

# **CONSULTATION REPORT**

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



**OICU-IOSCO**

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

**OCTOBER 2005**

**This paper is for public consultation purposes only. It has not been approved for any other purpose by the IOSCO Technical Committee or any of its members.**



## BACKGROUND INFORMATION

In 1998, IOSCO published the *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers*, which contain detailed disclosure standards applicable to equity securities. As a follow-up project, IOSCO has developed the *International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers*, which set forth substantive disclosure principles for documents used in public offerings and listings of “plain vanilla” corporate debt securities. In contrast to the first project, a principles-based format for this project was used because such an approach was viewed as providing the most flexibility and adaptability. As a result, the *Principles* can potentially be applied to a broader range of debt securities.

The public is invited to submit comments on this Consultation Report. Input is solicited on the following issues:

1. Do you feel a principles-based format provides useful guidance for securities regulators who are developing or reviewing their regulatory frameworks for debt disclosures?
2. These *Principles* focus on “plain vanilla” corporate debt securities because IOSCO believes that such a framework can be used as the basic starting point for any disclosure regime relating to debt securities. Do these *Principles* include all topics that you believe should be covered in a document used in a public offering or listing of corporate debt securities? Do these *Principles* suggest disclosures that you believe are inappropriate or unnecessary to public offerings or listings of “plain vanilla” corporate debt securities?
3. Do you think it is necessary to develop another project that would deal with other types of debt instruments? If so, which types of debt securities do you think would benefit from disclosure guidance by IOSCO?

After considering the comments received as a result of this consultation process, IOSCO’s Standing Committee on Multinational Disclosure and Accounting (SC1) will submit a final version of the attached *Principles* to the IOSCO Technical Committee for approval.

### How to Submit Comments

Comments may be submitted by one of three methods **at the latest on 22 December 2005**. To help us process and review your comments more efficiently, please use only one method<sup>1</sup>.

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<sup>1</sup> **Important:** All comments will be publicly made available, unless anonymity is specifically requested. Comments sent via e-mail will be posted on the IOSCO Internet Home Page. Comments sent via fax or paper will be converted to PDF format and then posted on the IOSCO Internet Home Page. Personal identifying information will not be edited from submissions.

### **1. E-mail**

- Send comments to [mail@oicv.iosco.org](mailto:mail@oicv.iosco.org).
- The subject line of your message must indicate “Public Comment on *International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers*”
- If you attach a document, indicate the software used (e.g., WordPerfect, Microsoft WORD, ASCII text, etc.) to create the attachment.
- DO NOT submit attachments as HTML, PDF, GIF, TIFF, PIF, ZIP, or EXE files.

**OR**

### **2. Facsimile Transmission**

Send by facsimile transmission using the following fax number: 34 (91) 555 93 68.

**OR**

### **3. Paper**

Send a copy of your paper comment letter to:

Mr. Philippe Richard  
IOSCO Secretary General  
Oquendo 12  
28006 Madrid  
Spain

Your comment letter should indicate prominently that it is a “Public Comment on *International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers*”

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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. 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, and may be especially useful to regulators in emerging markets who are considering these issues in their markets.

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 *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 aimed at investors with different levels of sophistication. As a result, in many jurisdictions issuers may be subject to different or additional 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.<sup>2</sup>

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

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<sup>2</sup> 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.



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.

### ***Meaning of "Cross-Border" As Used in the Principles***

Consistent with the use of the term in the *International Equity Disclosure Standards*, an offering or listing of debt securities is considered to be "cross-border" when it is directed to one or more countries other than the issuer's home country ("Home Country" as defined in the Glossary), regardless of whether or not the offering or listing also is being made concurrently in the issuer's Home Country. In the following jurisdictions, the term "cross-border" as used in the *Principles* does not include public offerings and listings by the following:

In Canada, companies organized in the United States that use the Canadian Multijurisdictional Disclosure System with the United States, described in National Instrument 71-101. The term "cross-border" also would not include a company legally organized, incorporated or established in Canada for offerings within Canada.

In the European Union, offerings or listings by a company registered in an EU member state that only take place within EU member states.<sup>3</sup>

In the United States, (1) companies that are organized in a foreign country but do not meet the Securities and Exchange Commission's definition of a "foreign private issuer" as set forth in Rule 405 under the Securities Act of 1933, as amended, or in Rule 3b-4 under the Securities Exchange Act of 1934, as amended; or (2) companies organized in Canada that register under the U.S. federal securities laws using the rules and forms provided for in the U.S. Multijurisdictional Disclosure System with Canada.

