



**USAID**  
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## Capital Markets Project

**TRANSPARENCY AND DISCLOSURE:  
FOUNDATION FOR GOOD GOVERNANCE AND INVESTMENTS**

**Kyiv**

**January 24-25, 2007**

# **UKRAINIAN ELECTRONIC DISCLOSURE SYSTEM**



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### TRANSPARENCY AND DISCLOSURE: FOUNDATION FOR GOOD GOVERNANCE AND INVESTMENTS

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#### UKRAINIAN ELECTRONIC DISCLOSURE SYSTEM (EDS)

The foundation of a well-regulated capital market is timely and accurate disclosure by public companies that insures that investors have sufficient information to make an informed investment decision. The Government of Ukraine, the Securities and Stock Market State Commission, and market participants recognize that moving to international standards of disclosure is essential and have made this a top priority for development of the Ukrainian capital market. The Presidential Decree dated November 24 2005, among other things, approved the "Guidelines for Ukraine Stock Market Development for 2005-2010" which mandated *"further improvements of the disclosure system on the stock market based on the free, timely and cost-free access of investors to information about securities issuers and professional market participants, including the introduction of international standards of disclosure."* The recent passage of the Securities and Stock Market Law, which became effective on May 12, 2006, strengthened the power of the SSMSC to implement this program.

The EDS, owned and operated by the SSMSC, allows for the gathering, processing and distribution of business and financial information necessary to provide transparency to the capital market of Ukraine. The EDS will provide an easy format for issuers to prepare the required disclosure documents and send them by electronic means directly to the SSMSC server, which would then publish the document directly on the SSMSC web site in a real time mode.

The EDS will provide for the electronic delivery of issuers' prospectuses, annual reports, quarterly information for each of the first three quarters of the year and the expanded list of special information required by the recently adopted Law "On Securities and Stock Market." These reporting requirements, which meet both IOSCO principles of international best practices and EU Directives, will provide a continuous update of business and financial information on the company. Access to the information would be free of charge to the public, investors and market participants on a real-time basis at the SSMSC web site. The SSMSC, as the regulator of the market, will have the necessary control over the process to insure that information filed by companies meets international standards and is available at all times to the market.

This real-time system will also promote compliance with laws and regulations regarding "insider information" as everyone will have access to the information at the same time.

The electronic disclosure system (EDS) consists of four major components.

- The first component requires issuers to file prospectuses, annual reports, quarterly reports and special information reports, which provide information meeting international standards as to both form and content on their business and financial condition.
  - The second component is the electronic collection and dissemination of the reports in a real-time mode free of charge to the public by the SSMSC.
  - The third component is the enhancement of the SSMSC web site to insure easy and free access to this information at all times.
  - The fourth component is extensive training programs and other events for companies, market participants and the public that will promote compliance with the new system and encourage its use.
- **Component No. 1. EDS Program in Ukraine – International Standards for Business and Financial Information**

### **A. Background on International Disclosure Requirements**

The program provides for the introduction of international standards and best practices of disclosure established by International Organization of Securities Commissions (IOSCO)<sup>1</sup>, the Organization for Economic Cooperation and Development (OECD)<sup>2</sup>, and EU Directives.<sup>3</sup> These requirements and best practices have furthered a more uniform approach to the form and content for disclosure documents that is implemented by regulators and followed by issuers in most regulated markets. This standardization, with only minor modifications, has resulted in disclosure documents that are substantially similar no matter the market or country in which the issuer conducts its business or on what market its securities are traded.

The IOSCO principles, implemented by regulators throughout the world, provide that *“there should be full, accurate and timely disclosure of financial results and other information which is material to investors’ decisions.”* These principles further provide that *“accounting and auditing standards should be of a high and internationally acceptable quality.”*

The standards for disclosure are also addressed in the OECD Principles of Corporate Governance. OECD Principle V provides that *“The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.”*

This Principle specifically provides the following:

*“A. Disclosure should include, but not be limited to, material information on:*

- 1. The financial and operating results of the company.*
- 2. Company objectives.*
- 3. Major share ownership and voting rights.*
- 4. Remuneration policy for members of the board and key executives, and information about board members, including their qualification, the selection process, other company directorships and whether they are regarded as independent of the board.*
- 5. Related party transactions.*
- 6. Foreseeable risk factors.*
- 7. Issues regarding employees and other stakeholders.*

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<sup>1</sup> For additional information see [www.iosco.org](http://www.iosco.org).

<sup>2</sup> OECD at [www.oecd.org](http://www.oecd.org)

<sup>3</sup> EU Directives at [www.europa.eu.int](http://www.europa.eu.int)

8. *Governance structures and policies, in particular, the content of any corporate governance code or policy and the process by which it is implemented.*
- B. Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.*
- C. An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company.*
- D. External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.*
- E. Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.*
- F. The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice.”*

There are three key EU Directives addressing the standards of disclosure that were considered in establishing the form and content of the prospectus for a public offering of securities and the form and content of the ongoing disclosure required of public companies:

- EU Directive 2003/71/EC of the Parliament and of the Council dated 4 November 2003 “on the prospectus to be published when securities are offered to the public or admitted to trading.” EU Commission Regulation No. 809/2004 dated 29 April 2004 implementing the Directive,
- EU Directive 2001/34/EC of Parliament and of the Council dated May 28, 2001 “on securities admission for official listing on stock exchange and the information to be published on these securities”, and
- EU Directive 2004/109/EC of the European Parliament and of the Council dated 15 December 2004 “on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.”

The EU Directives are comprehensive and impose requirements for disclosure on issuers leading to a fair and transparent market.

In developing the Ukrainian disclosure system only the core requirements of these EU Directives have been proposed. As the Ukrainian market moves from a frontier market to a developed market enhanced disclosure requirements will be required to bring Ukraine into full compliance with these and any possible subsequent EU directives.

In summary, the program implements the basic principles and the substantive requirements of the EU Directives. In compliance with the EU Directives, the disclosure required is focused on that minimum information needed to inform the market and protect investors. In recognition of the fact that investments in securities, like any other form of investment, involves risk, the information required is that information that permits shareholders and other investors to understand such risk and make an informed decision with full knowledge of the facts. Following the EU Directives, the basic content of the prospectus provides sufficient flexibility to permit the issuer to address the particular financial and business aspects of its operations.

There has been a global movement, among governments and regulators, to adopt International Financial Reporting Standards (IFRS). Their use helps to achieve convergence towards high quality accounting standards that provide transparent and comparable information in financial reports leading to increased investor protection, general improvement in collecting taxes and trust in the market.

The 2005 PriceWaterhouseCoopers survey of 187 fund managers across Europe shows that the overwhelming majority of the fund managers (79%) see the change to IFRS as a significant one. According to the survey investors say that IFRS is having a real impact on the way they perceive companies and consequently on their investment decisions. This positive trend is seen domestically as Ukrainian companies are beginning to realize the benefits of preparing their financial statements in accordance with international accounting standards based on audits prepared in accordance with international standards. The number of companies who choose to follow international standards voluntarily is growing rapidly. For these companies it is critically important that these financial statements be disclosed domestically, as well as in foreign markets, to level the playing field and avoid problems related to disparity of information.

In 2001 in the “Conceptual Fundamentals of the Reporting System of Stock Market Participants,” the SSMSC established the principle that issuers, whose securities are listed on a trade organizer, shall prepare financial reports in accordance with International Accounting Standards (IAS) starting from year 2003.<sup>4</sup> It is important to be diligent in enforcing this provision to move Ukrainian issuers closer to international norms. Equally important, pension fund asset managers will need this information if they are to invest pension assets wisely and for the benefit of future pensioners.

