

**The Role Of The Regulatory Authority In Protecting Individual Investors
(A Legal Comparative Study)**

دور الهيئة التنظيمية في حماية صغار المستثمرين

(دراسة قانونية مقارنة)

Preparation

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موجز عن البحث

تداول الأوراق المالية أصبح أمراً شائعاً خصوصاً في العامين ٢٠٢٠ و ٢٠٢١؛ حيث يحلم كثير من صغار المستثمرين بأن يصبح غنياً من خلال عملية التداول، إلا أن الواقع يشهد بأن عملية تداول الأوراق المالية تنطوي على خطورة كبيرة قد تلحق أموال هؤلاء المستثمرين؛ حيث يكون صغار المستثمرين - في الغالب - هم ضحايا عمليات الغش والخداع، بخلاف الشركات الكبيرة القادرة على تأمين الحماية لنفسها.

ومن أجل حماية صغار المستثمرين هؤلاء تم إصدار عدد من القوانين من قبل الحكومات المعنية، كم تم إصدار جهاز يقوم بالرقابة والحماية والتنظيم لعملية تداول الأوراق المالية، وهو هيئة أسواق المال.

وهذه الورقة تتناول دور هيئة أسواق المال في حماية صغار المستثمرين، وأهمية أن تصبح الهيئة ذات فاعلية لتقوم بهذا الدور عن طريق تمتعها بالاستقلالية، وأن تكون لها السلطة في تطبيق القانون، ولها من الوسائل التي تستطيع من خلالها حماية صغار المستثمرين من عمليات الغش في التداول، وأيضاً حمايتهم من العمليات المشبوهة من المدراء، وحوكمة الشركات الضعيفة.

الكلمات المفتاحية: صغار المستثمرين، هيئة أسواق المال، قانون الأوراق المالية، الهيئة التنظيمية .

The Role Of The Regulatory Authority In Protecting Individual Investors A Legal Comparative Study

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Abstract :

Around the world many individuals are entering the world of securities trading. Trading on the stock market has become commonplace, especially during 2020 and 2021. Individual investors are tempted by dreams of high yield returns and quick increases in value of certain stocks. Many feel this is a guaranteed way to “get rich quick”.

However, the reality is that trading in securities is extremely risky. Unscrupulous individuals and companies take advantage of individual investors, and many have lost large amounts of money in their attempts to make large profits.

To protect these individual investors, governments have tried to enact laws that limit securities markets. Furthermore, they have created regulatory authorities to monitor the behaviour of those who trade on the stock markets, as well as the way listed companies operate.

This paper will consider the role these regulatory authorities play in protecting individual investors. It will consider whether these regulatory authorities are independent of their governments, the methods of regulation at their disposal, as well as how they enforce and expand on the legal framework in the various countries. Finally, the article will consider alternative ways in which individual investors can be protected against market abuse, irresponsible actions by managers and boards of directors, and poor corporate governance by firms.

Keywords: Securities Law, Regulatory Authorities, Individual Investors, Regulatory Body.

1. Introduction: The Role of the Regulatory Authority in Protecting Individual Investors

Most countries around the world have established a regulatory authority⁽¹⁾ to regulate their capital markets. A regulatory authority is an administrative body created by a special law or secondary legislation to supervise industrial, financial, or commercial activities. Most regulatory authorities are financially independent and do not rely on the state for funds.⁽²⁾ The regulatory authority in the UK is known as the Financial Conduct Authority (FCA). In the USA it is known as the Securities Exchange Commission (SEC) whereas in Kuwait it is called the Capital Market Authority.⁽³⁾

The main purpose and function of a regulatory authority is to serve and protect the public interest with regards to the trading of securities. In carrying out its mandate, a sound regulatory authority will create and enforce rules related to the trading of securities with a view to eliminating misconduct by professionals and companies.

Noted author, Robert Shiller likens a regulatory authority to a referee in sporting events. He says that just as a referee can enforce the rules of the game by deciding when the rules are broken and when people should be punished, a regulatory authority will also establish rules for trading in securities and then enforce those rules. In sport, everyone recognizes the need for a referee. Whilst players sometimes argue with the referee, they need him, because without him it would not be a fair game. An impartial referee allows the game to be played according to the rules and enforces the rules against players who break them. The goal of governments then is to build a regulatory authority that will serve as an effective referee in the business world.⁽⁴⁾

Whilst the main aim in establishing a regulatory authority is to provide better regulation and enforcement of laws, a regulatory authority can also protect individual investors from unscrupulous practices of board of directors, stockbrokers, institutional investors, and other nefarious characters. To do so, the regulatory authority needs to be effective and efficient.

