THE IMPACT OF THE DISRUPTION OF INFORMATION AT THE JORDANIAN STOCK EXCHANGE: AN ASSESSMENT OF THE CORPORATE LEGAL RESPONSIBILITIES

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ABSTRACT

International and local stock exchange have witnessed a significant development in term of the volume of money trade and the large number of companies whose shares are traded in those markets, which give a clear indication of the significant role of the stock market as one of the institutions operating the capital market, but on the other hand, it has become one of the most important institutions influences in the decisions of dealers and investors in the financial market. The theories of efficiency of the stock market confirm that all information about the market and companies registered in it are available, in general, freedom of information and access reach all without fees, but the practical reality reveals that there are illegal practices in the stock exchange in dealing with information, as there is a group of dealers who have free access to insider information which is not available to everyone, and there is a another group which publish false information in the markets. To avoid this, several countries, including Jordan, have issued various penalties in violation of these obligations. The aim of this research is to identify the legal responsibility.

Keywords: Stock Exchange, International Laws, Jordanian law, Legal Responsibility.

JEL Classifications: H54, J24, P12.

1. INTRODUCTION

Information plays a significant and influential role in the decisions of dealers and investors in the financial market. Efficient Market Hypothesis (EHM) assumes that all information about the market and the registered companies are generally available as well as the freedom of information access which is free of cost or at low cost. Practically, the access of all investors to the information necessary to evaluate an investment decision is one of the challenges that financial markets faces, despite the significant importance that information represents for market stability, transaction growth and dealer’s confidence.

On the other hand, the inadequacy of deterrent laws leads to the impossibility of justice in transactions which carried out in the stock market, the absence of these laws stimulate the motives to circumvent the capabilities of financial markets that is, a specific group of dealers who have the right to freely access the insider information can benefit from this advantage, others who can publish false information in Market or leak valid information that will generate significant profits if such information has an effect on the decisions of dealers at the expense of other investors and dealers who do not have free access to this information.

What is meant by information, in this case, is that; it is an organized data that holds a meaning and a value to the beneficiary, who in his turn interprets it and determined its content to
use it in drawing up investment decision particularly in the field of securities investment. It can be said, that the stock market differs from the ordinary markets of being an organized market, though what is performed in it is also sale and purchase in the general sense, where the seller is interested in taking the price and the buyer cares about receipt but what distinguishes the stock market from others is that the seller and the buyer do not meet, each of them delegates a financial brokerage company or a broker (financial intermediary) to represent them in buying and selling process although the decision of purchasing or selling is made by the seller and the buyer, who shall made their decision correctly and based on appropriate basis to achieve a fair price and this cannot be done without the availability of information related to the securities issued.

The securities whether shares or bonds of all types are transferred values that represent an evidence that the holder has a part in the issuer of that shares or of indebtedness. The assessment of this instrument whether in terms of material and moral aspects or cash flows, the type of activity or other technical issues is difficult for anyone to realize by himself. Therefore, many companies operating in the stock market (Stock Exchange), whether they are the issuing companies or public bodies of the stock market that are monitoring and supervising these processes, shall provide a set of data and information relating to each security accurately to the interested dealers and internal and external bodies. Information and data are considered a backbone in securities trading in the market, where the market efficiency value based on the availability of strong and honest information and data network that is provided to all in a framework of equality and equity.

The stock market regulator (COB) in France defines the characteristics of the information that must be published to the public. According to COB information should be characterized by being accurate, influential on the price of the securities, and to reach all parties at the same time and in the same amount. That means to be real, not misleading, declared to all parties and fundamentals in decision-making. As for the Jordanian law, the disclosure instructions of the Amman Stock Exchange of the year 2018 in Article 3(b) specifies the information to be disclosed, it stipulates that the stock exchange shall immediately disclose information and data it receives which may have an impact on the prices of securities and trading. Article 7 stipulated that information and data provided in Article 4 of these instructions shall not disclose, which come to their knowledge thereof due to their work duties.

In order to place the information naturally, there must be bodies that exercise control and supervision to guarantee its stability, among these regulatory bodies that perform this active role in the stock exchange and are approved by the law are the public bodies of securities. The research deals with the problem of information in the Jordanian Stock Exchange compared to some countries and to clarify the adequacy of applicable laws to prevent illegal infringement of information affecting stakeholders, investors and other parties in securities trading on the exchange.