### **B. Overview of Form and Content of Disclosure Documents**

Information to be disclosed by the issuer is provided in conformity in a clear and simple time sequence. An issue prospectus is required in the event of an issue of securities or if the issuer's securities are listed on a regulated market. Following the filing of a prospectus, issuers are to file “current reporting” to continue informing investors of the issuers' business and financial situation

#### **Disclosure Time Line**

- Prospectus for Issuance of Securities or Securities Listing on Organized Market.
- Quarterly Reports
- Annual Report
- Special Information Report at Anytime Significant Event Occurs

#### **B. 1. Information on shares and bonds issuances (prospectuses).**

According to EU Directive 2003/71/EC *“the prospectus shall contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. This information shall be presented in an easily analyzable and comprehensible form”*.

In order to comply with the EU Directives, the content of prospectus, the order of presentation of information in the prospectus is to be revised to meet the requirements of the Directive. For example, the risk factors section of the prospectus should prioritize the risk. The risk should be described in narrative free form text to permit the company to fully and adequately describe the specific risk that the company faces and investors need to know before investing in the securities of the company. It is not informative to investors when the disclosure requirements merely provide

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<sup>4</sup> IAS is now referred to as IFRS.

a checklist of risks to be mentioned in the prospectus. This results in different issuers being restricted to the same checklist, which is not meaningful to investors.

As provided in the EU Directives prospectus information must be filed for any securities issuance and also when an issuer is listed and traded on an organized market. This prospectus provides the core information that an investor would need to make an informed investment decisions. While the form and content of the information is substantially the same for debt or equity offerings there are some minor changes reflecting the differences in the type of security offered, the manner of offering and the pricing of the security. The substance of the prospectus disclosure is continuously updated in annual reports, quarterly reports and by filing timely special information reports.

Today, unnecessary costs and burdens are placed on issuers who issue public equity or debt. Because the current prospectus required by the SSMSC lacks substantive business and financial information, issuers prepare other documents, such as offering memoranda that contain this information. The format and substance of these “offering memoranda” are directed at the investor and generally are in compliance with international standards. Yet, these offering memoranda are not filed with the SSMSC and are not subject to liability under the law eliminating the basic protections for investors that should be provided by the law.

1. Cover Page or Visa. The cover page identifies the company’s legal name, its headquarters address and postcode, EDRPOU code and the date the prospectus was filed.
2. First Page of the Prospectus. This page, not the cover page or visa, is the first page of the prospectus. It provides the following information in a free text narrative format and contains the following information to the extent it is applicable to the offering:
  - The legal name of the company.
  - The title of the securities being offered and the anticipated cash proceeds to be raised by the offering.
  - A brief description of the unique legal and financial characteristics of the securities offered. If common shares are offered, the nominal value of the shares, and the number of common shares to be outstanding if all shares are sold should be provided.
  - The proposed offering price of the securities and how it was determined.
  - The name and address of the underwriter, if any, and a brief description of the terms of the underwriting arrangements for the offering.
  - A statement in bold faced type substantially similar to the following:  
*“Registration by the Securities and Stock Market State Commission of the prospectus shall not be viewed as a guarantee of the value of the securities.”*
3. Table of Contents of the Prospectus. The prospectus should include a brief table of contents that identifies the key sections of the prospectus including page numbers. This will help investors locate key information that is of interest to them.
4. A Summary of the Prospectus. The summary section should provide in a few pages a brief statement of the offering including how the proceeds of the offering will be used and the essential characteristics of issuer’s business and financial condition, including summary financial information for three to five years, and information on the securities including data on guarantors of the securities of the issuer, if any. As provided in the EU Directives, to facilitate understanding, the summary should be written in non-technical language and may be in outline form provided that it is complete and accurate.
5. Risk Factors. This section should identify each of the material risks associated with the company and its business and financial conditions set forth under headings that clearly identify the nature of the risk. The risks should be ranked in order of importance to an investment in the company. The narrative description of each risk should be specific to the

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company and contain sufficient financial and other data on the risk to permit an investor to understand the risk and its importance, e.g. losses for the past year or years, lack of sufficient cash flow to meet operations, declining market share, existing or proposed legislation changes that significantly affect the company's operations, high debt to equity ratio, country macroeconomic or political instability, etc.

6. *Use of Proceeds from the Offering.* This section should describe in detail how the funds from the offering will be used. The information should be broken down as to major categories of use and prioritized as to importance. If additional funds will be required for any listed use, information should be provided as to the source of such funds. If the additional funds are not available, the adverse effect on the company's operations should be described and the risk factor section should contain information on this risk.
7. *Description of Company's Historical Development and Structure.* This section identifies the issuer, its legal form, its legal address and telephone number, place of registration and registration number, and the dates and nature of any major corporate events such as any mergers, major acquisitions or dispositions of major assets, etc. for the last five years. The company's organizational structure should be described e.g. supervisory board, management board, major departments, subsidiaries, etc.
8. *Description of the Company's Business.* This section describes in narrative detail the principal business activities of the company, including but not limited to, major products or services, sources of supply and raw materials, distribution networks, methods of competition, principal markets for its products or services, the seasonality of the company's operations, if applicable. Additional information should be provided on the company's major customers (10% or more of revenues), indicating whether there are contracts with the customers and the terms of the contract. In addition, the company should describe its major patents, licenses or contracts that are essential for its operations. The dates, terms and major provisions of these contracts, patents etc should be given. The competitive ranking, or market share of the company should be given and the basis for the statement should be provided. If the company is planning any major investments or acquisitions relating to its business operations they should be described including the material terms of the acquisition or investment, its cost and method of financing.
9. *Description of the Company's Property and Equipment.* This section should describe the company's principal plants and major equipment required for the conduct of its business. Information should be given on plant locations, age of facilities major renovations, etc. Information should be provided as to whether the facilities are adequate for the company's needs and the extent of their capacity and utilization. Information should be given as to environmental laws governing the issuer's operations and the nature and extent of the issuer's compliance with these laws. If the issuer must expend significant funds to bring its plant and facilities into compliance with existing or proposed laws, information should be given on the cost and funding of such renovation.
10. *Description of Employees.* This section should give the number of employees as of a specified date (the fiscal year end) broken down by general categories, e.g. administrative, engineers, production workers, etc. Any problems with hiring and retaining qualified staff to support its operations should be described. The company's human resources program for insuring that its employee's qualifications continue to meet its operating needs should be set forth.
11. *Description of Legal Proceedings.* This section should describe any pending legal proceeding or related proceedings that involve a claim for damages in excess of 10% of the issuer's total assets or sales, to which the company or its subsidiaries, members of supervisory board, or members of the management board is a party that relates to the

business and financial activities of the company. Information should be provided for each legal proceeding that gives the date of the action, the parties to the action, the amount and nature of the claims, and the name of court in which the action is pending and the current status of the proceeding.

