

**Principles for Ongoing Disclosure
and
Material Development Reporting
by
Listed Entities**



OICJ-IOSCO

**A Statement of the Technical Committee
of the
International Organization of Securities Commissions**

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I – Introduction

1. The Technical Committee recognizes that reliable, timely and readily accessible information is fundamental for investors. Information should be disclosed on a timely basis, whether in connection with an initial public offering or listing, continuously, currently or periodically, and in a form or manner either prescribed by accounting standards, regulations, listing rules or law, together with the information that is provided by the management under the principles of fair presentation.
2. In 1998, IOSCO endorsed the International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers for equity securities (IDS98), which set forth non-financial statement disclosure standards for offerings and listings of equity securities. The Disclosure Subcommittee of Standing Committee No. 1 is currently developing a comparable set of international disclosure standards for cross-border offerings and initial listings of debt securities by foreign issuers that would be based on the IDS98. The adoption of both sets of non-financial statement disclosure standards by jurisdictions would facilitate cross-border offerings because a foreign issuer could use one disclosure document that would be accepted in multiple jurisdictions. At the same time, adequate investor protection would be assured through the use of the high quality disclosure standards of the IDS98.
3. However, the volume of secondary trading far exceeds the amount of offerings, and protection of investors therefore requires ongoing provision of material information. Because most investors participate in the market through secondary trading rather than initial public offerings, providing high quality information to the markets on a periodic basis is crucial, even if a company only infrequently makes public offerings.

In particular, most retail investors participate in the securities markets through the secondary trading that occurs in the markets, rather than through initial offerings of securities. An initial offering prospectus or listing document that satisfies the requirements of IDS98 provides high quality, material information for investors who participate in initial public offerings (“IPOs”). Material information should also be updated and provided on an ongoing basis to the public, so that retail investors who participate through secondary trading, and who are most in need of regulatory protection, can benefit from this same type of disclosure on an ongoing basis. In other words, the body of information available to an investor should contain both information disclosed at the IPO stage, covered under IDS98, as well as information disclosed on an ongoing basis. The fundamental principle of full and fair disclosure is that the listed entity should provide all information that would be material to an investor’s investment decision. Such information also includes management’s discussion and analysis (MD &A), where required, which could be disclosed in a separate report or included as part of a periodic report.

4. Consequently, the Technical Committee has developed a set of common high level principles for ongoing disclosure and, in particular, material development disclosure by all listed entities, leaving the possibility for individual jurisdictions to add further requirements. For convenience, this set of principles is referred to in this document as the International Ongoing Disclosure Standards or IODS.

5. The term “ongoing” is defined in this report to include generally all current, continuous¹ and periodic disclosures, other than that disclosed at the IPO stage.² The term “periodic” used in this report refers to information required to be disclosed at specified dates or intervals.
6. Competent authorities in different jurisdictions have used two basic approaches, as well as a combination of the two, in order to ensure appropriate disclosure of information by listed entities in view of the interest of investors:
 - a “general obligation” approach and
 - a “prescription approach”.

Some information on these two approaches is provided in the Appendix.

Such differences in regulatory approaches evolved due to differences in the characteristics of each market and its legal and institutional history. The Technical Committee recognizes that there is no “one-size fits all” approach for all IOSCO members. No one approach is necessarily better than any other, because individual market characteristics and regulatory regime are different. Notwithstanding different definitions and concepts, the information disclosed may be similar in nature and extent under the different approaches.

7. In spite of the different approaches used, most jurisdictions agree that listed entities should have an ongoing obligation to disclose information that would be material to an investor’s investment decision and that is necessary for full and fair disclosure. *IOSCO, while acknowledging the different regulatory approaches taken by various jurisdictions with respect to ongoing disclosure, notes that these different approaches do not preclude agreement on what events should be disclosed in an effective disclosure scheme. It is therefore possible to identify common principles of ongoing disclosure that would facilitate IOSCO members to develop their own disclosure regimes, in the light of their own unique market characteristics.*
8. Accordingly, the purpose of this Statement is:
 - To develop a companion set of International Disclosure Standards to IDS98 – namely setting high level principles in “International Ongoing Disclosure Standards for ongoing disclosure and material development reporting by listed entities” (IODS); and
 - By means of IODS to:
 - (a) Facilitate the agreement on minimum standards for ongoing disclosure and material development reporting for listed entities; and
 - (b) Provide guidance to jurisdictions reviewing and/or developing an ongoing disclosure and material development reporting regime for listed entities.

9. The Technical Committee notes that:

¹ “Continuous disclosure” refers to the disclosure regimes of certain jurisdictions in which information is provided under a general principle of materiality, without reference to a specific timeframe.

