

Market Manipulation In Kuwait Stock Exchange

**An Analysis of the Regulation of Market Manipulation Prior and
Under Law No. 7 of 2010**

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Abstract

There are many practises that affect and harm the integrity of financial markets. These acts fall under the general title of "Market Abuse". This title can be divided into two main forms, insider dealing and market manipulation. This research primarily aimed at exploring the regulation of market manipulation in Kuwaiti law. Market manipulation practises came under regulation for the first time via Law No. 7 in 2010. Therefore, it is essential to differentiate between the periods; before and after the issuance of this law. Hence, there are four main objectives to this study: 1) define market manipulation and its common forms, 2) explore the applicability of criminal and civil Kuwaiti law to market manipulation practises prior Law No. 7, 3) critically evaluate how well this law covers the forms of market manipulation identified and 4) evaluate how effective the law is through its enforcement and implementation.

To achieve these objectives, different methods have been followed. Overall, this research follows a critical analysis approach. In addition, the extant literature has been explored. The evaluation of Law No. 7 has been conducted using the more established regulatory law, the FSMA 2000, was taken as a basis for the analysis and evaluation.

It has been found that prior to Law No. 7 of 2010, regulation of market manipulation practises was almost non-existent. Law No. 7 of 2010 does largely cover most forms of market manipulation, excluding stabilizing the security price and information based on manipulation of forms. Civil penalties, as compared with those in the UK, tend to be lenient, which may prove problematic in deterring manipulative practises. Judges in general also lack the experience and confidence to apply and enforce sanctions regarding manipulative practises yet it must be noted that the law has not been in action for very long. Thus, it is recommended that the fourth objective of the study be repeated after the law has been in place for several years to reassess its success in combating manipulative practises.

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Dedication

I dedicate this thesis to my wonderful husband for his continuous support.

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List of Abbreviations

•	CMA	Capital Market Authority
•	FSA	Financial Services Authority
•	FSMA 2000	Financial Services and Markets Act
•	KSE	Kuwait Stock Exchange
•	KCC	Kuwait Clearing Company
•	SA 1933	Securities Act 1933
•	SEA 1934	Securities Exchange Act 1934

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Introduction

The main opinion that spread widely among Kuwaiti financial and economical circles is that ‘the Kuwait Stock Exchange (KSE) suffers from market manipulation’. This statement has become ubiquitous amongst investors in the case of the KSE.¹ Despite that, this statement was not uncovered in previous research or past legal cases. It is demonstrated by the manner in which investors in the market regard the KSE. These opinions are evident through newspapers, chat rooms² and economic reports published by financial and economic consulting companies.³

Three questions often arise from the statement quoted above:

- 1- What is the meaning of the term ‘market manipulation’?
- 2- Is it true that the KSE suffers from market manipulation?
- 3- What does the regulation deal with in terms of market manipulation in the case of KSE?

In fact, determining whether the KSE is subject to market manipulation practises is beyond the scope of this research because it might require statistical studies or previous cases, which do not exist for this matter. In other words, it needs a quantitative PhD based on market analysis and this research is a law PhD. However, this lack of evidence should not contradict the need for academic research that addresses the regulation of

¹ This will be explained in Chapters 3, 4 and 5 of this study. See table no. 19.

² Examples include <www.indexsignal.com> and <www.alnawady.com>.

³ For example, Alshall Consulting Company or Al-Joman Center for Economic Consultancy. See Al Joman Centre for Economic Consultancy, Al Joman report on listing new companies in the KSE on Sept. 29th, 2008, available at < <http://www.aljoman.net/FreeZone/ShowArticle.aspx?type=4&articleid=214> > Last accessed on 13 Sept. 2013. See also ‘Istmrar Alborsa fe altathabthb yo’akd tafagm azmat althiga wa en’edam alda’am (Continued volatility in the stock market confirms the worsening of the trust crisis and the lack of support)’, *Al-Shahed* newspaper (Kuwait 23 June 2010) p. 19.

market manipulation in the KSE. The issue of market manipulation itself may fluctuate in the financial market. Thus, the regulation of market manipulation should be addressed.