12. Description of Supervisory Board, Management Body and key personnel. This section requires information, usually in table format to facilitate understanding, of the name, position, business address, and term of office of members of the supervisory board, and members of the management board. If any of the named persons hold positions with any other company or enterprise than the table should list the position held and the name and address of the company or enterprise.
13. Description of Supervisory Board and Management Board Compensation. This section should describe the company's compensation policy for its executive bodies. In addition it should provide the aggregate compensation paid for the last fiscal year to the executive bodies grouped as to annual salary, bonuses, benefits (vacation, car, housing, entertainment allowance) and any other payments.
14. Identification of Major Shareholders. This section should identify any person(s) or legal entities that own 10% or more of the company's voting shares or otherwise controls the company. The number of shares held and the percentage of these shares should be given. Shares owned directly by the person (s) as well as shares owned indirectly by family members or through other companies or enterprises should be included. The source of this information should be given and the company should indicate the nature of any written inquiry and the response of existing members of the supervisory board and members of the management board regarding this information.
15. Transactions with members of the Supervisory Board, Management Board or Major Shareholder or other interested parties. This section should describe the date of any transaction between the company or its subsidiaries and any major shareholder or member of the supervisory board or management board during the last two fiscal years and any current or proposed transaction. The information should describe in detail the nature of the transaction, the reason for the transaction, the method of valuing the assets or services that are the subject of the transaction.
16. Evaluation of the Company's Corporate Governance Policy and Practice. This section, which is voluntary under Ukrainian legislation, requires the company to describe its corporate governance policy and its actual practices in implementing the key components of good corporate governance. If the company has not implemented any program or key component, then the company should indicate the reasons for not implementing the program or component.
17. Description of Securities and/or Securities Being Offered or Admitted for Trading. This section should provide a description of the rights attached to the securities, including any limitations on these rights, and the procedure for exercising these rights. If debt securities are offered, at a minimum, information should be given as to the total amount of the debt offered, interest rate, coupon dates, maturity date, collateral and procedure for payment of interest and principal. If shares are offered, at a minimum, information should be given as to voting rights, dividend rights, procedures for payment of dividends including the name and address of the legal entity responsible for making the dividend payments, rights to share in issuer's profits, and rights to share in any surplus in the event of liquidation. The legal name and address of the company's registrar should be given.
18. Terms and Conditions of the Offer. This section should describe the material terms of the offering e.g. the number of securities offered, the time period during which the offer will be

open, conditions relating to possible revocation of the offer, method and time limit for payment of the securities, date and procedure for announcing the results of the offer, and if applicable, provisions for exercise of pre-emption rights. In addition, the name and address of the underwriter should be given as well as a brief description of the terms of the underwriting arrangements.

19. Terms of Pricing of the Offer. This section should detail how the price for the securities was determined including the factors considered and their weight in establishing the price. Information should be given as to the party that set the criteria for the price and the party responsible for its final determination. Information should also be provided as to the effects of the Ukrainian tax system on a potential purchaser of the securities.
20. Third Party Statements and Experts. If the prospectus contains statements attributed to or based on an expert, e.g. credit rating, appraiser, etc information should be provided as to the name of the person, business address and qualifications and material interest in the company, if any. The person should sign the prospectus given his full legal name and date of signing.
21. Financial Statements of the Issuer. Audited financial statements for the last three years should be provided. If the issuer prepares audited financial statements based on international standards of accounting and prepared in accordance with international standards of auditing these financial statements should be provided as well as financial statements prepared in accordance with Ukrainian Accounting and Auditing Standards. The financial statements should contain the opinion of the auditor, the balance sheet, statement of profit and loss, cash flow statement, the notes to the financial statements, and the statement of changes in ownership equity. If the company is a start-up company then audited financial statements, prepared in accordance with international standards of accounting prepared in accordance with international standards of auditing, should be given for each of the fiscal years of its operations.

*Note 1. If there is a delay in the offering, the company must also include the latest quarter financial statements, which are not required to be audited, but must be prepared in the same manner as if they were audited.*

22. Expenses of the Offering. This section should describe, in table format, the material expenses of the offering and to whom the payments were made, e.g. lawyers, accountants, experts, ratings, printing etc.
23. Securities Issuances in the Last Three Years This section provides information on each voting share issuance during the last three years giving the date of the issuance, the type and amount of the offering, the SSMSC registration number and date.
24. Signatures of Persons Responsible for the Prospectus Information.  
The company's manager (chairman of the executive body) and the issuer's chief accountant should sign the prospectus. Immediately above the signature a declaration should be provided that states the following "*The person named below confirms the authenticity of the data contained in the report and acknowledges that he/she is responsible for failure to submit information, delayed submission, or submission of inaccurate information in the report and shall be liable according to the laws of Ukraine.*" The company's independent auditors should also sign the prospectus and give a similar representation limited to the financial statements.

## **B. 2. Quarterly reports**

Quarterly reports are usually the first disclosure document filed after completion of a public issuance of securities and are part of the ongoing disclosure requirement of an issuer. The requirements governing interim reports are found in Articles 5-6 of EU Directive 2004/109EC and

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specified in Article 40 of the Securities Law and Stock Market Law. This Law provides the SSMSC with the legal authority to collect and disclose quarterly reports for all public companies.

Quarterly reports should be required to be filed with the SSMSC not later than [30] days after the end of the quarter. Quarterly reports will be required for each of the first three quarters of the fiscal year: the first quarter ending in March, the second quarter ending in June and the third quarter ending in September. No report is required for the fourth quarter. The regulatory reason for not requiring a fourth quarter report is that issuing this report may cause the market to be misled if changes are demanded by the independent auditor as it begins to prepare the fiscal year end financial statements. Quarterly reports will contain only "unaudited" financial statements for the quarter with comparable financial data for the same period of the previous fiscal year. The quarterly reports for the second and third quarters will contain financial data for the quarter but will also provide the data on a cumulative basis for the six or nine month period.

If the company prepares financial statements in accordance with international standards then the quarterly report for the first quarter ending March of the fiscal year will contain a unaudited balance sheet for the quarter, a profit and loss statement for the current quarter compared to the same quarter of the prior year, a cash flow statement for the current quarter and for the comparable quarter of the prior year, statement of changes in shareholders equity for each of the last two fiscal years and certain key notes required in audited financial statements. Companies that only prepare financial statements in accordance with Ukrainian accounting standards will submit financial data for the same periods but in accordance with Ukrainian accounting standards.

Based on international standards the form and content of the **first quarter report** for the period ending March of each year will be as follows:

- ❑ Cover page or Visa,
- ❑ Balance Sheet for the first quarter,
- ❑ Profit and loss statement for the first quarter of the current fiscal year and the first quarter of the prior fiscal year,
- ❑ Cash flow statement for the first quarter of the current fiscal year and the first quarter of the prior fiscal year, and
- ❑ Key footnotes that relate to the first quarter of the current fiscal year, e.g. significant accounting policies, revenue recognition, bad debts and provisions for losses, valuation of investments, valuation of inventory, related party transactions, terms and conditions of debt outstanding and if applicable, basis of consolidation, investments in unconsolidated financial statements. The footnotes should clearly identify any changes in accounting policies implemented in the current year as compared to the prior fiscal year including its effect on the financial condition of the company.

The form and content of the **second (6months) and third (9 months) quarter reports** for June and September of each year are as follows:

- ❑ Cover page or Visa,
- ❑ Balance Sheet for the second (or third) quarter,
- ❑ Profit and loss statement for the second (or third) quarter and the second (or third) quarter of the prior fiscal year, and
- ❑ Key footnotes that relate to the second (or third) quarter, e.g. significant accounting policies, revenue recognition, bad debts and provisions for losses, valuation of investments, valuation of inventory, related party transactions, terms and conditions of debt outstanding and if applicable, basis of consolidation, investments in unconsolidated financial statements.

The recently enacted Law on Securities and the Stock Market requires that quarterly reports contain the same information as required for annual reports, except the auditors' opinion.