The significance of the research and its objectives draw attention to the importance of setting deterrent laws to protect investment in the stock exchange through the precise identification of information or data to be honest and not misleading and given to all parties in a framework of equality and justice. For this reason, several countries including Jordan have issued various sanctions when breaching the obligations related to the information of stock exchange transactions by the persons and entities. We will try to study the types of these sanctions, whether they are civil or criminal sanctions through three sections: The first section deals with the legal liability of the delay and lack of information disclosure. The second section is about the legal liability arising from the Internal Dealing (Insider Trading), and the legal liability of false and misleading disclosure in the third section.
2. LEGAL LIABILITY OF DELAY AND LACK OF INFORMATION DISCLOSURE

The public bodies of securities and stock exchange administrations in accordance to the legislations governing them issued several penalties on those who refrain, delay or reveal uncompleted periodic disclosure of information. Public bodies also decide on penalties that begin with the warning and may impose fines on those who delay this disclosure according to the legislation system in each country and it may reach to the suspension of the listing of its securities, and these bodies have the right to cancel the inclusion of trading the securities if the suspension of listing for a certain period all these procedures are taken in order to oblige the registered entities on the stock exchange to periodically disclose its information and data.

Comparative laws may stress obligation on the registered entities to periodically disclose its information and data in accordance with the specified laws that imposed on those who fail to disclose information by imposing procedures and penalties ranged from written notice that the disclosure must be on the dates specified to notifications and warnings. If the parties still causing the violation the procedure may develop to the suspension of its securities trading and then the decision to cancel the registering if the violation continues for a specified period which is issued by regulations as the Jordanian legislation did.

Some legislation also required disclosure of interests and ownership of securities in case shareholder's ownership reached certain percentages, as the French legislator has done in particularly, when it imposes penalties of non-disclosure. It can be said that all legislation has established appropriate penalties in case of delay and non-disclosure of information but vary from one State to another.

3. THE LEGAL LIABILITY ARISING FROM THE INSIDER TRADING

The regulation of stock exchanges has dealt with insider securities issues by prohibiting them. Rules prohibiting or criminalizing insider trading on material non-public information exist in most jurisdictions around the world, but the details and the efforts to enforce them vary considerably. The French legislator had a significant role in the French law of 1989 by punishing an informed person who discloses the insider information to others with six months’ imprisonment and a fine of 100,000 francs, in addition to punishing the legal person who committed the crime on his behalf under the law of June 2 of 1996. The US legislator has faced the cases of insider trading firmly, which was clear in the Securities Exchange Act of 1934, where the US law requires that anyone in possession of inside information must either disclose the information or refrain from trading publicly.

The Jordanian law has dealt with cases of insider trading in Jordanian law, which considered it as a breach of the provisions of the law and regulations, provided that a person is trading securities or carrying others to do so based on inside information or exploitation of this information to attain either material or moral gains for the dealers or to others or to disclose the inside information In another act, the Jordanian legislation stipulates that any person who violates the provisions of this Law or the regulations, instructions or decisions issued pursuant there to shall be subject to a fine of not more than one hundred thousand (100,000) Dinars, in addition to a fine of not less than twice the amount, and not more than five times the amount, of profit made or loss avoided by the person committing the violation. In addition to imprisonment of up to three years for violations of the provisions . Jordanian legislation grants the Board of Commissioners of the Commission the right to restrict, suspend or cancel the license or credit granted in any of the cases that constitute a violation of the provisions of the law, regulations, instructions or decisions issued pursuant there to.

Those sanctions against those violating the provisions of the prohibition on internal transactions do not affect the right of any investor to claim compensation for any losses sustained by transactions based on internal information. In such cases, the rules of tort liability are applied when determining the liability of the offending person and assessing the compensation of the
affected person. It can be said that the Jordanian law was strict in this matter and issues the appropriate punishment for the violators.

4. THE LEGAL LIABILITY OF FALSE AND MISLEADING DISCLOSURE

Many entities and persons may be responsible for false information in the stock exchange transactions, whether issuers of securities or auditing accounts, financial analysts or the companies which provide service also the Media that discloses misleading information. The legal liability of each of them is therefore determined as follows:

(a) The legal liability of the issuers of the securities for false information

Misleading information and data lead to the exposure of capital flowing in the stock exchange to the high risk of loss, which may lead to the reluctance of investors to invest in the stock market. The disclosure of incorrect data and information or the exaggerated or misleading affects negatively the investor confidence in the transactions of the stock market. Therefore, the law defines the authorities that are responsible for information distribution. The legislator has imposed deterrent provisions dealing with false information and states the responsibility of several parties including the directors, the chairman and members of the board of issuers as the main actors in the process of disclosing information and data pertaining to those entities in the past and future. The criminal and civil liability of both directors and members of the Board of Directors for false disclosure cases are identified in the prospectus or in the periodic reports, where they are subject to liability under the legislative texts that prohibit and penalize such practices.

