

Update On Capital Markets: Disclosure Of Material

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The CML and its Regulations were issued to regulate the securities market in Kuwait and to organize stocks and securities in a fair, transparent and competitive way. They also help to keep the public aware of stock activity, along with the risks, the benefits and the responsibilities associated with investing in securities and aim to encourage growth and to provide protection to those partaking in trading activities of securities and stocks.

On 5 June 2012, the Board of Commissioners of the Capital Market Authority (“Board of Commissioners”) issued a set of detailed instructions aiming to apply full disclosure policies in such a manner that would achieve justice and transparency while preventing conflicts of interest and exploitation of internal information (“Disclosure Requirements”).

Disclosure Requirements are applicable to all listed companies (“Issuing Companies”) having their securities listed with the Kuwaiti Stock Exchange (“Stock Exchange”). Moreover, according to the Disclosure Requirements, Issuing Companies must disclose any information related to the company which is not known to the public and would be critical to the potential investor’s investment decisions.

The information shall be deemed to be critical to the public’s investment decision and hence the Disclosure Requirements shall be triggered if the information falls under the “materiality” criteria defined therein. Material information includes any event that might have an effect on the Issuing Company’s assets, financial position or normal course of business, leading to a change in the Issuing Company’s securities price, tradability, attraction or reluctance of investors to purchasing the security or reducing the Issuing Company’s capability to meet its financial obligations.

The Disclosure Requirements include a wide range of cases and events that may occur and constitute Material Information triggering the disclosure requirement. Upon the occurrence of any of such events, Issuing Companies are obliged to announce such matters to the public in accordance with the mechanism specified by the Disclosure Requirements. As previously illustrated, the material cases and events provided under the Disclosure Requirements are quite extensive and include numerous events that may be directly or indirectly related to the Issuing Companies. However, the following are some of the most significant and relevant of these cases:

- entering into a joint venture and merging with or acquiring another company;
- entering into or concluding a material agreement (including but not limited to credit facilities and corporate guarantee agreements);
- purchasing or selling a material asset;
- any changes to the board of directors of the Issuing Company; and
- any changes to the shareholding structure of the Issuing Company leading to an acquisition of a shareholder of 5% or more of the Issuing Company shares.

As noted above, these cases are a sample provided under the Disclosure Requirements requiring announcement and disclosure thereof to the public. Nevertheless, in order for the Issuing Company to determine the impact and materiality of the potential information (hence disclose it as required) it must take into consideration the relevance of the information to the “prudent investor’s” decision. A prudent investor is defined as the normal investor seeking to increase his profits. In other words, the Issuing Company must take in to consideration whether or not the prudent investor shall rely on such information

in his investment decision. Also in determining the materiality of the information, the Issuing Company must consider different factors related thereto including but not limited to its size (large, medium and small), recent developments related thereto and the general status of the market and the sector it operates in.

Finally, it is also worth noting that the Disclosure Requirements have provided exceptions to the disclosure requirements, where the Issuing Company may be entitled to postpone disclosing material information if such information is still unconfirmed or within the negotiations phase.