### **B. 3. Annual Reports with Independent Auditor Financial Statements**

Under the Securities and Stock Market Law, companies who have made a public offering must file their annual reports for the fiscal year no later than April 30 of the next fiscal year. The Law also provides that the SSMSC must take measures to make these reports promptly available to the public upon filing. These provisions of the Law conform to the EU Directives for timely disclosure of annual reports. EU Directive 2004/109 EC, Article 4, provides that *“The [company] shall make public its annual financial report at the latest four months after the end of each financial year and shall ensure that it remains publicly available for at least five years.”* This is also inline with IOSCO Principle 6 for “Ongoing Disclosure and Material Development Reporting by Legal Entities” which states that *“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”*.

International best practice provides that annual reports will disclose the same information on the business, management, and financial condition of the company that is provided in a prospectus for an issuance of securities or for listing and trading securities on an exchange.

As discussed above the disclosure standard for a prospectus is that it provides high quality, material information for investors who participate in these public offerings. The IOSCO Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities, dated October 2002, provides that *“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 [offering stage] as well as information disclosed on an ongoing basis.”*

Thus, the form and content of annual report would consist of the following information substantially similar to that detailed above for a prospectus:

1. Cover Page or Visa. The cover page identifies the company's legal name and headquarters address, including post code, the EDRPOU code, the annual report fiscal year, and date of filing with the SSMSC.
2. Description of Company's Historical Development and Structure. This section identifies the issuer, its legal form, its legal address and telephone number, place of registration and registration number, and the dates and nature of any major corporate events such as any mergers, major acquisitions or dispositions of major assets, etc. for the last five years. The company's organizational structure should be described e.g. supervisory board, management board, major departments, subsidiaries, etc.
3. Description of the Company's Business. This section describes in narrative detail the principal business activities of the company, including but not limited to, major products or services, sources of supply and raw materials, distribution net works, methods of competition, principal markets for its products or services, the seasonality of the company's operations, if applicable. Additional information should be provided on the company's major customers (10% or more of revenues for the last fiscal year), indicating whether there are contracts with the customers and the material terms of the contract. In addition, the company should describe its major patents, licenses or contracts that are essential for its operations. The dates, terms and major provisions of these contracts, patents, etc. should be given. The competitive ranking, or market share of the company should be given and the basis for the statement should be provided. If the company is planning any major investments or acquisitions relating to its business operations they should be described including the material terms of the acquisition or investment, its cost and method of financing.

4. *Description of the Company's Property and Equipment.* This section should describe the company's principal plants and major equipment required for the conduct of its business. Information should be given on plant locations, age of facilities major renovations, etc. Information should be provided as to whether the facilities are adequate for the company's needs and the extent of their capacity and utilization. Information should be given as to environmental laws governing the issuer's operations and the nature and extent of the issuer's compliance with these laws. If the issuer must expend significant funds to bring its plant and facilities into compliance with existing or proposed laws, information should be given on the cost and fund of such renovation.
5. *Description of Employees.* This section should give the number of employees as of a specified date (the fiscal year end) broken down by general categories, e.g. administrative, engineers, production workers, miners, etc. Any problems with hiring and retaining qualified staff to support its operations should be described. The company's human resources program for insuring that its employee's qualifications continue to meet its operating needs should be set forth.
6. *Description of Legal Proceedings.* This section should describe any pending legal proceeding or related proceedings that involve a claim for damages of 10% or more of the issuer's total assets or sales, to which the company or its subsidiaries, members of supervisory board, or members of the management board is a party that relates to the business and financial activities of the company. Information should be provided for each legal proceeding that gives the date of the action, the parties to the action, the material claims, and the name of court in which the action is pending and the current status of the proceeding.
7. *Description of Supervisory Board, Management Body and key personnel.* This section requires information, usually in table form to facilitate understanding, of the name, position, business address, and term of office of members of the supervisory board, and members of the management board. If any of the named persons hold positions with any other company or enterprise than the table should list the position held and the name and address of the company or enterprise.
8. *Description of Supervisory Board and Management Board Compensation.* This section should describe the company's compensation policy for its executive bodies. In addition it should provide the aggregate compensation paid for the last fiscal year to the executive bodies grouped as to annual salary, bonuses, benefits (vacation, car, housing, entertainment allowance) and any other payments.
9. *Identification of Major Shareholders.* This section should identify any person(s) or legal entities that own 10% or more of the company's voting shares or otherwise controls the company. The number of shares held and the percentage of these shares should be given. Shares owned directly by the person (s) as well as shares owned indirectly by family members or through other companies or enterprises should be included. The source of this information should be given and the company should indicate the nature of any written inquiry and the response of existing members of the supervisory board and members of the management board regarding this information.
10. *Transactions with members of the Supervisory Board, Management Board or Major Shareholder or other interested parties.* This section should describe the date of any transaction between the company or its subsidiaries and any major shareholder or member of the supervisory board or management board during the last two fiscal years and any current or proposed transaction. The information should describe in detail the nature of the transaction, the reason for the transaction, the method of valuing the assets or services that are the subject of the transaction. International best practice and international accounting

standards define interested parties as members of management board, members of the supervisory board, direct family members of senior management, any shareholder, senior management of a parent company, subsidiaries and associated companies, companies that have common shareholders and special purpose companies related to the company.

11. Evaluation of the Company's Corporate Governance Policy and Practice. This section requires the company to describe its corporate governance policy and its actual practices in implementing the key components listed in the table. If the company has not implemented any component, disclosure is required as to the reasons for not implementing a corporate governance program. The Corporate Governance Policy and Practices form is attached to the annual report.
12. Description of the Common Shares of the Company. This section should provide a description of the rights attached to the securities, including any limitations, on these rights, and the procedure for exercising these rights. Information should be given as to voting rights, dividend rights, procedures for payment of dividends including the name and address of the legal entity responsible for making the dividend payments, rights to share in issuer's profits, conversion or redemption rights and rights to share in any surplus in the event of liquidation. Indicate the name and address of the registrar for the company. Note: International accounting practice requires that the notes to the financial statements detail the same information for any of the company's outstanding debt that is listed in its audited balance sheet.
13. Financial Statements of the Issuer. Audited financial statements for the last two years should be provided. If the issuer prepares audited financial statements based on international standards of accounting and prepared in accordance with international standards of auditing these statements should be filed as well as the issuer's financial statements prepared in accordance with Ukrainian Accounting and Auditing Standards. The financial statements should contain the opinion of the auditor, the balance sheet, statement of profit and loss, cash flow statement, notes to the financial statements, and the changes in ownership equity. If the company is a start-up company then audited financial statements, prepared in accordance with international standards of accounting prepared in accordance with international standards of auditing, should be given for each of the fiscal years of its operations.

*Note 1. If there is a delay in the offering, the company must also include the latest quarter financial statements, which are not required to be audited, but must be prepared in accordance with the same accounting principles used to prepare the audited statements*

14. Securities Issuances in the Last Three Years This section provides information on each voting share issuance during the last three years giving the date of the issuance, the type and amount of the offering, the SSMSC registration number and date.
15. Signatures of Persons Responsible for the Annual Report Information. The company's manager (chairman of the executive body) and the issuer's chief accountant should sign the prospectus. Immediately above the signature a declaration should be provided that states the following "The person named below confirms the authenticity of the data contained in the report and acknowledges that he/she is responsible for failure to submit information, delayed submission, or submission of inaccurate information in the report and shall be liable according to the laws of Ukraine." The company's independent auditors should also sign the prospectus and give a similar representation limited to the financial statements.