² In the US, the terms “ongoing” or “current” normally refer to disclosure other than that required for periodic disclosure, such as quarterly and annual reports. However, for the purpose of this report, “ongoing” also includes periodic disclosure requirements that apply in the United States.

- (a) IODS does apply in relation to all entities with shares listed in a recognized exchange. It does not apply in relation to foreign or domestic unlisted entities.
- (b) IODS does not address how competent authorities (including exchanges and SRO market operators) should monitor and enforce the ongoing disclosure obligations.
- (c) IODS does not apply to collective investment schemes (CIS).
- (d) IODS does not apply to suitability criteria that may be imposed by listing authorities.

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II – Principles for Ongoing³ Disclosure and Reporting of Material Developments

1. The key elements of an ongoing disclosure obligation

Listed entities should have an ongoing disclosure obligation requiring disclosure of all information that would be material to an investor's investment decision.

This principle is typically implemented either by a comprehensive list of prescribed disclosure items that are presumptively material or by a general obligation to disclose all information that may affect an investor's assessment of a listed entity's value and prospects. In addition to this general obligation, some jurisdictions have indicated a list of events that typically can be considered material. More information is provided in the Appendix.

The subject matter of material information disclosed in periodic disclosure documents should be carefully monitored to identify specific events or developments that are time-sensitive and should be disclosed more promptly, under any applicable general disclosure obligation. Examples include certain off-balance sheet arrangements, changes in the valuation of non-market traded contracts, and events related to stock options including stock option arrangements.

2. Timeliness

The listed entity shall disclose ongoing information on a timely basis, which could require disclosure on an:

- (a) *immediate basis for disclosure of material developments, where such a term could be defined as "as soon as possible" or prescribed as a maximum of specified days (such as 2 business days, as proposed in the USA); and*

³ For the purpose of this document, ongoing disclosure means periodic disclosure which has to be provided at set dates and current disclosure which must be provided on a as needs and immediate basis. Although in the United States the term "ongoing disclosure" normally refers to disclosure of information other than that provided through annual and quarterly reports, in these Principles the term "ongoing" also includes the periodic disclosure requirements that apply to companies listed in the United States.

It is outside the scope of this report to provide general guidelines for periodic disclosure. It aims only to define that periodic disclosures and reports are also a useful channel to disclose the information discussed in the body of this report.

- (b) *periodic basis, prescribed by law or listing rules, such as quarterly or annual reports. Such information would also include management discussion and analysis (MD&A), where required, which can be disclosed in a separate report or included in a periodic report. The disclosure obligation may require disclosure of relevant information on an immediate basis even when it belongs to periodic reporting.*

Under the general ongoing obligation approach disclosure may be subject to delay, to be granted in some jurisdictions by the competent authority, if:

- (a) the information is confidential under legislation;
- (b) the information concerns an incomplete proposal or negotiations or the disclosure of particular information is such as to prejudice the legitimate interests of the entity's investors; in such cases the listed entity must ensure that the information is maintained strictly confidential.

3. **Simultaneous and identical disclosure**

If the entity is listed in more than one jurisdiction, the information released under the ongoing disclosure obligation of one jurisdiction where it is listed should be released on an identical basis and simultaneously in all the other jurisdictions where it is listed. This obligation should not be dependent on where the listed entity is principally listed.

This will mean disclosing information in a jurisdiction where:

- (a) the obligation may not technically require disclosure but disclosure is required in another jurisdiction in which the entity is listed; or
- (b) such information is exempted from ongoing disclosure obligation but it is not exempted in another jurisdiction in which the entity is listed.

This principle should be applied pragmatically to take into account factors such as different time zones and trading hours.⁴

4. **Dissemination of information**

Under the ongoing disclosure obligation listed entities should ensure that full information is promptly made available to the market by using efficient, effective and timely means of dissemination.

⁴ Trading halts are separately considered by the IOSCO Technical Committee.

5. **Disclosure criteria**

Ongoing disclosure of information should be fairly presented, not be misleading or deceptive and contain no material omission of information.

6. **Equal treatment of disclosure**

The information to be disclosed in compliance with the ongoing disclosure obligation should not be disclosed to selected investors or other interested parties before it is released to the public. Certain narrow exceptions may be permitted to this principle to allow communications with advisers and rating agencies or, in the ordinary course of business, communications with persons with whom the listed entity is negotiating, or intends to negotiate, a commercial, financial or investment transaction or representatives of its employees or trade unions acting on their behalf. In all these cases, the recipients have a duty to keep the information confidential.

7. **Allocation of accountability**

The listed entity is responsible for compliance with the ongoing disclosure obligation. In some jurisdictions, specific persons have been identified as also being responsible for the disclosure of such information.

Appendix

Different Approaches to Disclosure Requirements

The Prescription Approach

In the prescription approach a set of rules specify the disclosures that issuers must provide to investors and the public, and which are presumptively material.

