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Transparency and Disclosure

Non-finance Disclosure of Issuers

by

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Good afternoon, dear colleagues!

**I am happy to greet you at the second meeting of the Eurasia corporate governance roundtable.
Topic of my presentation is the Non-finance Disclosure of Issuers**

The purpose of disclosure by open joint stock companies is to ensure timely access of stakeholders to complete and reliable information related to the terms of issuance and circulation of securities, financial and operational performance of the company and other meaningful information.

In my view, the disclosure is a guarantee of investment security and is of key importance for shareholders to exercise their voting rights. Easily accessible, timely and reliable information enable the shareholders and potential investors assess the quality of the Company Management, make sound decisions as regards acquisition and sales of securities as well as exercise their voting rights at general meetings of shareholders. In its turn, strict requirements to disclosure strengthens trust in the respective market and may help to attract capital. Experience of countries with large and active stock markets demonstrates that there is no trust without information, and there is no investment without trust.

The Principles of Corporate Governance developed by the Organization of Economic Cooperation and Development (OECD) is an important step in the direction of the development of common international understanding of elements of proper corporate governance and serves as a benchmark for countries undergoing reform, in their effort to improve corporate governance environment. These Principles address issues from the following five areas of corporate governance:

- 1) Shareholders' rights,
- 2) Equitable treatment of shareholders,
- 3) Role of stakeholders,
- 4) Disclosure and transparency,
- 5) Responsibilities of the Board of Directors.

In my presentation I would like to discuss in detail the corporate governance principles with regard to timely non-financial disclosure and transparency, specifically, I will focus on the non-financial disclosure by Ukrainian issuers.

The system of non-financial disclosure, provided for by the current legislation of Ukraine, aims to ensure investors' rights for timely access to reliable and complete information at the following levels:

- . Information on issue of securities offered for public trading;
- . Regular information;
- . Specific information on issuers.

•. Disclosure at the time of securities placement

Ukrainian legislation mandates registration of securities issue in cases where the issuer posts bonds and shares for public trading, in other words between legal and natural entities, the circle of which is not predictable in advance. However, under general rules, established by the Securities and Stock Market

State Commission (SSMSC), the information on issue of shares of publicly traded companies (open joint-stock companies) is supposed to be registered in all cases, as the circle of legal and natural entities, which may acquire these shares, may not be determined in advance. Therefore, as of today, open joint-stock companies register information on issue of shares in cases of decrease of charter capital, denomination of shares and in other cases. There is a number of exceptions from this general rule, which began to appear in the current legislation due to the simplification and deregulation of securities issue procedure. Say, according to the latest regulations adopted by the SSMSC, open joint stock companies are exempted from registration of information on issuance of shares in the following cases:

- Due to the increase of charter capital caused by the revaluation/indexation of fixed assets;
- Due to the creation of Open joint-stock company on the basis of the state-owned enterprises in the process of privatization and corporatization;
- During the reorganization of companies.

SSMCS defines the scope of information which is recognized essential and which must be disclosed at the time of securities placement.

The necessity of disclosure at the time of securities placement is caused by the fact that investment activities are related to certain risks, and that the investor needs to have complete and reliable information on the issuer, its financial position and placed securities, in order to analyze potential risks and to make sound decisions as regards acquisition of securities.

Conditionally, all information on issuance of securities, may be divided into four groups:

1. Information on the issuer.

This includes general information on the issuer (full name, location, core activity, number of shareholder and employees); data on the issuer's key officers; possible risk factors; description of the issuer's operations; number of shares owned by the members of executive body and the list of persons, size of shares of which in the charter capital exceed 5% etc.

2. Information on the financial position of the issuer.

Includes data from the balance sheet, report on financial results and use of profit (for banks – profit and loss statement), certified by auditor and prepared at the beginning and at the end of the year, preceding the current year, as well as at the beginning of the current quarter.

3. Information on securities of the issuer, which includes the list and results of earlier issues, and the data on projected securities issues.

4. Information concerning the accounting for issuer's registered securities owners.

It means information about the registrar or the depositary of the company's securities.