For a regulatory authority to protect individual investors effectively, it needs to:

- 1) be independent
- 2) introduce sound regulation and
- 3) create strong investors

(1) In the UK, the regulations use the term 'regulatory' (Financial Services Act 2012) instead of the term 'authority'.

(2) Zaid Aboa, *Management of Public Institutions: Foundations of the application of administrative functions* (Dar Al Shorouk 2009) 19.

(3) Abdullah Alhayan, Mohammed Al-Mutairi, *The Mediator in Explaining the Capital Markets Authority Law* (Dar Aleilm, 2019) 13.

(4) Robert Shiller, 'Behavioral Finance and the Role of Psychology' (2011) Lecture, Open Yale University Courses I Tunes.

2. What Constitutes a Sound Independent Regulatory Authority?

For a regulatory authority to carry out its mandate and protect individual investors, it needs to be independent of government control, introduce sound regulation and create strong investors. Each of these will be discussed below with reference to the UK regulatory authority and how these principles are applied in that country.

2.1. Independence

Whilst regulatory authorities are established by the government they must function independently and without intervention. In addition, they should have total control over their finances and operations. This will allow these bodies to impose and enforce regulations that are free of political or any other undue influence.

In the United Kingdom, the Financial Services Act 2012 created two regulators, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA).⁽¹⁾

The PRA is a part of the Bank of England and is responsible for the supervision and the regulation of banks, major investment firms, building societies, credit unions and insurers, promoting safety and soundness to those firms and protecting policyholders.⁽²⁾ The chair of the PRA is the Governor of the Bank of England, and the chief executive is the Deputy Governor for Prudential Regulation.⁽³⁾

The Financial Conduct Authority (FCA) has been created to regulate the conduct of financial services firms. It regulates those financial services that are not supervised by the PRA, such as, asset managers, hedge funds, brokers, dealers, independent financial advisers, and listed companies. The FCA's duties include preventing market abuse and ensuring that financial firms treat their customers fairly. Its three major objectives are: 1) protecting consumers, 2) promoting the integrity of the financial system and 3) promoting effective competition.

The FCA is a good example of an independent regulatory authority as it is completely funded by financial services companies and does not receive any government funding⁽⁴⁾. Whilst the FCA does account to the Treasury in the form of an annual report, it is able to continue its work without political interference.

2.2. Introduction of Sound Regulations

A regulatory framework that protects individual investors needs to have a legal basis (laws, rules, codes) and effective monitoring of compliance with the laws, rules, or codes. A regulatory authority that oversees the capital markets will often make rules that have the force of law.⁽⁵⁾ This is also known as secondary legislation.⁽⁶⁾

(1) Financial Services Act 2012 sch 3A part 2.

(2) <<http://www.bankofengland.co.uk/pru/pages/default.aspx>> accessed 11 January 2022.

(3) Financial Services Act 2012 Schedule 1ZB s2.

(4) However, civil penalties go to the Treasury after deducting the enforcement costs.

(5) In Kuwait, Article 4 Part 1 states that the authority board shall issue rules and regulations that are necessary to implement this law. In the UK, one of the FCA's functions is rulemaking according to the Financial Services Act 2012 Part 1A inside Part 2 Section 1B, 6, and the same Act also gives the Prudential Regulation Authority (PRA) the power to make rules.

(6) Paul Nelson, *Capital Markets Law and Compliance: The Implications of MiFID* (Cambridge University Press 2011) 4.

In the UK, primary legislation consists of ‘statutes’ that are enacted by Parliament. The secondary legislation, known as ‘delegated or subordinate legislation’, is enacted when the law-making power is vested in the regulatory authority.⁽¹⁾

Regulatory Authorities have the power to promulgate rules and codes of conduct that regulate the industry and practitioners. For example, listing rules regulate the way that companies must make certain information available when listing on a stock exchange. Also, securities exchanges can make rules that force companies to declare certain financial information and other material information that pertains to their trading as a business.