#### **B. 4. Special Information disclosure.**

The Securities and Stock Market Law has expanded the list of special information that public companies are required to disclose. International practice follows the same narrative, free form requirement for disclosure of this information as for other disclosure requirements. Narrative disclosure requirements, rather than being a mere checklist, mandates that the issuer provide full and accurate information on each of the significant events and to place the importance of the event in the context of its operations and financial conditions. Thus, a narrative description of the event leads to better- informed investors and the market. Due to the nature of special information and its potential affect on market price of securities of the issuer, this information, just like the other ongoing disclosure will be immediately disclosed to the market via the SSMSC's web site. Real-time release to the market will be one further step in insuring that there is a level playing field and that all persons have access to the information at the same time. This will assist in combating problems of inside information.

As noted above, real time release of this information is in accordance with international practice. In Russia this special information, in most cases, is released to the market on the same day. Thus, it is clear that same day release of the information is not a burden on the issuer.

According to the Securities Law "special information" includes information on the following events:

1. A decision on placement of securities for an amount that exceeds 25% of the statutory capital;
2. A decision on redemption of the issuer's own shares;
3. The listing/delisting of securities on a stock exchange;
4. Receiving a loan or credit for an amount that exceeds 25% of the issuer's assets;
5. Any change in the composition of the issuer's officials;
6. A change in the owner(s) of shares representing 10% or more of voting shares;
7. The issuer's decision on creation, liquidation or reorganization of its branches, representative offices or subsidiaries;
8. The decision of the issuer's highest body on a decrease of the statutory capital;
9. The initiation of bankruptcy proceedings against the issuer and its sanation;
10. A decision of the issuer's highest body or the court on liquidation, reorganization or bankruptcy of the issuer".

Under the Law, the SSMSC is empowered to set additional requirements for disclosure of special information on the issuer and must take measures to insure its disclosure. The information required for each of these events is set forth in the form, which is part of the draft Disclosure Regulation provided as Attachment 2.

In addition to the special information items in the Securities and Stock Market Law, the SSMSC proposes to add another item, which will require disclosure of information on the company's general meeting of shareholders or special meeting of shareholders. The Commission believes that this information is important to the market and should be disclosed promptly after the general or special meeting of shareholders. Under today's system this information is not provided to the SSMSC or the public until the filing of the company's annual report for the year in which the meeting was held. This results in the information often being over twelve months old when released to the public.

#### **□ Component No. 2. Ukrainian EDS Program – The Electronic Process for Collection and Dissemination of Documents Filed in Electronic Format.**

This electronic collection and dissemination system involves three major steps: (1) a new electronic disclosure system for collecting and disseminating the information; (2) new reporting forms available free to the issuer using internationally compliant XML technology like that used on

the Internet; and (3) a report form to facilitate listing and identification of a company's reports, and easy of public access to the reports.

### 1. The Ukrainian EDS Design

In the development of the concept for the system, the IT specialists reviewed and analyzed electronic systems implemented by regulators in Russia, Poland, United Kingdom and the United States. The goal of this research was to create a system in Ukraine that employed the most modern information technology, eliminated unnecessary burdens and costs for the company, displayed document in electronic format that was highly readable and useable by the public, and was sufficiently flexible to insure updating and changes to address the anticipated growth in the Ukrainian securities market.

The steps in the process are the following:

- (1) The company will prepare the document using free software provided by the SSMSC, with the requirement of purchasing keys for electronic signatures from a certified authority,
- (2) The document will be transmitted either by e-mail or via SSMSC website to the SSMSC server,
- (3) The document will be electronically verified by the SSMSC server,
- (4) A confirmation notice will be electronically sent to the company confirming that the report was received by the system,
- (5) Reports are then stored immediately on the SSMSC server and will be available immediately to the public free of charge via the SSMSC web site.

**Registration of the issuer and reports preparation.** The initial step for the company is to officially register with the SSMSC. This will allow the company to receive the free software for the preparation of the reports. This software may be installed at the local computer of the company.

**Electronic Submission of the Document.** The system provides for two different methods of electronic submission of the document to the SSMSC server. The company can choose to submit the electronic document either via e-mail or uploading to the SSMSC web site.

Of course, a company is **not** required to submit the document by **both** e-mail and via the SSMSC web site. Sending reports via e-mail is the more traditional method used in electronic submission systems, while the possibility to submit reports via the SSMSC web site gives the company additional flexibility.

Sending reports via e-mail follows the same procedures for creating and sending any regular e-mail message. A company creates an e-mail message addressed to the SSMSC e-mail address and attaches the prepared document to the message. The company's e-mail message is sent to the specific SSMSC e-mail address established for electronic submission of the required document. The EDS retrieves the company's e-mailed report from the SSMSC e-mail server, sends the confirmation email to the company, and submits it to the EDS system for processing and then to the SSMSC server for permanent storage. At the same time the report in the database will be displayed on the SSMSC web site providing public access to the report, free of charge.

As an alternative, the EDS system has been designed so that a company can elect to submit its document via the SSMSC web site. This alternative has been provided as a backup in the rare case when there may be temporary problems with company's e-mail server or the company

determines that use of the Internet for submission of the document is more convenient. For submission of the report via the SSMSC web site, the EDS system requires that the company open a specific page on the SSMSC web site and specifies the document that is to be filed from the company's local hard drive. The company will then merely hit the "submit" button on its computer and the company's selected files are uploaded to the SSMSC server for processing and dissemination to the public.

The EDS messages indicate only transmission status, not report validity. Thus, when the company receives a message from EDS on the web site or by e-mail, it only indicates whether or not the document was submitted and received by the SSMSC. It does not have any bearing on whether the document has been considered valid by the SSMSC. The EDS system has been designed to clearly indicate this status in the message that is transmitted to the company that submits the document electronically via the SSMSC web site or by email

**Verification of the report.** The SSMSC, as the regulator of the securities market, is not responsible for the adequacy and accuracy of the data in the filed documents. The company is responsible for the accuracy of the documents filed with the SSMSC and as required by the Securities and Stock Market Law legal responsibility and penalties for violation of these legal requirements is placed on the company, members of its supervisory board and management board. The SSMSC, like regulators in other securities markets, is responsible for reviewing and analyzing these documents to test whether the company has complied with the law. Therefore, the EDS system has minimum basic requirements for the validation of the document, insuring that the document is promptly provided to the public. The company will be responsible for the information provided to the public and the SSMSC will review this information, following its release to the public, and impose legal sanctions and penalties for violation of the law.

All documents submitted via EDS, either by e-mail (the most common method) or via the SSMSC's web site are subject to basic validation. The EDS report preparation software ensures that the data is properly validated and can be loaded to the SSMSC server for storage. All stored reports then become immediately available for public viewing and also can be downloaded by the user. Since the validation process is electronic and automatic, it will take just seconds to complete. If the electronic signature is tampered with, the report will be rejected and the system will send the message to the sender.

The EDS program contemplates that electronic submission of required documents will be accepted only during the official SSMSC working hours, which are from 0900 until 1800 five days a week, excluding official Ukrainian holidays. The EDS design requires that a document must be transmitted no later than 1730 on any SSMSC official working day insure that it can be validated and accepted on that date.

**Security of the System.** Security of the system is of major concern in the development of the system. In order to secure the integrity of the submitted document and the identity of the sender of the data, the system will use official electronic signatures.

Ukraine has the infrastructure and the regulatory framework to use digital signatures. The company must obtain a digital signature that is issued by the certified authority in compliance with Ukrainian legislation. The EDS system is designed to use official electronic signatures for transmission and validation of the reports filed electronically.

The EDS database will be secured from unauthorized access by built-in features of the database system management based on the internationally recognized system, Microsoft SQL Server. This will prevent malicious external users from entering the system and tampering with the SSMSC database. To protect data from corruption within the SSMSC only certain persons, authorized by the SSMSC, will have full access to the database. All others within the SSMSC will have "read only" access to the database.