This thesis attempts to answer questions one and three, since answering question two would require conducting independent research. However, this current research considers all the available evidence (reports and newspapers) related to the issue of market manipulation in the KSE in addition to examining an applied study conducted in the KSE. Before discussing the existing literature, it is important to define market manipulation. Market manipulation can be defined as influencing other traders in the market to buy/sell and creating artificial prices for the benefit of the manipulator.⁴

In fact, answering question three requires differentiating between two periods. The first is the period prior to the issuance of Law No. 7 in 2010 in Kuwait regarding regulated (prohibited) market manipulation. The second is the period after this issuance. The following sections describe the main issues and objectives of this thesis.

1. Research Problem

Despite being one of the first markets in the region, the Kuwait Stock Exchange (KSE) has suffered from a lack of regulation from its inception.⁵ In the 1970s, investors avoided trading on the official stock market regulated by the Ministry of Commerce in favour of the unofficial 'Soq Al-Manakh' Market.⁶ Since this market was unregulated, it

⁴ This definition is not sufficient; however, Chapter 2 of this thesis deals extensively with the definition of market manipulation.

⁵ This is in comparison with other gulf stock markets. See Union of Investment Companies, *Aham Alborsat fe Alalam (The most important stock exchanges in the world)*, (1st ed., Kuwait 2008).

⁶ The first stock exchange was established in Kuwait in the 1970s as a response to ministerial decree no. 10 of 1971 in connection with the regulation of trading the securities of Kuwaiti joint stock companies. This will be clearly discussed in Chapter 1 of this thesis.

collapsed in 1982; the current official KSE was established in 1983 and enforced some regulation.⁷ However, in spite of KSE being established through a new decree (the 1983 Decree),⁸ this decree was characterised by some legal gaps and shortcomings.⁹ As market manipulation has not been regulated under the 1983 Decree, and this shortcomings in the initial period of the market as well as in the periods following the collapse of the Al-Manakh Market indicates that market practise in Kuwait has experienced many forms of unacknowledged abuse.

Due to the lack of regulation and so-called market abuse, there was a trust crisis in the KSE in 2008. This crisis occurred simultaneously with the global ‘Credit Crunch’; however, despite their concurrence, the two were not directly related, as will be explained in Chapter 3. As a result of this crisis, Law No. 7 was issued in 2010, which may be considered a significant step towards the development of the KSE. This law led to the establishment of the Capital Market Authority (CMA) in Kuwait as a specialized entity to combat market abuse along with market manipulation.

Another aspect that must be emphasized is that the term market manipulation in the case of the KSE is unclear due to the lack of a clear article or section in existing law that defines or explains the term ‘market manipulation’. This has caused confusion in terms of what is regarded as ‘market manipulation’ as distinguished from other problems and wrongful practises of the KSE in extant literature. The term market manipulation became a label loosely assigned to any malpractises in the KSE, and many problematic

⁷ Chapter 1 briefly discusses the Soq Al-Manakh crisis. For more information regarding Soq Al-Manakh, see Fida Darwiche, *The Gulf Stock Exchange Crash: The Rise and Fall of the Souq AL-Manakh*, (Croom Helm Ltd, 1986).

⁸ A decree was passed on 14 August 1983 to establish the official KSE.