Rules are part of the legal and regulatory framework.⁽²⁾ Alexander Justham, the chief executive of the London Stock Exchange, emphasised the importance of rules by saying that *‘one of the crucial roles any regulator plays, is to examine the marketplace and potentially intervene through rule changes to ensure that an appropriate equilibrium is consistently achieved’*.⁽³⁾

A sound regulatory authority should have the authority to impose civil fines for violations of its rules and codes of conduct. For instance, in the UK, the FCA can impose a fine of any amount for breaching its rules. Both civil and criminal sanctions are available for effective enforcement of its rules⁽⁴⁾ although criminal sanctions require the intervention of the police and state prosecutors.

The FCA has a wide range of enforcement powers, including the imposition of criminal, civil or administrative sanctions against companies or individuals who do not meet the required standards.⁽⁵⁾

With regards to criminal sanctions in the UK, dealing with financial crime is a very important objective of the FCA authority. One way is to involve the firms in fighting this crime by monitoring, detecting, and preventing financial crime, such as fraud, money laundering, bribery, and corruption, and disclosing false or secret

(1) Emily Finch, Stefan Fafinski, *English Legal System* (4th edn, Pearson 2013) 10.

(2) Paul Nelson, *Capital Markets Law and Compliance: The Implications of MiFID* (Cambridge University Press 2011) 3-4.

(3) Article entitled ‘New Listing Rules Protect Investors and Safeguard London’s Open Markets’ (2013) <<http://www.cityam.com/article/1384224375/new-listing-rules-protect-investors-and-safeguard-london-s-open-markets>> accessed 18 January 2022

(4) Ana Carvajal, Jennifer Elliott, *The Challenge of Enforcement in Securities Markets: Mission Impossible?* (International Monetary Fund (IMF) working paper 2009 19).

(5) <http://www.fca.org.uk/firms/being-regulated/enforcement/how-we-enforce-the-law>> accessed 15 January 2022.

information.⁽¹⁾ In addition, an enforcement programme aims to detect and punish non-compliance and to deter such action in the future. This includes investigating, obtaining evidence and interviewing witnesses, gathering information from third parties such as telephone companies and Internet providers, and accessing bank accounts.

The power of investigation includes such varied action as sanctions for failure to comply under section 177 of the FSMA 2000, gathering information under section 165, obtaining search warrants under section 176, and interviewing witnesses. For example, in an insider dealing investigation, two kinds of persons can be interviewed. The first is a potential witness. The interview with such a person can be compulsory or voluntary. The second kind of person is the subject of the investigation.⁽²⁾ In addition, although disclosing the details of customer accounts is not generally allowed in the UK, section 175 FSMA 2000 allows it in certain circumstances.

'Comply or Explain' Regime

The corporate governance code of the UK is a combination of primary law or "hard law" and secondary law or "soft law". This entails certain aspects that companies are required to apply, whereas others are discretionary.

In this regard, the theory of "comply or explain" allows listed to companies to comply with the code where necessary, but to explain instances of non-compliance where these are not compulsory.⁽³⁾

A 'comply or explain' regime can be described as an alternative method of strong regulation. It strikes a balance between soft law and hard law that can be suitable in today's complex economic world. "Comply or explain" offers more flexibility for companies to set out their case for non-compliance.

This open and transparent communication helps build mutual understanding between the board of directors and shareholders. Communication about the future includes setting out plans to adopt and improve, which, for shareholders provides reassurance that companies are being run for the long-term and in the interests of the shareholders.⁽⁴⁾ According to the chairman of the London Stock Exchange, Chris Gibson-Smith, 'Companies benefit from visible, strong corporate governance practices by attracting more investors and so reducing the cost of

(1) FCA Article 'Fighting Financial Crime' <<http://www.fca.org.uk/about/what/protecting/financial-crime>> accessed 2 January 2022.

(2) Sarah Clarke, *Insider Dealing: Law and Practice* (Oxford University Press 2013) 244- 247.

(3) If the companies do not comply, they will breach the listing rules.

(4) Michelle Edkins, 'Comply or Explain, An Essay on the Report Titled: Comply or Explain: 20th Anniversary of the UK Corporate Governance Code' (London Stock Exchange, The Financial Reporting Council Limited 2012) 18.

capital for all'.⁽¹⁾

In addition, 'Comply or explain' means more flexibility in the application of the set of rules with no free passes for avoiding these rules. Companies are required to provide an explanation, and others, such as future investors and institutional investors, will judge and monitor. Although there is no action from a regulatory authority if the explanation is insufficient, the market forces the shareholders to act. The share price will force the shareholder to engage. An investor who buys stock in a company with high standards of corporate governance is less likely to lose money.

