINANCIAL INFORMATION

- The IOSCO standards are not intended to address accounting and auditing standards, which are left to each host country
- However, the standards do address:
  - Financial statements required in the disclosure document
  - Fiscal periods required to be covered and timeliness
- The document must contain the following audited consolidated financial statements presented on a comparative basis for the company's last three fiscal years and accompanied by an independent auditor's report:
  - Balance sheet
  - Income statement
  - Statement of changes in shareholders' equity or comparable footnote disclosure
  - Cash flow statement
  - Notes and schedules required by the comprehensive body of accounting standards under which the financial statements are prepared

# FINANCIAL INFORMATION - CONTINUED

- Audit reports must be sufficient to enable the regulator to assess the nature and acceptability of any qualifications
- Timeliness – The last year of the financial statements should not be older than 15 months at the time of the offering or listing
- If the disclosure document is dated more than nine months after the last year of the audited financial statements, interim, unaudited condensed financial statements are required for the first six months of the fiscal year and the same period of the prior year
- Any significant changes from the date of the most recent annual or interim financial statements must be disclosed
- The standards recognize that host countries may require additional financial information; e.g. company only financial statements and financial statements of businesses acquired or to be acquired

## FINANCIAL INFORMATION - OTHER

- Export sales – If significant, the amount and percentage of total sales represented by export sales must be disclosed
- Any legal or arbitration proceedings (contingencies) which may have, or have had in the recent past, significant effects on the company's financial position or profitability must be disclosed
- Dividend policy must be disclosed

# THE OFFER AND LISTING

- Pricing
  - Expected price of an offering and method of determining price
  - Expenses to be borne by investors
  - If there is a prior trading market
    - High and Low prices for last five years
    - Quarterly high and low prices for the last two years
    - Monthly high and low prices for the last six months
  - Information required for host market and other markets where the securities are listed or traded
  - For preemptive rights issues
    - Price at beginning of prior six months, price on last trading day before announcing the rights offer and price as of the latest practicable date
  - If pre-emptive rights have been waived or restricted, the reasons and the beneficiaries of such restriction or waiver
  - Potential lack of liquid market for issues not previously traded

# THE OFFER AND LISTING -CONTINUED

- Description of securities being offered or listed
  - Arrangements for transfer; and any restrictions on free transfer
- Plan of distribution
  - Identity of underwriters and terms and conditions of underwriting; e.g., firm commitment vs. best efforts
  - If known by company, extent of participation by major shareholders directors and management, and any person who intends to acquire more than 5% of the offering
  - Investors for whom the offering is targeted or shares are reserved
  - Over-allotment options
  - Any private or other offerings being made at or about the same time as the offering or listing
  - Any material relationships of the underwriters and financial advisors with the company
- Expenses – Amount and percentage of underwriting discounts or commissions and reasonably itemized statement of offering expenses

# THE OFFER AND LISTING -CONTINUED

- Selling shareholders
  - Names, addresses and any material positions or relationships with the company during the past three years
  - Amount of securities being sold by each shareholder and the amount and percentage of outstanding shares owned before and after the offering
- Dilution
  - Where there is a substantial disparity between the offering price and the price at which directors, management and affiliates have acquired shares within the past five years, or may acquire shares in the future:
    - A comparison of the respective contributions of each group is required along with disclosure of the amount and percentage dilution between the offering price and net book value per share as of the most recent balance sheet date
  - Separate disclosure requirement re dilution suffered by shareholders who do not subscribe to a rights offering

# ADDITIONAL INFORMATION

- Purpose of requirement is to specify information, mostly of a statutory nature, that is not covered elsewhere in the disclosure document but may be required to be made publicly available outside of the disclosure document. This includes:
  - Information regarding share capital, including authorized but unissued shares, reserved shares and treasury shares
  - Information regarding the company's governing instruments, including procedures regarding shareholders' rights and their exercise, shareholders' and directors' meetings
  - Material contracts within the past two years not entered into within the ordinary course of business
  - Exchange controls and taxation that may affect investors
  - Dividend rights and restrictions, and paying agents
  - Statements in the disclosure document made upon the authority of experts and the experts' consent
  - Information regarding subsidiaries
  - Where the above information may be inspected

# DISCLOSURE ISSUES OUTSIDE OF THE STANDARDS

- Part II of the IOSCO standards includes a list of disclosure issues on which IOSCO members do not have uniform views, and summarizes the practices in jurisdictions that address such issues.
- The issues include:
  - The concept of materiality
  - Incorporation by reference of information
  - The filing or display of additional documents
  - Use of projections and forward-looking information
  - Disclosure standards for specialized industries; e.g., banking, mineral and oil and gas operations, and insurance
  - Property valuations
  - Responsibility statements by the persons who may be held responsible or liable for the accuracy and adequacy of the disclosure document
  - Cover page disclosure and undertakings

# DISCLOSURE ISSUES OUTSIDE OF THE STANDARDS - CONTINUED

- Indemnification of directors and officers
- Ratio of earnings to fixed charges
- Separate financial information for entities other than the issuer
- Supplementary information that becomes available after the document is approved
- Grounds for omission of information
- Certificates representing shares
- Derivatives and market risk
- Enforceability of civil liabilities against foreign persons
- Restatement of financial statements
- Subsidiary information
- Listings on other exchanges
- Mutual recognition within the European Union

# WHAT THE IOSCO STANDARDS DO NOT DO

- The standards apply to offering and listing transactions; they do not apply to annual or other periodic reporting obligations
- The standards do not address the obligation of a publicly-traded company to disclose on an ongoing basis other information that may significantly affect its share price
- The standards do not address accounting and auditing standards
- The standards do not prevent a host country from imposing additional standards
- The standards are not per se applicable to offerings or listings in only one jurisdiction, although they may be used as a benchmark or guideline for such purposes

# IMPLEMENTATION OF THE STANDARDS

- United States – the standards have been fully implemented by amendments to SEC Form 20-F, which governs most offering, listing and annual reporting requirements for foreign private issuers
- European Union – The IOSCO standards themselves indicate they are not intended to apply to offerings and listings that are limited to one or more EU member states
- However, in May 2001, the European Commission proposed a new EU prospectus directive for equity and debt securities offered to the public or admitted to trading in EU member states, which would be based upon the IOSCO standards
- In April 2002, an EU Parliament Committee significantly critiqued the proposed directive for reasons largely unrelated to the IOSCO standards requirements

# IMPLEMENTATION OF THE STANDARDS - CONTINUED

- Current requirements in EU member states make it difficult to make public offerings of equity securities in more than one state under existing directives
- However, many issuers avoid this problem by making a public offering in an issuer's home country and a cross border offering in other countries, which is limited to institutional investors
- Market disciplines applied to these offerings by underwriters and others often produce an offering document with non-financial disclosures that compare favorably to the IOSCO standards