In Hong Kong, the term "cross-border" only refers to public offerings and listings of debt securities by companies whose primary listing is on a stock exchange approved under the Stock Exchange of Hong Kong's Listing Rule 36.07 as being an exchange that is a "regulated, regularly operating, open stock market recognized for this purpose by the Exchange" and the issuer "conducts its business and makes disclosure according to the accepted standards in Hong Kong."

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<sup>3</sup> The reference to "EU member state" includes EEA states.

***Presentation***

Information that is disclosed in a Document 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 the accessibility of the Document to investors. The information covered by these *Principles* may be included in the financial statements or elsewhere in the Document, as appropriate.

***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.

**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) members of its administrative, supervisory or management bodies, (c) partners with unlimited liability, in the case of a limited partnership with share capital, and (d) nominees to serve in any of the aforementioned positions. The persons covered by the term “administrative, supervisory or management bodies” vary in different countries and, for purposes of complying with the disclosure standards, will be determined by the Host Country. In the United States, the term “Senior Management” corresponds to a U.S. company’s “executive officers” as defined in Rule 405 under the Securities Act of 1933, as amended and Rule 3b-7 under the Securities Exchange Act of 1934, as amended.

**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 Country** – The jurisdiction in which the Company is legally organized, incorporated or established.

**Host Country** – The jurisdictions, other than the Home Country, 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:** The parties who can be held responsible for the information provided in the Document should be identified. This disclosure may include identifying the Directors, members of Senior Management, advisers and auditors according to the applicable laws and regulations.

- A. **Directors and Senior Management.** By identifying the Directors and Senior Management who may be held liable, the Document will enable investors to ascertain the individuals within the Company responsible for the information contained in the Document. Information about their business addresses and functions may be helpful in this regard.
- B. **Advisers or Other Parties.** By identifying the advisers or other parties, the Document will indicate to investors the advisers and other parties who may be held responsible for the disclosure contained in the Document. The nature of who these parties can be 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, legal advisers to the extent they were involved with the public offering, or the sponsor for listing.
- C. **Auditors.** The Document should also include the names and business addresses of the external auditors who have audited the Issuer's financial statements contained in the Document.

### **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.** 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 should be contained in the Document. The Document should indicate whether the Debt Securities are registered or bearer securities. The total nominal amount of the Debt Securities to be issued should also be disclosed, as well as the individual face value of each type of Debt Security offered or listed. The Document should indicate 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 should be described.

An essential aspect of the Debt Securities that should be disclosed to 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, the Document should indicate who has the option to determine the currency conversion, as well as what the basis for that determination will be.

- B. Covenants Relating to the Issuance of the Debt Securities.** Debt Securities are usually created with financial covenants that are aimed at protecting Debt Security holders. These covenants should be disclosed. 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 of 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, the Document should identify the guarantor, and outline the main features of the guarantee. In this case, the Document should also include information about the guarantor so that investors can make an informed decision about whether or not the guarantor will be able to fulfill its obligations under the guarantee. The *Principles* should apply, to the extent relevant, to the disclosures provided in the Document about the guarantor.
- D. **Liens.** If the Company is issuing 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 Company should disclose the kind and priority of any lien securing the issue, as well as the principal properties or assets subject to the lien. 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 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, or as having priority. 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, the Issuer should identify, as of the most recent practicable date, the aggregate amount of outstanding indebtedness that is senior to the subordinated Debt Securities. The Issuer should also disclose any limitations on the issuance of additional senior indebtedness, or indicate that there is no such limitation, if appropriate. 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, the Document should include information about the general types of events that would constitute a default, as well as the remedies that would be available in the event of default, so that investors will 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. The Issuer should disclose any consequences of such a failure, and the available remedies under either the terms of the Debt Security or the applicable law.
- H. **Representation of Debt Security Holders (Through Trustees or Any Other Representative of the Debt Security Holders).** Investors in the Debt Securities should be informed 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, the Document should identify the party that is acting as the Debt Security holders' official representative, as well as the provisions applying to this representation. The Document should also disclose the address of the representative, and the nature of any material relationship between the representative and the Issuer or its Affiliates 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. If there are any requirements 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 have instructed the representative to take action, this should be disclosed. 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, and this should also be disclosed.

In addition, the main terms of the contract or law governing the representation of the Debt Security holders should be disclosed, as well as where the investors may obtain access to the contract. 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. The Document should indicate whether the Issuer is required to make this type of periodic disclosure, which provides the Debt Security holders with an early indication of any deterioration in the Issuer's financial condition.

- I. **Meeting of Debt Security Holders.** The Issuer should disclose details relating to the requirements for convening, attending or voting at a meeting of Debt Security holders, if such a meeting can be held. 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. To that end, the Document should disclose the name and address of the Issuer's appointed entity for that purpose.