The market in general and the shareholders specifically, force the companies to follow the code.⁽²⁾ Simply, the process for shareholders is that if no one wants to buy the company's shares, then the price will decrease, which prompts the shareholders to try to correct the situation. Consequently, the decline in the share price encourages the firm to adopt good corporate governance principles.

How Can a Regulatory Authority Help to Improve the Law?

One of the benefits of a regulatory authority is that it can suggest improvements to the law, either directly to the government or by making and enforcing rules to regulate prejudicial conduct. The difficulty with policing financial crimes is the complexity involved in enumerating the specific terms of the crime.⁽³⁾

For example, many activities can be classified as financial market crime, but the most common is market abuse. The term market abuse covers a wide range of illegal deeds.⁽⁴⁾ Therefore, a sound regulatory authority should suggest improvements to the law that are as wide-ranging as possible to protect investors.

Regulatory authorities could furthermore improve the enforcement system, by training expert judges and criminal authorities in financial matters⁽⁵⁾ and case settlement. Effective enforcement increases the level of confidence and credibility amongst individual investors.⁽⁶⁾

(1) Chris Gibson-Smith, 'An Essay on the Report Titled 'Comply or Explain': 20th Anniversary of the UK Corporate Governance Code' (London Stock Exchange, The Financial Reporting Council Limited 2012) 6.

(2) Andrew Keay, 'Comply or Explain: In Need of Greater Regulatory Oversight', (2012) SSRN Working paper <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2144132 >_accessed 22 /1/ 2022

(3) Montasser Hamouda, *Economic Crimes* (Dar Elgamaa Elgadida 2010) 53.

(4) Stuart Bazley, *Market Abuse Enforcement and Procedure* (Bloomsbury Professional 2013) 3.

(5) Ana Carvajal, Jennifer Elliott, *The Challenge of Enforcement in Securities Markets: Mission Impossible?* (International Monetary Fund (IMF) working paper 2009 18.

(6) *ibid* 21.

Related to the improvement in the enforcement systems is the gathering of intelligence. This takes on a two-fold purpose: one part is alerting the authority about potential concerns; the second is gathering evidence.⁽¹⁾ The first part, which is supervisory in nature, is discovering breaches of regulations. Supervision programmes aim to identify, deter, and prevent problems. The second part entails investigating potential crimes and interviewing witnesses with a view to building a legal case against the wrongdoers.

2.3. Create Strong Investors by means of Education

Another feature of a sound regulatory authority is that it will aim to educate individual investors to the dangers of investing and to potential illegal conduct on the part of securities traders. The Organisation for Economic Co-operation and Development (OECD) recommended education and complaints handling principles to be part of high-level principles in terms of protecting financial consumers.⁽²⁾ In Principle Five the OECD mentions that:⁽³⁾

Financial education and awareness should be promoted by all relevant stakeholders and clear information on consumer protection, rights and responsibilities should easily be accessible by consumers. Appropriate mechanisms should be developed to help existing and future consumers develop the knowledge, skills, and confidence to appropriately understand risks, including financial risks and opportunities, make informed choice, know where to go for assistance, and take effective action to improve their own financial well-being.

It furthermore stated that countries should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays, or burdens on consumers. In accordance with the above, financial services providers and authorised agents should have in place mechanisms for complaint handling and redress. Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorised agents' internal dispute resolution mechanisms. As a minimum, aggregate information with respect to complaints and their resolutions should be made public.

Investors should take some responsibility for protecting themselves either through education or by using a complaints process or both. A regulatory authority can play a significant role in ensuring that investors receive clear and adequate information about the market, the risk, and their rights. This also

(1) *ibid* 67.

(2) 'G20 High-Level Principles on Financial Consumers Protection' (2001) OECD Working Paper.

(3) *ibid*.

includes increasing investors' ability to receive financial advice in an easy way. In addition, enhancing public awareness and understanding of financial systems is a key to protecting investors.

Education is not just limited to investors, but should also include various parties, such as firms' managers, advisers, brokers, and the like, because many people do not know the effects of their actions. For example, although insider dealing is a crime and has many negative effects on the market and on people's lives, some people think that there is nothing wrong with insider dealing.