**Report Forms and Identification System.** To facilitate the collection and dissemination of electronic reports requires an orderly process that will identify the report, e.g. prospectus, annual report, quarterly report, special report, etc. This report system supports the storage of these reports by company name and date of filing. This process will facilitate the ability of the public and other users to easily locate the documents available on the SSMSC web site. The report forms will also provide a process for the company to correct mistakes in the reports, either because of the company's error in submitting the data, or as a result of comments from the SSMSC staff as they carry out their obligations as the regulator of the market.

The EDS system will require that all documents, including the initial prospectus and any amendments to the prospectus, be publicly available upon submission to the SSMSC. This will necessitate a system for identifying the document as a prospectus as distinguished from one of the other ongoing disclosure documents. The system will also identify an amendment to the document and the date of the amendment. The SSMSC data base and the public database, available on the SSMSC web site, will list for each company, the name of the report, the date of its filing and where applicable the date of the fiscal year end, the quarter of the fiscal year of, and the item reported on the special information report. Each report, if an amendment is necessary, will be amended by filing the complete corrected report, with an introductory statement that identifies the information that has been amended so that the public and the regulator are notified and alerted to any changes in a report.

### 2. Preparation of Documents by the Company

The current design of the EDS program requires that the prospectus and the ongoing disclosure documents (reports) be filed on EDS in electronic format. Once EDS is fully operational reports will be filed only in electronic format on the system.

The EDS has been designed to facilitate a company's filing of reports in electronic format, using SSMSC owned special software which will not only provide a means for drafting the new substantive disclosure requirements but will assist the issuer in checking the document so that validation is assured. The SSMSC will provide a CD copy of the electronic form, free of charge to each company. This electronic form will also be available, free of charge, on the SSMSC web site and can be downloaded by the company for its use.

### 3. Information Disclosure

Upon receipt of the company's electronic report it goes to the SSMSC database and **simultaneously** becomes available to the public, free of charge, on the SSMSC website. It should be emphasized that report processing is done entirely automatically. There are no time lags from the moment when a validated report is sent to the SSMSC database and when the report becomes publicly available.

Public access to the EDS database is accomplished via the Internet. This access will allow the user to locate information by company name or its official EDRPOU code. The database can be searched for any of the specific reports filed for a particular date or time period as well as using other criteria. In addition, the information within a particular document can be searched by key words. The public will be able to locate the information from the SSMSC web site and save the information on a computer or print a hard copy of the document.

The SSMSC central office staff will have access to the database via its local network using a dedicated application. Regional offices of the SSMSC will have real time access to the database via the Internet.

### 4. Pilot Program for EDS Implementation

Before the EDS is fully implemented it will be necessary to test the system not only by the Ukrainian IT developers at each stage of its development using “test” filings but also with live filings via a Pilot Program. The Pilot Program will require that at least 10 companies participate in the Pilot Program and submit reports directly from the company to the EDS system. The documents will be submitted electronically using the free software directly to the SSMSC’s server at the central office using electronic signatures. The Pilot Program will follow every step of the EDS program to insure that it works effectively including the Draft Disclosure Regulation. Simultaneously, the SSMSC will prepare a manual on the substantive disclosure requirements and a manual that addresses the technical aspects of the electronic system. These documents will be made available on the SSMSC web site free of charge to assist companies in preparing and submitting their reports electronically via EDS.

This Pilot Program will also serve as the basis for modification of the Draft Disclosure Regulation, if necessary, to insure that it contains the necessary requirements for the EDS program. The SSMSC encourages companies to participate in the pilot program. Each company participant will receive individualized support and consultation on both the substantive requirements and the electronic requirements of the EDS system.

### 5. EDS Implementation

Initially the SSMSC plans a dual system of filing required reports. Any company who is part of the pilot program and who otherwise is scheduled to file reports on the EDS system will file reports only on the EDS system. Other companies will continue to file reports in accordance with the SSMSC existing disclosure program which will require them to file in both paper form and to also submit a diskette to the SSMSC regional office where the company’s headquarters is located. Once the company is required to file reports via the EDS system all reports will be filed on the EDS system.

EDS implementation process will be based on an orderly phased-in schedule to permit the SSMSC staff to train companies on the system and provide sufficient help to companies to make the system work effectively for the Ukrainian securities market. The SSMSC, in compliance with the November 2005 Presidential Decree, is committed to improving the quality of the information provided to investors.

The SSMSC will announce the EDS phase-in schedule following the testing of the EDS system in the Pilot Program. Initially, the SSMSC is considering the following schedule for implementation of the EDS system:

- ❑ **Component No. 3. Ukrainian EDS Program – Enhancement of the SSMSC web site to permit implementation of the Electronic Process for Collection and Dissemination of Documents Filed in Electronic Format.**

The third component of EDS is the enhancement of the SSMSC web site to insure easy and free access to this information at all times.

This dedicated web site will insure a “seamless” electronic process from issuer submission, validation, and storage on SSMSC server to the transmission to the public via the new SSMSC web site.

□ **Component No. 4. Ukrainian EDS Program – Training and Public Awareness Program**

For those companies that participate in the Pilot Program the SSMSC will provide specialist in both the new requirements for international disclosure and IT specialists who will provide to each participant in the Pilot Program specialized guidance and instructions on how to meet the new requirements and to address any IT issues.

In addition, the SSMSC and its regional staff will conduct seminars, roundtables and other events in each of the regions to assist companies in their understanding of the new requirements to promote compliance with the least burden on the company. The SSMSC will provide examples of Ukrainian companies that have prepared documents in accordance with international disclosure standards to facilitate the transition to the new disclosure regime.

As part of this training program, the SSMSC will prepare manuals on both the new substantive disclosure requirements and the technical requirements to ease the burden on the companies and insure that companies understand and can comply with the new informational standards.



**USAID**  
FROM THE AMERICAN PEOPLE

## Capital Markets Project

### TRANSPARENCY AND DISCLOSURE: FOUNDATION FOR GOOD GOVERNANCE AND INVESTMENTS

**Kyiv**

**January 24-25, 2007**

#### LEGAL ANALYSIS OF NEW DISCLOSURE REGULATIONS IN UKRAINE (EDS)

The SSMSC, in cooperation with the USAID/Capital Markets Project, proposes to implement a disclosure process that will require Ukrainian issuers to provide business and financial information in accordance with international standards established by International Organization of Securities Commissions (IOSCO), the Organization for Economic Cooperation and Development (OECD), and EU Directives.

#### **General Legal Requirements for Disclosure**

General provisions for information disclosure have been foreseen by the Civil Code of Ukraine as of January 01, 2003. Art.152 (5) says that "A joint-stock company which conducts public offering is obliged to disclose publicly each year annual report, balance sheet, profit and loss statement and other information provided by the law". Besides, in accordance with Art.162 (1) "A joint-stock company which is obliged according to the law to disclose the above documents has to involve for checking and confirmation of the annual financial statements an auditor who does not have property interests related to the company".

Developing provisions of the Civil Code of Ukraine, Art.39 (1) of the new Law of Ukraine "On Securities and Stock Market" provides that disclosure of information by the public issuers must reflect:

- financial-economic state and results of activities of the issuer;
- any actions that are likely to affect the financial-economic state and lead to material change in value of issuer's securities;
- shareholders who own 10 and more percent of voting shares.

#### **EDS Essential Issues**

Regarding the content of information, the Law "On Securities and Stock Market" provides such types of information to be disclosed to the SSMSC by issuers of public offerings:

1. Regular information about the issuer (Annual and Quarterly reports);
2. Special information about the issuer (information on any actions that are likely to affect the financial-economic state and lead to material change in value of issuer's securities);
3. Prospectus of securities offerings and amendments to it;
4. Report on the results of public placement of securities.