⁹ This is explained in Chapter 1 of this study.

practises in the KSE were referred to as market manipulation. For example, Jassem Al-Sa'doon¹⁰ declared that heavy speculation based on insider information and repeat Initial Public Offering (IPO) shares are examples of manipulation in the KSE.¹¹ Furthermore, exceeding the maximum limit of ownership of a company was also considered market manipulation.¹² In some cases, IPOs exceeded their maximum limit and shares were bought many times; this issue was also considered to be market manipulation. Other examples of what was regarded as market manipulation include instances where management issued misleading financial reports that serve their personal interests and also when they directed the Board of Directors to control the company's finances, again according to their personal interests.¹³ Further, increasing company's capital to inject cash into the stock market, which is not related to the company's activity,¹⁴ or disclosing contract values without mentioning the percentage of profits from these contracts were also referred to as market manipulation. Thus, although they revolve around different forms or practises, all the above-mentioned practises have been referred to as market manipulation by many commentators. Thus, the term market manipulation is controversial and has different connotations, at least in the case of the KSE. Therefore, there is a need to clarify this definition from a legal standpoint.

¹⁰ Jassem Al-Sa'doon is a Kuwaiti economist and the chairman of AlShall Investment Company. See Alshall website < <http://www.alshall.com> > Last accessed on 18 Aug. 2013.

¹¹ See Jassem Al-Sa'doon, *Manakh alazma wa azmat alManakh (The crisis climate and the Manakh crisis): economic studies*, (1st ed., Alrubaian Kuwait 1984) p. 81.

¹² See *ibid*.

¹³ See N. Al-Sane, '*Tatwer Soq Alkuwait Lelawraq Almaliya (Kuwait Stock Exchange Development)*' Kuwait Stock Exchange Market Conference, 2005, p. 12.

¹⁴ See S. Al-Fathly, 'Zilzal bedarajt 2008 ala megyas alKuwait: 2008 yosget waham bank alestethmar alshamel (An earthquake of scale 2008 hits Kuwait: 2008 announced the failure of the complete bank investment)', *Al-Qabas* newspaper (Kuwait 28 December 2008) p. 38.

As has been previously mentioned, the enforcement of regulations on abusive market practises was delayed in Kuwait; market practise was first regulated in Kuwait under Law No. 7 of 2010 and there were no direct rules to regulate market behaviour in the KSE prior to the enforcement of law. The only available rules that addressed manipulation were general rules in the Kuwaiti law, such as Civil Law (tort) and the crime of fraud in Criminal Law. In addition, the regulation of market manipulation practises has been beset with problems from the earliest years of the establishment of the KSE. Hence, the primary objective of this dissertation is to analyse how market manipulation has been regulated over the years in Kuwait, since the establishment of the KSE in 1983.

A number of questions arise from the main research problem. First, there is a need to clarify the precise meaning of market manipulation. The term was unclear in the KSE and often not used in its appropriate sense. In addition, Law No. 7 of 2010 does not use the term ‘market manipulation’ or even define it. On the contrary, Western literature shows that the term is used to label many malpractises in various forms. Hence, defining market manipulation is important as the Kuwaiti regulation lacked any sections or articles to define this term or clarify forms of manipulative practises prior to Law No. 7 of 2010. It must be mentioned that the definition of the term market manipulation is poor in Kuwaiti literature. In addition, there exist no legal cases that have been filed as manipulation prior to the implementation of Law No. 7 of 2010.

The second aspect that has been addressed in this thesis is the evaluation of the general rules and regulations that existed prior to Law No. 7 of 2010 and their effectiveness in addressing and limiting market manipulation in the KSE, as well as investigating the forms of manipulative practises that existed in the KSE prior to Law No. 7 of 2010.

The third aspect that has been discussed is the evaluation of Law No. 7 of 2010 in terms of how well it encompasses the forms of manipulative practise identified in the earlier stages of this study. Specifically, the research examine what forms of manipulative practise does the law encompass and how effective the law is in combating manipulative practises. The more mature regulatory system of the UK under the Financial Services and Markets Act (FSMA) 2000 Act has been utilized as the basis for this evaluation. Finally, the issue of the effectiveness of Law No. 7 of 2010 since its implementation in combating manipulative practises has been discovered, bearing in mind that the law is still in its initial years of enforcement. The next section summarizes the main objectives of my thesis.