Having an adequate complaint handling and redress mechanism is a key point in terms of protecting investors. If the voice of investors is heard in a quick and fair way by considering the complex financial markets, the degree of protection will improve. Despite the success of arbitration in the private sector, it has been proven that countries are reluctant to use it.⁽¹⁾ However, protecting investors by alternative civil law resolution of disputes is compulsory for firms, while it is optional for investors.

Financial Education in the UK

In 2010 the Consumer Financial Education Body (CFEB) was established. One of its functions is to help members of the public to understand financial matters and to manage their finances better.⁽²⁾ The CFEB is an independent body that provides information, advice, and education.

The CFEB changed its name to the Money Advice Service in 2011.⁽³⁾ The Money Advice Service is different from Citizens Advice in that the latter provides free, independent, confidential, and impartial advice to everyone who faces any problem, not just a financial one.

Section 4 of the FMSA 2000 mentions that promoting public understanding of the financial systems is the objective of public awareness. However, in 2012, the Financial Services Act replaced the FMSA 2000 to enhance the public's understanding and knowledge of financial matters.⁽⁴⁾ The Financial Services Act 2010 provided that the Money Advice Service must enhance the provision of information and advice to the public.⁽⁵⁾

Although the Money Advice Service has statutory functions, it is accountable to the FCA on some points. According to a framework document that was signed in 2013 by the Money Advice Service, the FCA, and the UK Treasury, the FCA has different responsibilities from the Money Advice Service, such as appointing and

(1) Benn Steil and Manuel Hinds, *Money, Markets and Sovereignty* (2009) 30.

(2) New Section 6A of the Financial Services Act 2010.

(3) <https://www.moneyadviceservice.org.uk/en/static/publications>> accessed 26 January 2022.

(4) Financial Services Act 2010, explanatory notes.

(5) Financial Services Act 2010, s2 Part 6A(e).

removing the board, approving the annual budget, levying sums, and receiving an annual report. The FCA can monitor some of the Money Advice Service's activities, such as providing the FCA with sufficient information, its capability of exercising its functions and having regular meetings.⁽¹⁾ The primary source of funding is from industry. The FCA raises and collects the money on behalf of the Money Advice Service.

Education in financial skills could affect individuals, families, and society. For example, education and improving financial capability could help to eliminate child poverty by early intervention and financial support.⁽²⁾ Education in financial skills is not limited to making good financial decisions. Mark Taylor says that financial skills could affect people's psychological wellbeing and their mental health, savings behaviour, living standards, and household income.⁽³⁾

Financial Complaints in the UK

Ease of lodging complaints and education are the keys to enabling investors to protect themselves. The Financial Ombudsman Service (FOS) was set up by the UK Parliament to solve problems for individuals. The main role of the FOS is to act as an alternative to the civil court,⁽⁴⁾ to resolve disputes quickly, fairly, reasonably, and informally. The scheme includes three jurisdictions:⁽⁵⁾ the first is the compulsory jurisdiction; the second is the consumer credit jurisdiction; and the third is voluntary jurisdiction.

The compulsory jurisdiction covers complaints against authorised firms to settle individual disputes between consumers and businesses that provide financial services. The investor is always free to go to court instead of accepting the FOS decision, which is binding on the firm if the investor accepts it.

The role of the FOS is to investigate individuals' complaints and to deal with them on behalf of individual consumers; the FCA cannot do such things. The FCA ensures that the regulated firms meet the standards set by the FCA's objectives, and it acts against these firms for any breaches. This means that the FOS handles individuals' cases, and the FCA takes supervisory and regulatory action.

The FOS offers a free service without taking sides and gets involved if the firm is not able to resolve a dispute. Consequently, the firm is given a chance to solve the dispute itself. In addition, various matters can be referred to the

(1)<http://www.fca.org.uk/static/documents/mou/mas-fca-hmt-framework-document.pdf>> accessed 22 January 2022.

(2) According to a paper submitted to the government's consultation on its child poverty strategy from the consumer financial education body (CFEB) in February 2011.
<https://www.moneyadviceservice.org.uk/en/static/publications>> accessed 26 January 2022.

(3) Report 'The Long-Term Impacts of Capability: Evidence from the BHPS' (2011) Consumer Financial Education Body.
http://www.educationscotland.gov.uk/resources/l/genericresource_tcm4662873.asp> accessed 26 January 2022.

(4)http://www.financial-ombudsman.org.uk/about/MOU_with_FCA-APRIL2013.pdf> accessed 23 January 2022.