The U.S. Securities and Exchange Commission for example requires all public domestic companies to file annual and quarterly periodic reports that address certain specified disclosure items. In addition, all public domestic companies must file current reports on Form 8-K in the intervening period between periodic reports to disclose a specific, comprehensive list of events that are presumptively material: the list is reproduced in the annex to this Appendix. Such disclosure must be made within a few business days after occurrence of the corporate event that must be disclosed⁵. That list has recently been proposed to be substantially increased. The U.S. exchanges require disclosure of price sensitive information. The definition of materiality that is used by the SEC has been developed by the courts and is not delimited by the notion of the effect on the price of an issuer's securities. Thus, while the listed entity is required by the U.S. SEC's rules to disclose specific information or events in a prescribed manner, if investors feel that the disclosure is inadequate or misleading they can take legal action against the issuer and the courts will determine the materiality of the disclosure or non-disclosure.

Also Japan provides a list of corporate events which are presumed to be material and require compulsory disclosure. The list is reproduced in the annex to this Appendix.

The General Obligation Approach

In the European Union and in other jurisdictions, regulators require listed entities to disclose information under a general obligation of materiality comprising price sensitive information, without specifically describing the types of events that would be deemed material. Such information, if determined price sensitive or material, would have to be disclosed immediately by issuers without any further qualification.

This approach includes information which is typically assessed against (i) the likely effect of the information on the price or value of the relevant equities and (ii) the information expectations of a reasonable investor in the market and (iii) the information to be disclosed has not been made available to the public. Some jurisdictions have indicated events that typically can be considered material. An example (Brazil) is included in the annex to this Appendix.

Under such a general obligation approach delays may be permissible under certain conditions, subject in some jurisdictions to approval by the competent authorities.

⁵ The SEC has proposed to shorten the deadline for such reports to two business days after the occurrence of the event.

It is recognized, however, that even under the general obligation approach, a body of accounting standards, listing rules, legislation or regulation may prescribe certain types of information, including specific events, which should be disclosed either in the form of immediate disclosure using the price sensitivity or materiality test, or through periodic disclosure in annual accounts or MD & A reports.

Annex to the Appendix

Examples of comprehensive lists of prescribed disclosure items

1. USA

Material events that are reported to the U.S. Securities and Exchange Commission on Form 8-K

The comprehensive list of prescribed corporate events that are presumptively material and that must be disclosed, or will likely be required to be disclosed, with the U.S. SEC on Form 8-K is as follows:

- Changes in control of a company;
- A company's acquisition or disposition of a significant amount of assets;
- A company's bankruptcy or receivership;
- Changes in a company's certifying accountant;
- Resignations of a company's directors, circumstances for the departure of a director, the appointment or departure of a principal officer, and the election of new directors other than pursuant to a vote of security holders at an annual meeting;
- Change in a company's fiscal year and amendments to a company's articles of incorporation or bylaws that were not previously disclosed in a proxy statement or other such disclosure document;
- Entry into a material agreement not made in the ordinary course of business;
- Termination of a material agreement not made in the ordinary course of business;
- Termination or reduction of a business relationship with a customer that constitutes a specified amount of the company's revenues;
- Creation of a direct or contingent financial obligation that is material to the company;
- Events triggering a direct or contingent financial obligation that is material to the company, including any default or acceleration of an obligation;
- Exit activities including material write-offs and restructuring charges;
- Any material impairment;
- A change in a rating agency decision, issuance of a credit watch or change in a company outlook;
- Movement of the company's securities from one exchange or quotation system to another, delisting of the company's securities from an exchange or quotation system, or a notice that a company does not comply with a listing standard;
- Conclusion or notice that security holders no longer should rely on the company's previously issued financial statements or a related audit report;
- Any material limitation, restriction or prohibition, including the beginning and end of lock-out periods, regarding the company's employee benefits, retirement and stock ownership plan;

- Unregistered sales of equity securities by the company;
- Material modifications to rights of holders of the company's securities;
- Earnings releases;
- Changes in earnings guidance; and
- Other materially different information regarding key financial or operations trends from that set forth in periodic reports.

2. Japan

Comprehensive list of corporate events that are presumed to be material

On a solo basis

- Public offering or selling of securities to be made abroad
- Issuance without public offering
- Grant of the subscription rights to new shares as stock options
- Change of its parent company or subsidiary
- Change of major shareholders
- Occurrence of serious disaster ⁽¹⁾
- Lawsuit raised or settled ⁽²⁾
- Conclusion of agreement on exchange of shares ⁽³⁾
- Resolution of transfer of shares
- Approval to the plan or conclusion of an agreement on corporate separation ⁽⁴⁾
- Conclusion of an agreement on merger ⁽⁵⁾
- Conclusion of an agreement on business transfer ⁽⁶⁾
- Change of representative directors
- Claim to bankruptcy, etc.
- Credits become likely to be in default ⁽⁷⁾
- Significant change in the company's financial condition and business performance⁽⁸⁾
- Occurrence of any event to correct the information described in the registration statement before the offered securities are listed.