As for the Jordanian law, it imposed imprisonment of up to three years for violations of the provisions, and a fine of not less than one thousand dinars and not more than ten thousand Jordanian dinars for anyone who falsely discloses the information, legislators mentioned the cases which are subject to the penalties. The Jordanian legislation also imposed financial penalties on the issuing company, a fine that is not less than one thousand Jordanian Dinars and not exceeding ten thousand Jordanian dinars with the cancellation of the offending act if the Court deems it. Under the US law, the legislator gave the Securities and Exchange Commission the authority to refuse the register of any securities if a lie was found in the data contained in the registering form. The Commission may also suspend trading if it finds that the disclosed information is incorrect and may also impose fines or issuing suspending orders through administrative procedures that has become an important means for the Commission to deal with illegal practices committed on US stock exchanges.

(b) Auditors' liability for false information

The auditor is considered the main element in the supervision of the issuers of the securities, including the joint stock company, the shareholding company and other issuers of securities. His position and duties require the right to request what he deems necessary for the completion of his profession such as investigating and monitoring the company’s business as well as auditing their accounts in accordance with the approved auditing rules and the requirements of the profession and its scientific and technical assets. An auditor shall be subject to penalties if he violates his duties in monitoring the companies’ business that he audits or if he passes or confirms correct or false information about the financial status of the audited company or if he hides information included in the financial report whether the information is included in the prospectus or in the introductory bulletins ready for listing or in financial reports issued after the listing. Accordingly, the auditor is considered responsible when there is an approved evidence of his lack of performance in his professional duties. The responsibility for the auditor is classified according to these three types:
(i) Civil Liability

The civil liability of the auditor is realized when he passes false or misleading information or when he is unable to disclose or intentionally conceal such information, as the criminal liability is attained when the acts are done or refrained. The auditor has only a civil liability towards the affected party and not a criminal liability. As a result, the Auditor becomes liable to compensate the company, shareholders or third parties for his faults in the exercise of his duties or in failing to comply with the obligations such as the disclosure of any deficiency in the financial status of the audited entity or by giving or confirming false information or data and also, by failing to perform his supervisory duties. For the French legislature there is no difference in terms of the company liability or shareholders and the third party’s liability, and there is no difference on the other hand between the report of the contractual liability and the tort liability. While in the comparative legislation the contractual liability and tort liability differs, including Jordanian legislation.

(ii) Criminal Liability

The criminal liability of the auditor for his actions shall be realized either as an original actor in cases that constitute a breach of his duties or as a partner in other actions if colludes with the original actors such as directors or members of the board. In both cases they are penalized by law in accordance with the special texts or the general rules of the Penal Code. The crimes for which the auditor is charged with are the offense of giving or confirming false or misleading information or data through his report. The criminal liability of the auditor requires the availability of these factors:

- Material factor, which is represented in giving or confirming false information about the status of the enterprise.
- The moral factor, which takes the form of criminal intent (mens rea) of the auditor. To confirm the moral factor, it is enough in to prove that the auditor recognizes the incorrect information without having the intent to cause damage to the company or shareholders some comparative Legislations stipulated this judgment as the French legislator did.

(iii) Disciplinary Responsibility

All the professional associations around the world were keen to set rules regulating the profession of accounting, auditing and provide a disciplinary system for the auditors in the form that aims to establish a proper framework for the practice of this profession, in addition to deterring those who violate these rules. Disciplinary liability is defined as a breach of the employee's duties in a positive or negative manner or performing any of the prohibited acts. The disciplinary penalty that affects the auditor, if it is proven that he fails to perform his profession after the investigation, ranged from a written warning, a final written warning, job suspension and dropping his membership of the union. One of the agreed issues is that the three kinds of civil, criminal and disciplinary liability are the responsibility of the auditor if it is proven that he failed or violated his professional responsibilities through incorrect or misleading disclosure of information whether he committed it intentionally or unintentionally.

