



FINANCIAL SERVICES COMMISSION

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Discussion Paper: Reshaping the Public Disclosure Framework – Regulation and Sustainable Embrace of Best Practice

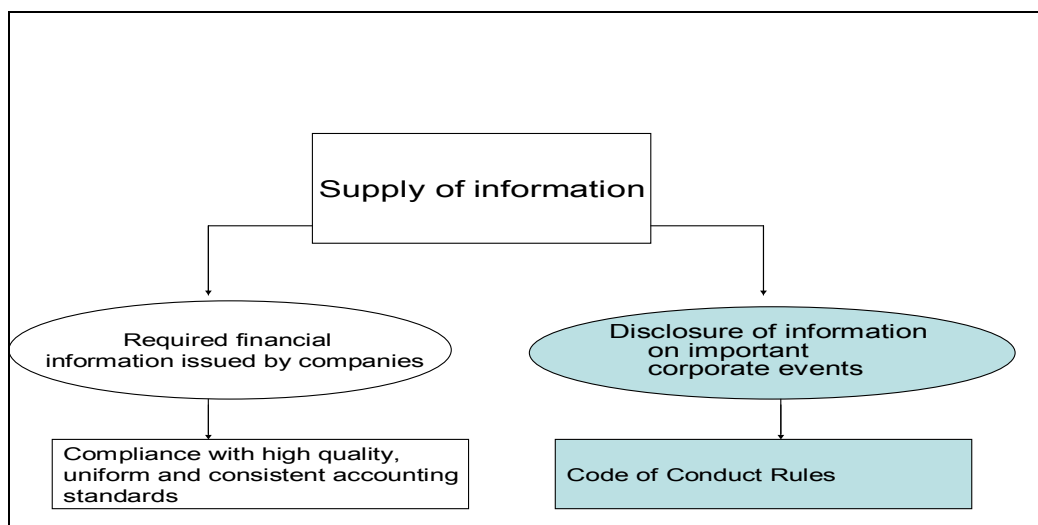
Introduction

Jamaica's public disclosure framework has traditionally relied on a mix of regulation and encouragement of industry best practice. While this appears to be a balanced approach, there is a greater need for regulation to ensure that the companies maintain a sustainable embrace of best practice.

This discussion paper and the symposium mark a further step towards a reshaping of the public disclosure framework and how it is understood by the participants. Both the discussion paper and the symposium build on existing regulations and guidelines and clarify the various responsibilities and responsible persons to focus on the quality of public disclosure. The Financial Services Commission ("FSC") is committed to comprehensively improving the disclosure framework in the interests of all stakeholders and the public.

Disclosure Framework

The focus is on the disclosure framework applying to publicly listed companies and other 'disclosing entities' in Jamaica, in recognition of their high level of public interest. Of note, is the distinction the FSC makes between the regulated reporting requirements of the licensees to the FSC versus public disclosure of information to current and potential investors. The emphasis of the FSC at this time is on public disclosure of information as demonstrated in the diagram below:



Responsible Persons

In reemphasizing or reconfiguring the public disclosure framework to deliver a model able to generate and be worthy of greater public confidence, the framework must more accurately define the range of participants and their responsibilities. These include:

- Companies’ board of directors
- Senior management
- Chief Financial Officers/Financial Controllers
- Auditors/ Accountants
- Regulators
- Investors
- Analysts/business journalists/media

These responsible persons are required to monitor, facilitate and regulate the quality and timeliness of public disclosure. Under the current Companies Act, the entity's Board of Directors is responsible for ensuring all reasonable care is applied to ensure the integrity of the corporation.

Responsible Persons	Requirements
Board of Directors and Senior Management	<p>Outline the legal and regulatory disclosure requirements that apply to the company.</p> <p>Give guidance as to the types of information that may require disclosure.</p> <p>Give practical guidance for dealing with analysts, the media and other members of the public.</p> <p>Establish and document a system for disclosure of material information, and identify the channels for employees to pass on potentially market-sensitive information as soon as it comes to hand.</p> <p>Allocate responsibility for approving the form of any public disclosures and the making of other public statements or communications.</p>
Chief Financial Officers/Financial Controllers	Rule of prompt, fair and non-selective disclosure of information on important corporate events
Auditors/Accountants	Impose general obligation on companies to inform the public in a timely manner.
Regulators	Define clear rules; Impartial enforcement; Fair application of punishment
Investors	Responsibility to learn of their rights regarding companies’ obligation to disclose information to them.

Analysts/business journalists/media	Rule of prompt, fair and non-selective disclosure in the dissemination of corporate information.
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Who Must Disclose?

- Listed companies – Jamaica Stock Exchange Rules
- Issuers – FSC’s Guidelines for Issuers of Securities
- Dealers – Sections 46 to 49 of the Securities Act
- Insurance companies – Segregated funds
- Pension Fund Investment Managers and Administrators
- Mutual Funds
- Unit Trusts

Any public disclosure framework is to be found in the securities laws and regulations, the Companies Act, other regulatory statutes and the wider laws in relation to anti-fraud, ethical codes and governance and reflects the mores of the society.

Principles for Ongoing Disclosure and Reporting of Material Developments¹

To aid the discussion, the FSC highlights below the International Organization of Securities Commissions’ (“IOSCO”) principles regarding disclosure. Many of these principles are embodied in the Securities Act and Regulations.

1. Companies should have an ongoing disclosure obligation requiring disclosure of all information that would be material to an investor’s investment decision.
2. Companies should disclose ongoing information on a timely basis.
3. If the company 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.
4. Under the ongoing disclosure obligation, companies should ensure that full information is promptly made available to the market by using efficient, effective and timely means of dissemination.
5. Ongoing disclosure of information should be fairly presented, not be misleading or deceptive and contain no material omission of information.
6. 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 communication with advisers or in the ordinary course of business, communications with persons with whom the listed entity is negotiating,

¹ “Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities,” A Statement of the Technical Committee of the International Organization of Securities Commissions (“IOSCO”).

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. Companies are responsible for compliance with the ongoing disclosure obligation.

Examples of disclosure items

- 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 memorandum and articles of association that were not previously disclosed
- 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's outlook
- Movement of the company's securities from one exchange system to another, delisting of the company's securities from an exchange 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.

Summary

The public disclosure framework must pursue best practice for the people involved and the processes they follow. Meaningful public disclosure plays an important role in reinforcing the efforts of regulators in fostering financial market stability. It should also benefit the institutions themselves both by enhancing their ability to evaluate and manage their exposures to counterparties, and also by reducing the likelihood that they become susceptible to market rumours and misunderstandings during periods of financial stress.

Public disclosure should not only be adequate and complete, but also relevant and timely. Reliable and timely dissemination of information for important corporate events has to be made in the most efficient way in order to eliminate exploitation of inside information that will distort share prices as a result of misleading information and unsubstantiated rumours

A disclosure based system with a high standard of disclosure will help capital markets to attain maturity, sophistication, and transparency. A disclosure based framework coupled with a strong regulatory regime can work effectively to protect the integrity of the capital market and the interests of the investors.

The FSC will continue to consult with business and the community so that these efforts are effective and achieve quality outcomes for investors.

The FSC invites your comments. Please address them to: Mr. Brian Wynter, Executive Director, Financial Services Commission, 39-43 Barbados Avenue, Kingston, Jamaica; e-mail: wynterb@fscjamaica.org