2. *Research Objective*

As discussed in the previous section, the main objectives of this research can be summarized in the following manner:

- 1- Define the term market manipulation and discover its common forms as a prior step to evaluating Law No. 7 of 2010.
- 2- Evaluate the general rules that existed prior to Law No. 7 of 2010 in terms of their effectiveness in controlling manipulative practises.
- 3- Evaluate Law No. 7 of 2010 in terms of its coverage of the forms of manipulation defined by the second objective.
- 4- Evaluate the effectiveness of Law No. 7 of 2010 in combating manipulative practises and enforcing the law.

This research is restricted to the KSE and only assesses market manipulation as a form of market abuse practise. It does not deal with other forms of abuse like insider dealing,

as there is an abundance of studies on such aspects.¹⁵ Moreover, insider dealing has been regulated in Kuwait for a long time; thus, it is clear and unambiguous.¹⁶ It might be useful to mention here that, although there was a regulation for insider dealing in Kuwait, but this law was not enforced. It was very rare to hear about previous cases in this regard.

3. *Significance of the Research*

This research topic was chosen by the researcher based on the chaos and manipulative practises that characterize the KSE.¹⁷ The dissemination of all types of rumours, fictitious supply and demand and last-minute trades have all negatively affected small investors who follow these actions with no solid rules to protect their rights. Unfortunately, the KSE is somewhat small and dominated by a limited number of merchants and investment funds;¹⁸ thus, manipulation is easy, particularly when there were no special rules to criminalize these actions and no specialized entity to monitor the manipulation in the KSE. Legal cases of manipulation or of someone punished for manipulative practise were rare and this attracted the researcher for choosing this field of research. The KSE was similar to a casino to a certain extent, as there was no protection for investors from manipulative practises, aside from insider dealing by any rule of law. In contrast, this is considered to be a crime in more developed markets and

¹⁵ See A. Al-Melhem, *Hathr estgelal alma'lomat gher almo'olana alkhassa besharekat fe alta'amol belawrag almaliya (Insider Trading or Dealing): comparative study*, (1st ed., Majls Alnashr Alelmy Kuwait 1998). See also F. Al-Kandari, 'Tajrem Este'amal Alma'olomal Altaftheleya gabl e'alanaha leljmhor (Criminalizing insider dealing)', Kuwait Stock Exchange Market Conference, 2005, p. 66.

¹⁶ See *ibid*.

¹⁷ The researcher was a small investor in the KSE in the period before the 2008 crisis and the problem of manipulative practises was observed by the researcher. In addition, the researcher noticed that these practises are regulated and prohibited in developed markets.

¹⁸ See A. Al-Nufaisy, *Kuwait: Alrai Alakhar (Kuwait: Other view)*, (Dar Faz'a, London 2009) p. 35.

practises rampant in the KSE are not as easy to execute. This is why there was a need to conduct this type of study on the KSE. Like any other country that gained independence in the recent past, Kuwait has needed time and the experience of many crises in order to issue legal reforms to govern market manipulation. In fact, the researcher was an investor in the KSE during the period from 2006 to 2008. The market boom in 2006 was a strong attraction for many Kuwaitis to enter the market. The researcher has observed that at the time the KSE was dominated by rumours and insider information in addition to heavy speculation,¹⁹ which was subsequently proven to be fictitious transactions used to encourage investors to trade.²⁰ Thus, the stock market in Kuwait at the time was replete with market abuse practises, such as insider dealing, artificial transactions, fake orders, rumours etc.²¹ Investors in the market went along with these practises and were influenced and affected by the fictitious trades every day. Unfortunately, there exists no academic research that addresses or proves this issue. It was believed that these practises reflected the freedom of trading and supply and demand.

The researcher, like many others, did not understand at the time that these practises are considered abusive and criminalized in more developed markets. Hence, this subject of market abuse has been chosen, since this concept is very new in Kuwait and not yet completely understood by legal experts.

Therefore, the topic of this thesis is important as market manipulation has been one of the main issues of concern in financial markets worldwide.²² The lack of effective

¹⁹ As it has been mentioned previously that insider dealing has been regulated for a long time, however it has not been enforced.