(5) Jurisdiction is the authority to hear a particular class of cases and to declare a judgment. It is a practical power granted to a legal body to best serve and achieve justice. It is like subject matter jurisdiction. Courts have the previous jurisdiction and in personam jurisdiction.
<<http://www.buteralaw.com/newsletters.asp?c=49&id=450>> accessed 12/1/ 2022.

Financial Ombudsman Services, such as stocks, shares, units and bonds, banking, and pensions. The FOS does not pass rules or impose fines.⁽¹⁾

According to the Memorandum of Understanding between the FCA and the FOS, the FOS is responsible for operating the Ombudsman Scheme and for appointing the ombudsmen, while the FCA is responsible for appointing the FOS board, making the rules, and approving the FOS budget.⁽²⁾ The FOS operates independently from the FCA, but the FCA ensures the capability of the FOS to exercise its functions⁽³⁾.

The FOS is funded by levies and case fees paid by financial businesses. It is free for investors, and for firms there are certain costs.⁽⁴⁾ The FOS was created to put things right for consumers with valid complaints against businesses providing financial services. It has two main enforcement mechanisms. The first is to impose 'Money Awards', which are the compensation that businesses violating the rules must pay to the financial consumers. The second consists of 'Directions', by which it instructs businesses to put things right by taking particular steps.

There are several ways that the FOS settles complaints:⁽⁵⁾ Nine out of ten disputes are settled informally. One and sometimes both parties want to rely upon the official power of the FOS to solve the disputes. If the consumer does not accept the decision within the time allowed by the FOS for this purpose, the decision is not binding. If the decision is accepted by the consumer, this decision is binding on both parties. It is a final stage for the firms because there is a legal requirement with a parliamentary function to comply with the decision as quickly as possible. If the business is unable to pay, the matter may be referred to the Financial Services Compensation Scheme (FSCS) as a final safety net when businesses are not able to pay what they owe. Businesses may refuse to comply with final decisions, although, in practice, this cannot happen.

Although the FOS has no power to enforce the decision if a business refuses to pay an award, a) the FCA has the power to force businesses to comply; and b) the court has the power to force the businesses, because the decision is legally enforceable in court according to Schedule 17. The court will not re-open the case if it is just for enforcement. The consumer will have to go to court to enforce the decision.

(1) <<http://www.financial-ombudsman.org.uk/>> accessed 23 January 2022.

(2) <http://www.financial-ombudsman.org.uk/about/MOU_with_FCA-APRIL2013.pdf> accessed 23 January 2022.

(3) According to the Annual Report 2012/2013, the number of cases handled by the FOS each year has increased over the last decade from 62,170 new cases in 2003 to 508,881 cases in 2013.⁽³⁾ This indicates that people increasingly trust this method of resolving disputes.

(4) <<http://fca.org.uk/firms/being-regulated/meeting-your-obligations/firm-guides/organisations/fos>> accessed 2 /1/2022.

(5) 'What a "Final Decision" by an Ombudsman Means' Paper, Financial Ombudsman Service.

3. How does a Sound Regulatory Authority Protect Individual Investors?

The above discussion has highlighted the requirements for a sound regulatory authority. Once a regulatory authority complies with these requirements, it is in a better position to protect individual investors from market abuse.

How are individual investors abused?

As previously mentioned, individual investors are open to abuse by unscrupulous traders and businessmen. One of the main aims of the regulatory authority is to prevent market abuse, especially when such leads to individual investors being taken advantage of. The rules and laws enforced by the regulatory authorities aims to provide a “level playing field” that allows as many people as possible to invest in securities markets. This will allow for more people to gain trust in these markets leading to greater investments.

What can the regulatory authority do to protect them?

Regulatory authorities should especially use their enforcement powers to punish those who take advantage of individual investors. Large fines and when possible, criminal sentences, will deter other individuals and / or traders from seeing individual investors as soft targets that can be abused. Furthermore, by educating the investors to be aware of the dangers and risks of trading in securities, regulatory authorities can protect individual investors from abuse.

Sanctions against those who take advantage of individual investors.

Criminal sanctions, whilst extreme, are typically the most effective means of deterring other individuals / traders from abusing individual investors. Similarly, large fines imposed on individuals and companies have an important role to play in protecting individual investors. Losing trading licenses or delisting are other options available to regulatory authorities when protecting the interests of individual investors.

How does education help individual investors protect themselves?