### 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.

The Document should contain a description of risk factors that are specific to the Issuer or its industry, or specific to the Debt Securities to be offered or listed. However, it should not identify so many risk factors that the value of the disclosure would be undermined, but should 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 Section III.D. of the *International Equity Disclosure Standards*.

#### IV. MARKETS

**Purpose:** Disclosure about all the exchanges or regulated markets on which the Debt Securities are or may be traded provides an indication of possible liquidity in the Debt Securities, whether there is another market for trading the Debt Securities, and whether Debt Security holders will be able to resell their Debt Securities.

The Document should identify all the exchanges and/or regulated markets on which the Debt Securities are or may be listed and/or traded, and the dates on which the Debt Securities will be listed and/or traded, if not already listed and/or traded.

#### V. INFORMATION ABOUT THE PUBLIC OFFERING

**Purpose:** The types of disclosures contained in this section should be provided 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 should be provided to investors so that they know the total amount of the issue and other essential details, such as when the offering period begins and ends. 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 and Section V.D. for discussion about the over-allotment option.
- B. **Pricing.** Information about the expected issue price or the method of determining the price should be disclosed, including 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. The amount of any expenses that will be charged to the investor should also be described. 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, the Document should indicate how the price will be disclosed to the public.

- 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 should be disclosed so that investors know, as a practical matter, how they can participate in the offering. The Document should disclose 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 should be disclosed, as well as how this information will be made public. Occasionally, the exact dates of the offering period are not known. In those cases, the Document should disclose the arrangements for announcing the definitive dates.

Other relevant details about participating in the public offering should also be clearly disclosed in the Document. For instance, the Document should indicate how investors may pay for the Debt Securities, as well as the time limits for making any payments. In addition, the Document should describe 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 Document should disclose the names and addresses of the entities underwriting the public offering, as well as describe the material features of the underwriting relationship. If the amount of the offering could be increased, such as by the exercise of an over-allotment option, this should be disclosed. An over-allotment option allows the underwriting syndicate to purchase from the Issuer additional securities at the original offering price in case of greater than anticipated public demand for the Debt Securities.

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"), this should be disclosed as 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 should be disclosed.

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, the Document should briefly outline the plan of distribution and indicate the amount of any Debt Securities that are to be offered other than through the underwriters. This information enables 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, the Document should contain a description of the plan of distribution and the terms of any agreement with such entities. This would include terms relating to any volume limitations on sales and conditions under which the agreement may be terminated. If known, the identity of the broker(s) or dealer(s) that will participate in the public offering should be disclosed, as well as the amount of Debt Securities to be offered through each.

- E. Targeted Investors.** If the Issuer expects to offer Debt Securities to certain selected investors, this should be disclosed in the Document. This information indicates to potential investors whether they can participate in the public offering, and enables them to assess whether their opportunities for participation are the same as for other investors. To that end, the Document should identify any group of targeted potential investors to whom the Debt Securities are being offered, noting 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, the Document should contain information about the tranche and provide details of any other allocation arrangements. This information indicates the potential secondary market trading liquidity of the Debt Securities after the offering is completed.
- 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, this should be disclosed as well.

- 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. To that end, the Document should disclose 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, the Issuer should indicate the order of priority for each purpose identified, including the amount and sources of other funds that would be needed. If the Issuer has no specific plans for the offering proceeds, the Document should discuss the principal reasons for the offering.

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 should describe these assets and their costs. The Document should also indicate if the proceeds will be used to acquire assets from related parties, and whether the acquisition will be transacted on an arm's-length basis. If the Issuer intends to use any material part of the proceeds to discharge, reduce or retire other indebtedness, the Document should contain information about the interest rate and maturity of that indebtedness. For indebtedness incurred within the past year, the Document should indicate how the proceeds of that indebtedness were applied.

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, it should describe the businesses and provide information on the status of the acquisitions, 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. In that case, the name and address of the person or entity offering to sell the Debt Securities should be disclosed. If the selling security holder has a material relationship with the Issuer or any of its predecessors or Affiliates, this should be disclosed. Information about selling security holders enables investors to know who is reselling the Debt Securities and delivering the Debt Securities upon resale.

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. 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.** In order to provide a useful summary of key information about the Issuer's financial condition, the Document should contain selected historical financial information about the Issuer for the Issuer's most recent financial years, the number of years to be determined by the Host Country regulator. This section of the Document highlights some of the most salient information from the financial statements. If interim financial statements are included in the Document, the selected financial data should also include updated information for that interim period, which may be unaudited as long as this is disclosed in the Document. If selected financial data for interim periods is provided, comparative data from the same period in the prior financial year should also be provided, except that the requirement for comparative balance sheet data is 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.

The selected financial data should include specific line items expressed in the same manner as the corresponding line items in the Issuer's financial statements. 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. Section 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. Any subsequent significant changes in the capitalization and indebtedness must be disclosed according to Section XI.B. of these *Principles*. 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.