²⁰ See section 3 of Chapter 3 of this study.

²¹ See N. Al-Sane, *supra* no. 13, p. 12

²² See Section 3 of Chapter 2 and Section 1 of Chapter 4 of this study.

market practise regulations in the KSE has led to the lack of an effective level of protection for investors. In addition, this lack has driven the market to a severe crisis, as will be explained briefly in this thesis. With regard to the KSE, it should be noted that the Amir of Kuwait, Sheikh Sabah, aims for Kuwait to turn into a commercial and financial hub.²³ He believes that the private sector plays an important role in the economic growth of Kuwait. This will entail developing the private sector in parallel with the development of the KSE, which cannot be achieved unless there are complete security regulations to protect investors in the market as well as regulate market abuse behaviour, including market manipulation. In addition to the privatization plans in Kuwait,²⁴ there is also a pressing need for legal reform to create an appropriate atmosphere for these companies to flourish. This would require a high standard of protection and an environment for trading with a high standard of security regulations. The researcher begins by evaluating the effectiveness of the very recent Law No. 7 of 2010 in preventing manipulation in the KSE. It draws attention to potential improvements that would lead to the highest level of transparency and efficiency in the KSE, based on other more mature laws that have been in action.

There is a gradual increase in public awareness with regard to the importance of regulating market manipulation and investigating manipulation acts in the KSE, which further encouraged the pursuit of this research, and it is hoped that this study will serve as a guide for investors, judges and anyone else involved with the market and provide them a clear understanding of the concept of market manipulation and its rules. This

²³ The Amir has issued a law for executing the development plan, check the official site of the Al-Diwan Al-Amiri <http://www.da.gov.kw/eng/festival/vision_his_highness.php> Last accessed on 30 June 2013.

²⁴ See M. Al-Moqate', 'The Kuwaiti National Assembly and the Targeted Legislation in the Privatisation Process', (1999) Arab Law Quarterly, p. 132

understanding is particularly important for a young market to become familiar with the new rules of Law No. 7 of 2010.

My hypothesis is that the trading environment in the KSE is not sufficient or efficient when compared to developed markets, particularly since the concept of manipulation as market abuse is unclear. Manipulators continue to take advantage of legal gaps in regulations. However, only a few researchers have explored the KSE with specific regard to market manipulation in that system.²⁵ This research may be considered as the first to conduct an in depth evaluation of the market manipulation regulations of the KSE as well as the first to identify some of the shortcomings of the KSE that had led to the problem of market manipulation practises. It is important to note that Law No.7 of 2010 is new and represents the first step towards regulating market manipulation in Kuwait. This thesis will offer a critical study to address the issue of market manipulation and the rules for its regulation from an academic perspective. It will be an added benefit to propose how to develop the system to achieve a high level of protection and raise the status of the Kuwaiti market to meet that of developed global markets.

4. *Research Method*

In order to achieve the multi-objective purpose of this thesis, the appropriate method will be applied to each of the four stated objectives.

Before discussing the four objectives, it might be helpful to clarify the method used in chapter one. This chapter describes a crisis that occurred in the 80s. In fact, previous studies have revolved around the Manakh crisis; hence, this chapter deals with the available data and serves as an introduction to a discussion of the emergence of the

²⁵ These researches will be mentioned subsequently.

stock exchange system in Kuwait. That is to say, this chapter follows the descriptive method, as it addresses the history of the KSE and its previous crisis.

To achieve objective one, defining the term ‘market manipulation and its common forms’, a review and analysis of existing literature on the topic will be carried out. As will be illustrated shortly,²⁶ the local, as well as the regional, literature on this subject is almost non-existent; hence, the Western literature was explored. That is to say, the explanatory method was used, with reference to this literature, to achieve the objective of defining market manipulation.