Information about securities issues is intended for any potential investor and **must be disclosed by the issuer by its publishing in the periodicals** of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and the official gazette of the stock exchange **not later than 10 days before the commencement of subscription for these securities.**

It must also be stated that Article 23(2) of the Law of Ukraine “On Securities and Stock Exchange” stipulates that company stocks and bonds offered for a public sale are admitted for placement not earlier than 30 days after the announcement of their issue has been published. This rule introduces some confusion, and as of today the status, the form and the organ where it is to be published remain unclear

as well as the number of publications that must precede issuer's placement of its securities. Therefore, **in**

practice, to avoid conflicts with the SSMSC, issuers make one publication, that is, they publish information about the issue not later than 30 days before placement of the securities.

II. Regular disclosure of information about the issuer.

Regular information about the issuer is an important periodical source of information for investors. It is intended to present complete, true and unbiased information about company's business to investors for best possible decision making on:

- buying, selling and holding securities;
- assessing the quality of management;
- assessing the company's ability to timely fulfill its obligations;
- determining the amount of distributable dividends;
- regulating activities of the company, etc.

According to laws of Ukraine securities issuers are subjects of regular disclosure.

Regular information about the issuer is presented in the form of an annual report. Financial statements prepared in accordance with national accounting standards (not contradicting international standards) are part of the issuer's annual report.

Current legislation of Ukraine obligates the issuer to regularly disclose information by publishing and circularizing it among holders of registered securities and the SSMSC not less than once a year.

Published must be not the entire annual report, but basic information about the issuer and basic indicators of its financial and business activities. The same information may be found at the SSMSC web site. Entire annual report information may be learned directly at the SSMSC.

It must be noted that on submission of regular information the issuer may apply to the SSMSC not to disclose certain data contained in the report. The procedure for consideration of this application and the making of the respective decision is regulated by the Procedure on publicizing part of regular information about the issuer approved by SSMSC Resolution #97 of July 1, 1998.

III. Disclosing special information about the issuer

Special information is information about important facts or developments (changes in financial and business activities of the issuer) that took place between submissions of regular information by the issuer and have an impact on the price of securities or the return on those.

Current legislation includes the following in special information:

- changes in rights to securities;
- personnel changes;
- attachment of issuer's bank accounts;
- commencement of receivership;
- reorganization, suspension or termination of issuer's activities;
- destruction of not less than 10% of assets (based on their book value as of the beginning of the reporting year) due to extraordinary circumstances;
- filing a suit against the issuer for the amount exceeding 10% of the authorized capital or the sum of fixed and current assets of the issuer;
- obtaining a loan or a share issuance in the amount exceeding 50% of the chartered fund or the sum of fixed and current assets of the issuer.

It must also be noted that in 1998, to ensure investor rights protection, the SSMSC resolved that legal entities professionally maintaining registers of registers securities owners and depositary activities

are obligated to submit to the SSMSC, information about owners or nominal holders holding 10% and more of the issuer's stocks. According to a resolution of the SSMSC adopted in June of the last year,

such information must be filed within three days of the day when the owner of nominal holder holding 10% and more of the issuer's stocks was entered upon the register. These requirements of law play a role in ensuring investor rights and prevent monopolistic practices at the securities market.

Today an issue is being considered whether it is necessary to expand the list of special information (to include data about entering upon the issuer shareholders register, a person holding over 25% of its securities, information about decisions made by the general shareholders' meeting, information about changes in the list of entities in which the issuer holds a stake, etc.) and whether it is necessary to have an opportunity to determine the scope of such information at the level of the SSMSC.

The law stipulates prompt disclosure of special information not only to the stock exchange and the SSMSC but also by publishing it in the stock exchange special gazette within two days. The SSMSC within a week of the issuer's announcement shall post the information on its official web site.

Summing up, it may be stated that Ukraine is implementing a set of measures aimed at the creation of a nationwide disclosure system concerning financial and business activities of joint stock companies in accordance with international standards.

Main measures include the switch by companies to national accounting standards, adoption by the SSMSC of a number of regulations on disclosure since the beginning of this year, implementation of a new issuer's electronic reporting, processing and publicizing information standard using modern information technologies.

Work to improve the disclosure system goes on and Ukraine will align itself with international accepted rules and principles of corporate governance, the use of which would help ensure the integration of Ukraine in the European and world stock markets, institute openness and transparency of the securities market of Ukraine, guarantee equal opportunities for issuers, investors, intermediaries and protection of their rights.