## VII. 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.** This section of the Document should include basic information about the Issuer, such as 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). The Document should also contain information about 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).

- 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 should also be described. This type of information would include discussion about the nature and results of any material reclassification, merger or consolidation of the Issuer or any of its significant subsidiaries. Examples of other 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.** In addition, the Document should contain 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. This information provides an indication of whether the Issuer will be able to fulfill its obligations under the issue. Issuers should provide sufficient disclosure to help investors assess the magnitude 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. Section 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. The Document should also indicate whether and how the Issuer is dependent on other



entities within the Group. See Section 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.** When the information is significant, the Document should contain disclosure about the Company's research and development policies, including the amount spent on Company-sponsored research and development activities.

## VIII. 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.

To the extent necessary for an understanding of the Issuer's business as a whole, this disclosure should also include the causes of material changes from year to year in financial statement line items. 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 company'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. The Document should identify the Issuer's internal and external sources of liquidity, as well as any material, unused 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, the Document should indicate the general purpose of such commitments and the anticipated sources of funds needed to fulfill such commitments.

- 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. The Document should indicate 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. For example, this could include disclosure of the most significant recent trends in production, sales and inventory, and costs and selling prices since the latest financial year.
- 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 should be disclosed, 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.

## **IX. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES**

**Purpose:** Information about the Issuer's Directors and Senior Managers 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, the Document should identify these individuals and disclose 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 should 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 for 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 are crucial to an Issuer's success. 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.

## X. 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. To the extent known to the Issuer, the Document should indicate 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 names of the controlling corporations, government or other persons should be disclosed, 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 should be disclosed.

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 should be disclosed according to Section XII.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 Section VII.B. of *the International Equity Disclosure Standards*.

## **XI. 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 should be disclosed.

## **XII. 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. These consolidated financial statements should enable investors to make accurate assessments about the Issuer's financial position, and to 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 should include: 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. The Document should also include comparative financial statements that cover the Issuer's most recent financial years (the number of years of historical financials that must be provided to be determined by the Host Country securities regulator), and audited in accordance with a comprehensive body of auditing standards. These comparative financials 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 include in the Document audit report(s) that cover 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, the Document should contain the auditors' refusal, qualifications or disclaimers reproduced completely, as well as the reasons given for them. With this information, the Host Country regulator can 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, it should contain consolidated interim financial statements covering at least the first six months of the financial year. If, at the date of the Document, the Issuer has published interim financial statements that cover a more current period, the more current interim financial statements should also be included in the Document.

Any interim financial statements contained in the Document should include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year-end balance sheet. The interim financial statements should 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.

The Document must indicate if the interim financial statements are not audited or reviewed. 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, a copy of the auditor's interim review report should be provided in the Document.

- B. Significant Changes.** The Document should indicate 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. This disclosure helps ensure that the Document reflects all material events that could have an impact on an investor's decision making, and should include changes that have a significant impact on the Issuer's financial condition, performance or its ability to fulfill its obligations under the relevant issue.

### XIII. ADDITIONAL INFORMATION

**Purpose:** In addition to the disclosure topics outlined above, applicable statutes and regulations in the Host Country may require the provision of other information in the Document that is viewed as material to investors.

- A. **Applicable Law.** The Document should identify the law applicable to the Debt Securities being publicly offered and/or listed. This is particularly important if an Issuer may be able to issue Debt Securities under the law of a jurisdiction other than its home jurisdiction.
- B. **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. The Document should indicate where this information may be found in the Issuer's memorandum and articles of association. 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.
- C. **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. A brief summary of the material contracts should be included.
- D. **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, they should be disclosed in the Document.
- E. **Taxation.** Home and Host Country tax provisions may materially affect an investor's decision whether or not to invest in the Issuer's Debt Securities. The Document should include information about the relevant



tax provisions, including whether the Issuer will be responsible for the withholding of tax on any payments made on the Debt Securities, and providing relevant details about any reciprocal tax treaty between the Home and Host Countries. 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.

- F. **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 should be disclosed. In some jurisdictions, the consent of the Expert to be named is required for liability purposes and must be disclosed. In those cases, the Document should indicate 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.
- G. **Credit Rating.** Information about the credit rating that has been assigned to the Issuer or the Debt Securities at the request or with the cooperation of the Issuer can provide investors with useful information about the Issuer's credit history and capability of fulfilling its obligations on the Debt Securities.
- H. **Documents on Display.** In addition to requiring certain disclosures to be made in the Document, the securities and company laws and regulations of many countries also require Issuers that are offering and listing securities in those jurisdictions to file additional documents as documents on display. 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.