In order to carry out the second objective, evaluating the general rules that existed prior to Law No. 7 of 2010, as well as addressing the 2008 crisis and associated problems that were present in the market at that time, secondary resources, such as books, articles, available economic reports, conferences and newspapers will be reviewed. In addition, primary resources, such as Kuwaiti civil and criminal law, will be addressed. Thus, the explanatory tool is used, as well, in this chapter, as this method will help to examine the 2008 crisis and its roots by using the available data.

In order to accomplish objective three, an analytical critical approach was implemented; specifically, the normative research method was followed. Law No. 7 of 2010 was evaluated with reference to the forms of market manipulation identified in objective one. In addition, the achievement of this objective explores the UK’s approach of regulating market manipulation under FSMA 2000 as a norm for the evaluation of the Kuwaiti law. The UK has an up to date and comprehensive system for dealing with market manipulation. This is the benchmark for a modern system and this research will

²⁶ See section 6 (literature review) of this chapter.

ask whether or not the Kuwaiti system has all the relevant parts or the correct approach. It should be mentioned that this research is not about a legal transplant but whether or not the Kuwaiti system covers all the possibilities. In addition, it must not be mistakenly viewed as a comparison study: this chapter is not interested in comparing both regulations. Comparative methodology has a different approach for analysis, while this thesis focuses on Kuwait's experience and the KSE. However, this research does analyse the UK regulation in order to reveal the deficiencies and shortcomings of Law No. 7 as compared to a more mature system, one that has been in effect much longer. Choosing normative regulation FSMA 2000 as a basis for evaluating the Kuwaiti Law No. 7 was based on the fact that the two laws have two essential points in common: first, each of the countries has a special, complete securities regulation that regulates market manipulation; second, both countries have a specialised entity for financial affairs: the CMA in Kuwait, and the FSA in the UK. In fact, there are other regulations that share the same common ground with Kuwait; however, what makes the UK regulation suitable for inclusion in this study?

The Kuwaiti law has been in effect only since 2010, while the UK has regulated market manipulation for a very long time (since 1986);²⁷ therefore, the UK has more experience with regulating market manipulation. In addition, the rate and number of manipulative cases in the UK also serve as good reasons to choose the UK as a basis for evaluation.²⁸ Moreover, the UK has implemented the EU Market Abuse Directive; hence, the UK has

²⁷ See Edward J Swan and John Virgo, *Market Abuse Regulation*, (2nd ed., Oxford University Press 2010) p 6.

²⁸ See Paul. Barnes, *Stock Market Efficiency, Insider Dealing and Market Abuse*, (Gower 2009) p. 161–179.

a better chance to update its regulation with new forms and practises.²⁹ Furthermore, the FSA in the UK has great power in enforcing and stipulating civil penalties on manipulative practitioners so as to help with deterrence.³⁰

Finally, objective four, which is based on the evaluation of the enforcement and implementation of Law No. 7, will consider the available legal cases specific to market manipulation in the Financial Market Court, in addition to the CMA penalties imposed on the manipulators. Consequently, this chapter explores the enforcement and implementation of market manipulation, in the case of KSE, by using the explanatory research method.

It was clearly stated earlier that this thesis does not seek to prove the existence of the problem of market manipulation; however, the researcher distributed a questionnaire among various people in the KSE to obtain data that would support the evidence that is already available, to get an idea and indication of people's opinions of the issue and to determine the manipulative practises that are prevalent in the KSE.

Therefore, this survey provides parallel support to the stated objectives of this thesis. As the questionnaire is one of the most widely used instruments to collect data, especially in the case of Kuwait (for which there is no previous literature, studies or cases), an applied study would be a useful instrument to collect views regarding market manipulation in the case of the KSE. Hence, a questionnaire was distributed among

²⁹ See Slaughter and May, 'The EU/UK Market Abuse Regime- Overview', (2011) p. 9, available at < <http://www.slaughterandmay.com/what-we-do/publications-and-seminars/publications/client-publications-and-articles/t/the-euuk-market-abuse-regime---overview.aspx>> Last accessed on 12 May 2013.