5. MISREPRESENTATION BY FINANCIAL ANALYSTS

Financial analysts play a significant role in stock exchanges through their contribution in preparing reports of the listed securities trading and the activities related to the stock market, which has a great role in enabling users of these reports to know the reality of the circumstances of the issuer and then make the right investment decisions. The role of the financial analyst is to adopt a number of data and documents disclosed by the issuers through the authorized channels, those
documents includes several information such as : the accounts of those entities, their budgets, profit and loss accounts for the year of analysis and comparative analysis of the previous years. The financial analyst examines the situation with the so-called economic health report, in a way that allows them to indicate the companies’ ability to self-finance and cash flows for the coming years and their ability to achieve profits. Most financial analysts are working for both listed companies and brokerage firms. In both cases, the functional dependency of the financial analyst has a significant role to play in influencing the outcome of the report, which eventually results in the interest of a subsidiary. And if the financial analysts provided false information whether by mistake or willful, he shall be subject to general provisions of responsibility.

6. THE ROLE OF THE FINANCIAL SERVICES COMPANIES

Financial services companies, including brokerage firms and holding securities companies, are committed to applying the principle of disclosure and transparency, for the information and data related to them which the legislator is required to submit to the General Authority for Securities and Stock Exchange under which it operates. In addition to refrain doing actions that would damage the stock exchange or its members and dealers. It is also its duty to avoid arranging any dealings which do not real transfer for securities in work trading place. If these companies issued any false information or data, whether they committed it themselves or by their representative entities, they shall be exposed to legal accountability by the official bodies represented by the General Authority for Financial Supervision, the stock market administrations and the local authorities, which are subject to supervision and control.

It is the responsibility of the brokerage firms to provide advice to the client considering the information they had previously given by the firm when concluded the agreement to the manage their investment as a financial intermediary, the company shall hold the responsibility toward its customers when issuing unreliable declarations or the concealment of any facts or material information in a manner that may affect the safety of the client or any recipient of announcement or information, when taking decisions to invest in securities in the process of buying, selling or retain. The brokerage firms shall hold the responsibility when they disclose information about the companies they are supervising and their business dealing without having any written permission from their clients except in cases where it is necessary to disclose information to the regulatory authorities including the General Authority for Financial Supervision and Stock Exchange.

7. THE ROLE OF THE MEDIA

Media, including television, radio and Internet sites, as well as newspapers and magazines play an important role in communicating information to investors in capital markets. If the information published by such means is false and misleading, they shall hold direct liability if they are the source of the false or misleading information, or indirect liability according to the provider of such information. Whether they hold direct or indirect responsibility they shall be subject to the general rules of liability for damages arising for transmitting false information.

8. CONCLUSION

Violation forms of information are varied, as well as the illegal practices resulting from this violation. Legal liability is considered a legally binding duty on all those who related to the stock exchange, starting from the issuers of securities to the smallest trader. It is believed that, the more the liability is strict, the available information on the stock exchange will be clearer, more transparent, easier accessible to the investor, and when the investors take correct decisions this would raise the efficiency of the stock exchange. Information is the basis for achieving the integrity and fairness of dealing with securities listed on the stock exchange. It is also considered a standard for measuring the efficiency of any stock exchange. When the information is available and
accessible, it hinders those who target the stock market from illegal manifestations and practices and prevent them from achieving their goals of which is to undermine the stock exchange and its dealers, and thus earn illegal profits at the expense of others. The disclosure of information related to the stock exchange results in achieving equality between dealers by knowing the basic information and data that are of interest to all parties in dealing. The investor will be able to deal with the stock exchange and is aware of the deal information and status. Finally, we conclude that the legal liability is legally obligated to the violators of the stock exchange and to any of the parties related to the stock trading including dealers, monitors of the transactions and other beneficiaries. The basis of this liability is the provisions and the laws of companies especially stock exchanges laws, in addition to the principle of good intent in the transactions imposed by all legislation in all types of contracts, but by different standards.

9. RECOMMENDATIONS

The study recommends the need to deal with all forms of information violation in the stock exchange that are committed by multiple parties in a manner that leads to the application of all legislation, whether the activities of the stock market or the related to those activities. It also recommended to organizing and developing the disclosure of information according to international standards, covering all the basic information that is necessary to protect investors and maintain confidence in the financial market, and other necessary information in this area.

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