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ملحوظة

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From "Guidance to Sanctions" – The Role of Market Regulator Enforcing Disclosure

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From Guidance to Sanctions – The Role of Market Regulator

Bassam J. Asfour

If I may just take a moment to thank the Global Corporate Governance Forum, the Centre for International Private Enterprise and the Lebanon Corporate Governance Task Force for their invitations to come to Beirut and for hosting us. I was really impressed by the work done by the Lebanese Task Force and hope that we can follow in their footsteps.

The title "From Guidance to Sanctions" was not one of my choosing, and I could not have chosen a better one because it tells a very realistic story of the Jordan Capital Market.

I really wish I could stand here today and say that our rules and regulations are so good and enforcement is so much better than before that we have had no bank or corporate failure for many years. On the contrary, from 1988 to this day, we have had quite a few of them. Legislative reform did not materialise directly because of those failures but because of the awareness that the general setup of the capital market should be changed to reflect separation of regulation from operation. Hence, the 1997 legislation created the Jordan Securities Commission (JSC) and the Amman Stock Exchange (ASE) as well as the Securities Depository Centre (SDC). One would think that such a development would have granted that greatly esteemed regulator, the JSC, some teeth to implement some good rules that emanated from that legislation. No. From the beginning, the 1997 Commission might have looked, in that sense, as if it was a lame duck. For it could make regulations and rules but did not have the power to take appropriate and speedy measures against violators. It could only refer violators to the courts. And even the State, when it resorted to the courts in virtually all failures, it went to the State Security Court, if only to emphasise that the civilian court system was, to say the least, slow.

Should issuers have learned a lesson? Yes, they should have. Did they? No, but governments and legislators did. Well after the enactment of the 1997 legislation, the Commission realised that it needed enforcement powers but legislators chose to stay the course and preferred to follow an evolutionary process to enforcement rather than a revolutionary one. Perhaps the international aspect played a very important role too in the promoting, among many other issues, the addition of

enforcement powers. I believe we should all be thankful for all for that, and of course because that it gave us the opportunity of a good job and of the privilege to come to Beirut and talk about it.

The bottom line is that our issuers are not culturally accustomed to a transparent and open policy of disclosure and to the principles of sound corporate governance. They will always use all sorts of reasons to justify their non-compliance. So when the Commission was born in 1997 it had to put together rules in accordance with the legislation in force and hope for the best. It was a tough battle for it could only inform and request, educate and cultivate, persuade and train. It had to lobby hard to find listeners, something that was rather frustrating. It undertook to hold workshops and lectures to issuers and market intermediaries to familiarise them with the legislation and disclosure requirements.

It also had to wait till the end of 2002 for new legislation to give it sufficient teeth to enforce its rules. Last year, for the first time, the Commission embarked on the enforcement of the legislation by taking administrative action against violators. More important than waving the stick and using it, we have the political will to do so and the support of our political leaders to our independence. They support us in work to ensure that our markets are fair and able to set fair prices for securities according to supply and demand and provide equal access to information. They also support us to ensure that markets are transparent so that decisions are made on correct and timely information and that those markets have to be efficient to the extent that prices reflect all information with speed and accuracy.

What we do at the moment is to enforce the classical requirements of continuous, periodic and timely disclosure, with regard to the preliminary results, the annual report and the semi annual report. In addition to this, any material information that has a direct impact on the value of securities, has to be disclosed immediately. Before any issuance, full disclosure has to be made in the prospectus for the initial public offering. Insiders' holdings as well as all their trading must also be disclosed. We also require any investor to disclose holding once it reaches 5% and any incremental increase of 1% thereafter. Once that figure reaches 10% they must declare their intentions. Legislation in force mandates that the board of directors as well as the top management, the auditor and the manager of the issue must sign the prospectus stating that they accept responsibility for the accuracy and completeness of the information therein. Annual reports submitted must also be signed. The legislation holds the auditor liable if he endorsed any false or inaccurate information in the prospectus or in any report made by the issuer within the limits of the profession. Disclosure regulations have also given substantial

powers to the audit committee to be an effective internal watchdog on board and management. We strive to ensure that all investors have prompt access to that information which is relevant to the taking of investment decisions.

I would like to present to you quickly the highlights of enforcement actions taken to some of the violations committed last year regarding disclosure:

- 17 out of a total of about 190 registered firms at the JSC were fined for failing to include the full information required to be disclosed in the annual report.
- Of 34 firms whose auditor expressed reservations about their annual accounts, 16 were fined for failing to file a response to that reservation. The rest complied.
- Five firms were fined for failure to disclose material information.
- 18 firms were fined to failure to file preliminary report.
- 24 firms were fined for failing to submit their annual report.
- 26 firms were fined for failing to submit their semi annual report.

Equally important for us is that firms must respond to media commentary if such commentary includes material information. Our disclosure rules require that firms do so, although of course, we do not require disclosure of trade secrets, internal documents or results of incomplete negotiations that are confidential. I am sure this is an irritation to firms to do so especially if they had nothing to do with that information reaching the media. However, we think issuers should take the responsibility to ensure that inaccurate information, if it appears, must be corrected.

We also have specific requirements for listing in addition to what the Amman Stock Exchange requires. We are happy to see the Exchange requiring firms, whom are listed on the first market, to disclose quarterly figures. We work together to ensure compliance of listing requirements.

At this stage I should mention that for the first time in Jordan, we have published in our 2003 annual report the details of each violation that were committed last year together with the enforcement action taken. We have done this so that all stakeholders see for themselves that we are applying the legislation in force. I tend to think that this disclosure is another aspect of full transparency that we seek to achieve in the running of the Commission. Compliance this year with preliminary report was much higher than last year. We are also putting together a plan to enable e-disclosure that can be accessible hopefully by the end of the year.

I believe that deterrence is very important. Whilst the Stock Exchange has limited power of sanction, the Commission has much more. My Chairman always likes to say that the Commission has zero tolerance to violators. We would like issuers to believe that if there was a disorderly trading of a security based on uninformed basis, a possible suspension of trading due to a listing rule breach should not be regarded as a penalty as much as a way to restore the orderly trading of that security following the appropriate disclosure by the firm.

I also believe that we must continuously be in effective engagement with issuers to achieve the desired continuous disclosure as well as to ensure that they would be convinced of the benefits to them of compliance. Such participation and compliance would no doubt enhance market efficiency and be of benefit to all investors.

We must also engage the media to carry our message across. We do that by explaining to them the nature as well as the detail of the legislation, rather than just send press releases, which we do. We build bridges with them and explain the nature of our work regularly and what we do so that when they write they know in the back of their minds what issues to raise and the right questions to ask, not only to us but also to issuers. We are working to convince the media that publishing the names of violators is valuable for the public so that they would do so without fear of prosecution.

Lastly, we must engage the shareholders and the public at large. Over 10 percent of Jordanians own securities today and the figure is rising. We are their first line of defence. We are setting up a special investor protection fund to compensate investors in case of broker-dealer failure. We strive to make the public aware of the need to be well informed about how to look after their investments, about swindles and scams as well as fraud. We want to improve the public's financial literacy. We also want them to be aware of their right to complain and how to exercise it. If they have a grievance or a complaint, they come to us for an answer. And we have to be quick to respond. We are setting up a special unit for this purpose attached to the Chairman's Office so that any complaint does not get bogged down in the bureaucracy.

Regulators are the protectors of the public interest. We must practice all of the above and we must be seen to be doing so.