³⁰ See Stuart Bazley, *Market Abuse Enforcement: Practise and Procedure*, (Bloomsbury 2013) p. 275. See also Paul Barnes, 'Insider Dealing and Market Abuse: The UK's record on enforcement', (2011) 39 *International Journal of Law, Crime and Justice*, p. 147.

people involved in the KSE; these include investors, portfolio managers and brokers. Three questionnaires were designed for these three parties.³¹ A structured questionnaire was designed for investors, while a semi-structured questionnaire was designed for brokers and portfolios managers.³²

The questions in the questionnaire aimed at acquiring the general views of the different parties regarding the types of manipulation from which the market suffers, the extent of the problem and each party's awareness of Law No. 7, as well as their views towards implementation of the regulation of manipulative practises.

Portfolio managers are individuals who work in investment companies, who control several portfolios and who are involved in the daily trading of shares in the KSE, including several funds directed by investment companies listed in the KSE. There exist (at the time of the study) 51 such investment companies.³³ The target was to have 30 portfolio managers answer the questionnaire online. It was difficult to determine the total number of portfolio managers employed by each company, since this information is not listed and is not freely provided by the companies. Therefore, the total population of portfolio managers had to be assumed: the researcher acquired information indicating that the number of portfolio managers ranges from three to four. An average number of four portfolios managers per company was assumed; therefore, for all 51 companies, the total number of portfolios managers was estimated to be 204.

³¹ See the appendices of this research.

³² The questionnaires are provided in the appendices. As the original questionnaires were written in Arabic, the appendices provide the Arabic version of the questionnaire as well.

³³ In the year 2011, when the questionnaire was administered.

Regarding the number of brokers, there are 17 brokerage firms that are housed in the KSE building.³⁴ The questionnaire was administered to 30 brokers, covering all the firms. For reasons similar to those associated with determining the population of portfolio managers, the total population of brokers again had to be estimated: a total of 119 for all 17 firms was the number, based on knowledge acquired which indicated that each of the firms employed 7 brokers, on average.

In terms of the investors, there are approximately 50–60 investors trading daily in the KSE;³⁵ the sample size selected for this questionnaire was 200. One hundred investors were recruited, with the help of the Public Relation Department of the KSE, by distributing the questionnaire in the men's trading room (which, the researcher, being female, was unable to access). The other 100 investors answered the questionnaire online.

It is appropriate to mention that the survey was distributed in February 2011 and took around two months to complete. The target number was difficult to reach. For more details regarding the respondents' genders, occupations, amount of trading, etc., this information is clearly delineated in chapter three of the thesis.³⁶

A previous study³⁷ has determined that in terms of the investors population in Kuwait, a sample of 150 is appropriate. The researcher recruited 200 respondents on this basis as

³⁴ In the year 2011, when the questionnaire was administered.

³⁵ Particularly when this questionnaire was administered—in February 2011.

³⁶ See section 3.2 of Chapter three of this thesis.

³⁷ A PhD research by F. Al-Zumai entitled 'The Protection of Investors in Gulf Cooperation Council Stock Markets: A Case Study of Kuwait, Bahrain and the United Arab Emirates' (PhD dissertation, University of SOAS 2006) p. 26. In addition to this study, a sample size of 200 was chosen in a questionnaire by Abdulsalam Albelooshi, 'The Regulation of Insider Dealing: An applied and Comparative Legal Study towards reform in the UAE' (PhD dissertation, University of Exeter 2008) p.

well as taking into consideration the daily number of investors in the KSE. The number of effective accounts in the KSE during February 2012 was 21,987.³⁸ This number also represents the population size of investors at the time the questionnaire was distributed. It must be noted that the time chosen for distribution of the questionnaire corresponded with the very beginning of the actual application of Law No. 7 of 2010, which may or may not have influenced the respondents' answers. The reliability of the questionnaire is stated in the table below.