Educating individual investors is also important because this equips the investor to see the potential danger before he / she is taken advantage of. Furthermore, education can create realistic expectations on the part of the investor. Those who hope to get rich quick will come to understand that “if it sounds too good to be true, it probably is”. By educating the investors, regulatory authorities will equip these people with the knowledge and skills that they need to be able to invest responsibly and avoid the pitfalls of those who have been taken advantage of in the past.

4. Is the Regulatory Authority in Kuwait a Sound Regulatory Authority?

The securities authority in Kuwait has only recently been established. To assess whether it can be considered a sound regulatory authority, this paper will consider it in light of what has been discussed above.

4.1. Independence

Kuwait describes its regulatory authority as an independent body that it is overseen by a Minister of Trade and Industry.⁽¹⁾ Although the term 'independence' is used, careful analysis of the text hereunder will show the extent to which this is true. To that end, the soundness and independence of the regulatory authorities in Kuwait will be assessed in terms of their composition, funding arrangements, accountability, and freedom of action from political and commercial interference.

The law gives the Kuwaiti Capital Market Authority⁽²⁾ financial and administrative independence, especially with respect to board appointments and its budget and financial resources.⁽³⁾

Composition

The regulatory authority is administered by a board called the Board of Commissioners. In Kuwait, the board consists of five full-time members.⁽⁴⁾ An Emiri Decree is issued to appoint them, and it specifies the chairman and the deputy chairman.⁽⁵⁾ Article 12 mentions that the Emiri Decree determines the board's salaries and benefits.

Funding Arrangements

In Kuwait, the Authority has an independent budget⁽⁶⁾ that does not need to be approved by the relevant minister. The authority has an independent budget because it is not part of the government's general budget.⁽⁷⁾

The authority generates income from (1) fees and (2) all other resources that are raised from exercising its activities or recruiting its reserves⁽⁸⁾. Furthermore, the authority has the power to maintain sufficient monetary reserves to ensure its financial stability over the long term without any limitation and transfer the surplus to the state public treasury⁽⁹⁾.

(1) Capital Market Law 2010, Article 2.

(2) In Kuwait, securities laws were passed by the Parliament in 2010 and were amended in 2014 and 2015. These laws created the Capital Market Authority (the Authority). The Authority's responsibility to regulate financial systems is limited to securities activities, while the major responsibility for financial systems lies with the Central Bank.

(3) https://cmamagazine.cma.gov.kw/ar-kw/Pages/articles/art-535.aspx?Magazine_ID=5 accessed 30 Jan. 22

(4) Bader Al Mulla, *The legal system of financial markets* (2011) 25.

(5) Capital Market Law 2010, Article 6.

(6) Capital Market Law 2010, Article 18.

(7) Abdullah Alshebbli, *Legal Framework for Corporate Governance on the Kuwaiti Stock Exchange* (Academic Publication Concile 2021) 118.

(8) Article 19 of the 2010 Law

(9) Article 21 of the 2010 Law

Accountability

In this context, independence does not mean freedom from accountability. In Kuwait, the Authority is overseen by the Minister of Trade and Industry⁽¹⁾ and must report once a year to the relevant minister and to the cabinet.⁽²⁾ While some may consider reporting to someone to be different to being overseen by that person, this is not the case in Kuwait.

In Kuwait, according to Article 22 of the 2010 Law, the Authority is committed to keeping its accounts and records.

4.2. Introduction of Sound Regulations

The Kuwait Capital Markets Authority has the power to issue rules and other secondary legislation. It is authorised to issue civil and administrative sanctions for violations of its rules. However, it must refer to the court to impose criminal fines.

In Kuwait, Article 3 Part 6 of Law 2010 mentions that the Authority aims to ensure compliance with laws and regulations related to securities activities. However, the law distinguishes between the Authority's right to bring a civil or commercial case and referring the complaint to a public prosecutor. The criminal complaint is for breach of any law, while the civil complaint is limited to matters referred to in 2010 Act.

Under Kuwait's financial regulations, various regulatory instruments can be breached, including laws, rules, and codes. Matters that are referred to criminal courts include situations where the law is breached by a firm or an individual. However, matters where the regulations of the 2010 Act are breached are referred to the civil court.

With regards to the authority's rules and codes, if the code (a combination of soft and hard law) is breached, there are two possibilities. If the breach was of the Authority's rules and, for example, the company does not disclose or explain, it will be referred to the disciplinary committee.