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Disclosure is focused on that minimum information needed to inform the market and protect investors. In recognition of the fact that investments in securities, like any other form of investment, involves risk, the information required is that information that permits shareholders and other investors to understand such risk and make an informed decision with full knowledge of the facts. The basic content of documents provides sufficient flexibility to permit the issuer to address the particular financial and business aspects of its operations.

### **Free text format**

EDS follows the free form requirement for disclosure of information. Narrative disclosure requirements, rather than being a mere checklist, mandates that the issuer provide full and accurate information on each of the significant events and to place the importance of the event in the context of its operations and financial conditions. Thus, a narrative description of the event leads to better-informed investors and the market.

### **Description of company's business, historical development and structure**

The issuer is required to describe in free text format the company's business, historical development and structure. In particular, the issuer should identify main corporate events such as any mergers, major acquisitions or dispositions of assets, etc. for the last five years. The company's organizational structure and the principal business activities of the company should be revealed. Additional information should be provided on the company's major customers (10% or more of revenues), indicating whether there are contracts with the customers and the material terms of the contract.

### **Description of legal (court) proceedings of the company**

The issuer shall describe any pending legal proceeding or related proceedings that involve a claim for damages of 10% or more of the issuer's total assets or sales, to which the company or its subsidiaries, members of supervisory board, or members of the management board is a party that relates to the business and financial activities of the company.

### **Description of supervisory board, management body and key personnel, as well as details of their compensation**

The issuer is to provide key information about members of the supervisory board, members of the management board and other key personnel, including the company's compensation policy for these persons and the aggregate compensation paid for the last fiscal year to these persons grouped as to annual salary, bonuses, benefits and any other payments.

### **Identification of major shareholders**

The issuer must also identify any person(s) or legal entities that own 10% or more of the company's voting shares or otherwise control the company including shares owned directly and indirectly (for instance, by family members or through other companies or enterprises). It should be noted that the new Securities and Stock Market Law takes a positive step forward and treats information on owners of large blocks of shares (10% or more) as special information and imposes a duty on the issuer to keep the information accurate and current and to provide this information to the public.

### **Transactions with members of the supervisory board, management board, major shareholder or other interested parties**

The issuer should describe any transactions between the company or its subsidiaries and any major shareholder or member of the supervisory board or management board during the last two

fiscal years and any current or proposed transaction. The information should describe in detail the nature of the transaction, the reason for the transaction, the method of valuing the assets or services that are the subject of the transaction.

### **Risk factors**

The issuer should identify each of the material risks associated with the company and its business and financial conditions. The risks should be ranked in order of importance to an investment in the company. The narrative description of each risk should be specific to the company and contain sufficient financial and other data on the risk to permit an investor to understand the risk and its importance.

### **Financial statements in accordance with International Financial Reporting Standards**

EDS enforces movement to the International Financial Reporting Standards (IFRS). Their use helps to achieve convergence towards high quality financial reporting standards that provide transparent and comparable information in financial reports leading to increased investor protection, general improvement in collecting taxes and trust in the market. Equally important, pension fund asset managers will need this information if they are to invest pension assets wisely and for the benefit of future pensioners. Therefore, if the issuer prepares financial statements in accordance with IFRS, EDS requests for filing these financial statements revised by the auditor, along with financial statements prepared in accordance with National accounting regulations (standards).

### **Materiality standard for disclosure of information**

To assist issuers in providing all necessary information, EDS contains a general “materiality standard” based on the current SSMSC’s corporate governance requirements. Materiality of information requires disclosure of the information required by the item or event and any additional information that is necessary to insure relevant, complete and accurate disclosure of the information, in the light of particular circumstances of the business and financial activities of the issuer.

### **Filing Documents within EDS**

SSMSC is empowered under the Law to establish additional requirements for disclosure of information about the issuer, as well as terms, procedure and forms of information filing. That is why, EDS provides in detail the form and content of the key disclosure documents required to be filed by companies.

EDS is designed to be a fully automated filing system using the latest technology. Initially, the issuer must comply with certain simple registration procedures and receive electronic signature keys to submit reports over the EDS system. The issuer will be required to update the information in the “Issuer Registration Form” promptly to reflect any changes in the data insuring that the information is current.

After completing registration and receipt of electronic signature keys, reports shall be filed electronically endorsed with electronic digital signatures of the issuer’s officials. Auditor’s opinion including the revised financial statements shall also be prepared in electronic form, endorsed with the auditor’s electronic digital signature and attached to the report. The official filing date will be the date that the document is accepted by EDS upon which the issuer receives electronic notification.

Endorsement of electronic documents with electronic digital signatures in accordance with legislation insures that electronic documents are relevant in law and have the same legal power as paper documents. By means of electronic digital signatures persons who signed the document

confirm authenticity of data contained in the document and the auditor confirms the authenticity of data contained in financial statements covered by the auditor's opinion. Immediately after filing, the documents will be revealed at the SSMSC web-site.

Access to the information would be free of charge to the public, investors and market participants on a real-time basis at the SSMSC web site. This real-time system will also promote compliance with laws and regulations regarding "insider information" as every user will have access to the information at the same time.

### **EDS Goals**

**Introduction of international standards** (EU Directives, OECD Corporate Governance Principles, IOSCO Information Disclosure Principles) and best international practices regarding the content of information to be disclosed by public issuers;

**Compliance with Ukrainian legislation** in terms of filing documents in electronic form and placement of information in the publicly available information database of the SSMSC;

**Insuring the principle of immediate, equal and simultaneous access of investors** and other information users to the information and prevention of insider dealing;

**Gradual transition to disclosure of information on the basis of International Financial Statements Reporting** which provide transparent and comparative information on financial state of the issuer leading to better protection of investors;

**Possession of all intellectual property rights on the information system by the SSMSC** allowing any further development of the system.

### **Conclusion**

The EDS will provide for the electronic delivery of issuers' prospectuses and reports on results of public placement of securities, annual reports, quarterly information for each of the first three quarters of the year and the expanded list of special information required by the recently adopted Law "On Securities and Stock Market." These reporting requirements, which meet both IOSCO principles and EU Directives, will provide a continuous update of business and financial information on the company. The SSMSC, as the regulator of the market, will have the necessary control over the process to insure that information filed by companies meets international standards and is available at all times to the market.



**Transparency and Disclosure:  
Foundation for Good Governance and Investments**

**Legal Analysis of  
New Disclosure System  
in Ukraine (EDS)**

Kyiv  
January 24-25, 2007

## Legislative Background

1. Civil Code of Ukraine as of 16/01/2003;
  2. Commercial Code of Ukraine as of 16/01/2003;
  3. Law “On Securities and Stock Market” as of 23/02/2006;
  4. Law “On Business Companies” as of 19/09/1991;
  5. Law “On the State Regulation of the Securities Markets of Ukraine” as of 30/10/1996;
  6. Law “On Accounting and Financial Reporting in Ukraine” as of 16/07/1999;
  7. Law “On Auditing Activity” as of 22/04/1993;
  8. Law “On Electronic Digital Signature” as of 22/05/2003;
  9. Law “On Electronic Documents and Electronic Documents Circulation” as of 22/05/2003;
- and others.

## Legislative Requirements for Content of Disclosure

### **Civil Code of Ukraine:**

“A joint-stock company which conducts public offering is obliged to disclose publicly each year annual report, balance sheet, profit and loss statement and other information provided by the law” (Art. 152 (5)).