On a consolidated basis

- Occurrence of the serious disaster for subsidiary ⁽⁹⁾
- Lawsuit for subsidiary raised or settled ⁽¹⁰⁾
- Conclusion of an agreement by subsidiary on exchange of shares ⁽¹¹⁾
- Resolution of transfer of shares of subsidiary ⁽¹²⁾
- Approval to the plan or conclusion of an agreement for subsidiary on corporate separation ⁽¹³⁾
- conclusion of an agreement for subsidiary on merger ⁽¹⁴⁾

- conclusion of an agreement for subsidiary on business transfer ⁽¹⁵⁾
- claim to bankruptcy, etc. of subsidiary ⁽¹⁶⁾
- credits of subsidiary become likely to be in default ⁽¹⁷⁾
- significant change in the consolidated financial condition and business performance ⁽¹⁸⁾
- occurrence of any event to correct the information described in the registration statement before the offered securities are listed

Notes

- (1) *the amount of damages is 3% or more of the net assets*
- (2) *claimed the amount of 15% or more of the net assets or paid compensation the amount of 3% or more of the net assets*
- (3) *resulting to be 100% parent company or to be 100% subsidiary*
- (4) *estimated to cause increase or decrease of the assets in 30% or more of the net assets or of the gross sales in 10% or more*
- (5) *estimated to cause increase of the assets in 30% or more of the net assets or of the gross sales in 10% or more*
- (6) *estimated to cause increase or decrease of the assets in 30% or more of the net assets or of gross sales in 10% or more*
- (7) *the amount of the credits is 3% or more of the net assets*
- (8) *effecting 3% or more of the net assets and 20% or more of the average of the net income in last 5 years*
- (9) *the amount of damage is 3% or more of the consolidated net assets*
- (10) *claimed the amount of 15% or more of the consolidated net assets or paid compensation the amount of 3% or more of the consolidated net assets*
- (11) *estimated to cause increase or decrease of the consolidated assets in 30% or more of the consolidated net assets or of the consolidated gross sales in 10% or more*
- (12) *estimated to cause increase or decrease of the consolidated assets in 30% or more of the consolidated net assets or of the consolidated gross sales in 10% or more*
- (13) *estimated to cause increase or decrease of the consolidated assets in 30% or more of the consolidated net assets or of the consolidated gross sales in 10% or more*
- (14) *estimated to cause increase or decrease of the consolidated assets in 30% or more of the consolidated net assets or of the consolidated gross sales in 10% or more*
- (15) *estimated to cause increase or decrease of the consolidated assets in 30% or more of the consolidated net assets or of the consolidated gross sales in 10% or more*
- (16) *the net assets or the deficit of which is 3% or more of the consolidated net assets*
- (17) *the amount of the credits is 3% or more of the consolidated net assets*
- (18) *effecting 3% or more of the consolidated net assets and 20% or more of the average of consolidated net income in last 5 years*

3. Brazil

Material events that are considered to be material in the context of the general disclosure obligation. According to the legislation, material events may include, but are not limited to:

- Signature of agreements or contracts regarding the transfer of the company's control, even if under conditional provisions;
- Changes in the control of the company, including celebration, amendments, or cancellation of shareholder agreements.
- Celebration, amendments, or cancellation of shareholder agreements in which the company takes part in or are intervenient, or if they have been registered in the appropriate book maintained by the corporation;
- Admission or departure of shareholders maintaining contracts or operational collaboration regarding financial, technological or administrative issues with the company;
- Authorization for listing securities issued by the company in any domestic or foreign market;
- Decision to go private;
- Incorporation, merger or spin-off involving the company itself or linked corporations;
- Transformation or dissolution of the company;
- Changes in the company's assets;
- Changes in accounting criteria;
- Renegotiations of debts;
- Approval of stock options plans;
- Changes of the rights and privileges of the securities issued by the company;
- Splits, reverse splits or the issue of share dividends;
- Acquisition of shares for the purpose of increasing treasury stock or cancellation, and the selling of shares so acquired;
- Amount of profits or losses and the distribution of dividends;
- Celebration or termination of contracts, or failure to close a deal, when the expectation for such is of public knowledge;
- A project's approval, alteration or abandonment, as well as a delay in its implementation;
- Starting, retaking or suspending the manufacturing or commercialization of products or of services rendered;
- Discoveries, changes or developments regarding technology or companies' resources;
- Modification of disclosed projections by the company;
- Reorganization arrangements, bankruptcy, or any lawsuit that alters the corporation's financial situation.