In Kuwait, the KCMA can apply one of the administrative penalties included in Law No 7 of 2010 if the issuer does not comply with the securities laws.

In terms of the 2015 Law, Article 146 authorises the KCMA to administer the following penalties:

1. Cautioning the violator to discontinue to the violation.
2. Issuing a warning.
3. Requiring the violator to re-pass pre-qualification tests.
4. Suspending the violator's activities for a period not exceeding one year.
5. Suspension from practicing work or profession in final.
6. Suspending the license for a period not exceeding six months.
7. Revocation of the license.
8. Imposing restrictions on the activity or activities of the violator; such restrictions shall be specified by the Bylaws.
9. Cancelling the voting or proxy or power obtained by the violation of the provisions of this Law.
10. Suspending or cancelling any acquisition offer or purchase transactions outside the scope of the acquisition offer if they are in violation of the

(1) 2010 Law, Article 2.

(2) ibid Article 25.

provisions of Chapter 7 of this Law or the Bylaws.

11. Prohibition of exercising voting rights for a period not more than three years by any person who refrained from submitting any statement, or submitted an incomplete statement, or one contrary to the truth or in violation with the Law or the Bylaws.
12. Suspending the validity of an applicable prospectus according to the provisions of this Law.
13. Cessation of trading of a security temporarily or suspension or cancellation of the decision to list a security before the effective date thereof.
14. Dismissal of a member of a board of directors or of a manager of one of the licensed companies or listed companies or investment controller or custodian of a collective investment scheme who failed to perform their duties as provided in this Law or the Bylaws.
15. Imposing financial penalties that are defined according to the severity of the violation not exceeding fifty thousand KD. In all cases, the Disciplinary Board may cancel all transactions related to the violation and the entailed effects or require the violator to pay amounts equal to the benefit they acquired or the value of the loss they have avoided as a result of the violation. The amount may be multiplied if the person repeats the violations.

4.3. Creating Strong Investors through Education

One of the regulatory authority main functions is to educate the public on securities' activities, risks, and liabilities associated with investing in securities and to encourage development⁽¹⁾. In addition the act requires that the regulatory authority publishes materials relating to securities' activities⁽²⁾.

In dealing with matters related to the breach of laws or rules, the law states that the Authority shall receive complaints, but that these complaints should be limited to breaches of the law⁽³⁾. However, the law extends the scope of complaint in the Kuwaiti to complaints and grievances. Furthermore, it allows every interested individual to submit a complaint to the committee⁽⁴⁾.

Arbitration is allowed in settling disputes related to transactions on the capital market⁽⁵⁾. The Kuwaiti Authority has created a dispute settlement system in 2014. This system is voluntary and does not include a compulsory jurisdiction system, which is an alternative to civil litigation and a factor for investor protection. The scope of the Kuwaiti system is limited to commercial and investment disputes that the consumer wishes to resolve, and the dispute is related to the 2010 Law and other laws about capital market transactions.

To sum up, the creation of strong investors in Kuwait is still in its infancy. The regulatory authorities can play a significant role by creating an education and complaints body and by enacting rules or suggesting laws to the legislature.

(1) Article 3 Part 2 of Kuwaiti Law No 7 of 2010

(2) Article 5 Part 6 of the Kuwaiti Act 2010

(3) Article 5 Part 2

(4) Article 15

(5) Article 148 of the 2010

5. Conclusion

As has been shown in this article, individual investors need to be protected against those who seek to abuse them. Governments have established regulatory authorities to amongst others, protect individual investors. A sound regulatory authority should be independent, ensure a stable and effective regulatory environment as well as assist in the education of individual investors and others in the securities trading industry.

5.1. Findings

The article considered the situation in the UK and found that in a large measure, the FCA is a sound regulatory authority that protects individual investors, leading to a healthy and flourishing securities industry. However, the Kuwait regulatory authority, still needs to make several adjustments to its position to achieve these goals. It is hoped that this will be completed in the next few years.

5.2. Recommendations

The Kuwait regulatory framework should be expanded to include laws, rules, and codes, and the Capital Markets Authority should be given the power to effectively monitor and police compliance and enforcement of the laws, rules, and codes.

The CMA should furthermore ensure that investors receive clear and adequate information about the market, the risks, and their rights. This includes increasing investors' ability to receive financial advice in a simplified manner. In addition, enhancing public awareness and understanding of the system is a key to protecting investors.

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