“A joint-stock company which is obliged according to the law to disclose the above documents has to involve for checking and confirmation of the annual financial statements an auditor who does not have property interests related to the company or its shareholders” (Art. 162 (1)).



## Legislative Requirements for Content of Disclosure

### **New Law of Ukraine “On Securities and Stock Market”**

(Art. 39 (1)) provides that disclosure of information by the public issuers must reflect :

- financial-economic state and results of activities of the issuer;
- any actions that are likely to affect the financial-economic state and lead to material change in value of issuer’s securities;
- shareholders who own 10 and more percent of voting shares.



## Legislative Requirements for Content of Disclosure

New **Law of Ukraine “On Securities and Stock Market”** provides such types of information to be disclosed to the SSMSC by issuers of public offerings :

- **Regular information** about the issuer:
  - Annual reports;
  - Quarterly reports;
- **Special information** about the issuer (information on any actions that are likely to affect the financial-economic state and lead to material change in value of issuer’s securities);
- **Prospectus** of securities offerings and **amendments** to it;
- **Report** on the results of public placement of securities.

SSMSC is empowered under the Law to establish **additional requirements** for disclosure of information about the issuer.



## Legislative Requirements for Form of Disclosure

### **Regular information:**

- is to be filed electronically with the SSMSC;
- is to be placed to the publicly available information database of the SSMSC;
- is to be disclosed by the SSMSC.

### **Special information:**

- is to be placed to the publicly available information database of the SSMSC;
- is to be disclosed by the SSMSC.



## Legislative Requirements for Form of Disclosure

### **Prospectus of securities offerings and amendments:**

- is to be published in the official printing edition after being registered but not later than 10 days before the start of public placement;
- until official registration and within 10 days of the publication no offers or sales can be made.

### **Report on the results of public placement of securities:**

- is to be published within terms established by the SSMSC.

**Terms, procedure and forms** of information filing shall be established by the SSMSC.



Capital Markets Project

*Legal Analysis of New Disclosure Regulations in Ukraine*

## EDS Goals

- **Introduction of international standards** (EU Directives, OECD Corporate Governance Principles, IOSCO Information Disclosure Principles) and best international practices regarding the content of information to be disclosed by public issuers;
- **Compliance with Ukrainian legislation** in terms of filing documents in electronic form and placement of information in the publicly available information database of the SSMSC;
- **Insuring the principle of immediate, equal and simultaneous access of investors** and other information users to the information and prevention of insider dealing;



Capital Markets Project

*Legal Analysis of New Disclosure Regulations in Ukraine*

## EDS Goals

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- **Gradual transition to disclosure of information on the basis of International Financial Reporting Standards** which provide transparent and comparative information on financial state of the issuer leading to better protection of investors;
- **Possession of all intellectual property rights on the information system by the SSMSC** allowing any further development of the system.



## EDS Legal Structure

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### **Legally EDS consists of:**

- **Draft Regulations** providing for procedure of information filing to be approved by SSMSC;
- **Forms** for filing different types of documents as Attachments to Draft Regulations to be approved by SSMSC.



## EDS Important Issues

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1. Description in free text format of company's business, historical development and structure.
2. Description of legal (court) proceedings of the company.
3. Description of supervisory board, management body and key personnel, as well as details of their compensation.
4. Identification of major shareholders (any person(s) or legal entities that own 10% or more of the company's voting shares including shares owned directly and indirectly).



## EDS Important Issues

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5. Transactions with members of the supervisory board, management board or major shareholder or other interested parties.
6. Risk factors.
7. Financial statements in accordance with International Financial Reporting Standards (if the company prepares such).
8. Materiality standard for disclosure of information based on the SSMSC corporate governance requirements.



## EDS Procedures

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1. Initial simple registration procedures for the issuer and receipt of electronic signature keys to start submission reports over EDS.
2. Requirement for updating information in the Registration Form to insure that the information is current.
3. Reports filed electronically and endorsed with electronic digital signatures of the issuer's officials.
4. Auditor's opinion including the revised financial statements filed electronically and endorsed with the auditor's electronic digital signature.



## EDS Procedures

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5. The official filing date – the date that the document is accepted by EDS upon which the issuer receives electronic notification.
6. The legal power of electronic documents the same as of paper documents due to electronic digital signatures applied in accordance with legislation.
7. Confirmation of authenticity of data contained in the document by persons who signed the document (with electronic digital signature) and the authenticity of data contained in financial statements - by the auditor.



## Conclusions

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- EDS is designed to provide free of charge relevant, complete and accurate information about the issuer in the light of particular circumstances of business and financial activities of the issuer;
- EDS helps investors and other information users to take reasonable decisions on the basis of such information;
- EDS aims to provide for equal and timely access to publicly available information by all information users;
- EDS insures fair treatment of shareholders and investors on the capital market.



Capital Markets Project

*Legal Analysis of New Disclosure Regulations in Ukraine*



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Legal Analysis of New Disclosure System  
in Ukraine (EDS)

**Thank you for attention!**

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**Transparency and Disclosure:  
Foundation for Good Governance and Investments**

**Presentation of the Prototype  
of Electronic Disclosure System**

Kyiv  
January 24-25, 2007

**Overview of Information Technologies Applied**

- The EDS is based on web technologies providing unified data representation and access to information
- XML format is used for issuers' reports filing
- Issuers' reports are delivered to the SSMSC via Internet
- Electronic digital signature technology is applied to ensure data integrity in the process of transmission and to meet the law requirements
- Public and SSMSC staff access issuers' reports through EDS web site owned by the SSMSC

## EDS Architecture

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- **Client software** (Windows-application):
  - preparation of the reports
  - saving the report in XML format at the local computer
  - application of electronic digital signatures
  - sending the report to the EDS server via Internet (email or web)



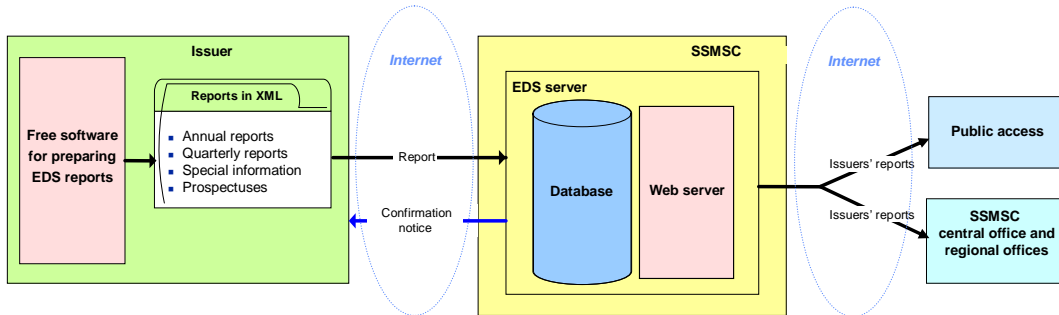
## EDS Architecture

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- **Server software** (database management system, web server, EDS services):
  - receiving of the report
  - verifying of electronic digital signatures
  - sending the confirmation notice to the issuer
  - loading the report to the database
  - functioning of the web server
  - administration of the system
- **Public access** to issuers' reports (web browser):
  - searching and reviewing of the reports



## EDS Architecture



## Presentation of the EDS Prototype

Issuer Component

Public Access to  
Issuers' Reports

## Next Step

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- Pilot Project
- 13 companies – issuers of securities
- Preparation of annual reports, quarterly reports and special information
- Disclosure of issuers' reports on the EDS web site



Capital Markets Project

*Presentation of the Prototype of the Electronic Disclosure System*



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Presentation of the Prototype  
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