	<i>Investors</i>	<i>Portfolios managers</i>	<i>Brokers</i>
- Sample:	200	30	30
- Population:	22,000	204	119
- Confidence level:	95%	95%	95%
- Confidence interval:	6.8	16.57	15.5

(Table 1) Reliability of the questionnaire

The representativeness of the respondent's results to the original population has been calculated using conventional statistical methods. 'Confidence level of 95%' was decided for all categories of respondents. The table above shows the 'confidence interval' for each category of respondents. For instance, the confidence interval for investors based on the sample size was 6.8. Therefore, if 80% of the investor's respondents agreed on a certain issue, this means that there is a 95% confidence that 73.2% to 86.8% of the original population will respond the same. The table shows that results are more representative with investors than the portfolios managers and brokers,

100. Further, A questionnaire was applied to 125 investors by Hamad Al Shamisi, 'Investigation into Market Abuse in the UAE Financial Markets: A comparative Legal Study', (PhD dissertation, University of Exeter 2010) p. 266.

³⁸ See the official website of the KSE <http://www.kuwaitse.com/Portal/Report/monthly%20distribution%20of%20investors_arabic%20201102.pdf> Last accessed on 18 August 2013.

which brokers have confidence interval of 15.5 and portfolios managers have confidence level of 16.57.

The following section discussed how each chapter employs the above-mentioned methods in order to achieve the study objective.

5. *Research Outline*

This thesis is divided into five chapters in addition to the introduction and conclusion chapters. Chapter 1 is an introductory chapter with regard to the history of the KSE. It considers the Al-Manakh Market crisis as the background of the establishment of the current KSE. In addition, it aims to clarify the general trading system in the KSE as a prior step to the evaluation of the existence of abusive practises within the system.

Chapter two addresses the first objective of this study, which is to provide a definition of the term ‘market manipulation’. As stated, this concept is missing in Kuwait and is also controversial, so there is a need to provide a broader definition for the term. Since previous studies on market manipulation in Kuwait are very rare, this chapter relies on Western literature as there are numerous previous studies that define and deal with market manipulation.³⁹ This chapter also provides guidance on the definition for market manipulation to lay the basis for objective three: evaluation of Law No. 7 of 2010 and its deficiencies.

Chapter 3 discusses the regulation of market manipulation prior to the issuance of Law No. 7 of 2010. It aims to identify the general legal rules that could be applied to market manipulation practises from the standpoints of civil and criminal law. Hence, this

³⁹ For example see E. Avgouleas, *The Mechanics and Regulation of Market Abuse: a Legal and economic analysis*, (1st ed., Oxford 2005). See also Barry Rider et al., *Market abuse and insider dealing* (2nd ed., Tottel Publishing Ltd 2009). See also Swan and Virgo, *supra* no. 27.

chapter deals with the second objective of this study. In addition, it provides a discussion of the 2008 Trust Crisis as well as its relation to market manipulation practises.

Chapter four tackles the third objective of this study and addresses the regulation of market manipulation under Law No. 7 of 2010. It evaluates the Kuwaiti approach by referring to the UK approach of regulating market manipulation under the FSMA 2000. The UK has been selected as a basis for evaluation as it has a more established market that has been regulated for much longer.

Chapter five, which deals with the fourth objective of this study, examines the effectiveness of the application of Law No. 7 of 2010, as well as that of the specialized entity—the Capital Market Authority (CMA), which has been in enforcing the law and issuing sanctions. In addition, a number of legal cases that have been filed after Law No. 7 will be reviewed.

6. *Literature Review: Establishing the Originality of this Thesis*

This research can be considered original, as there are no previous studies that address the regulation of market manipulation in Kuwait. There are some studies related to market abuse in Kuwait; however, they do not discuss market manipulation in the KSE. For example, a PhD thesis presented by Fahad Al-Zumai details the protection of investors in stock markets in the GCC countries.⁴⁰ However, Al-Zumai's thesis does not specifically deal with market manipulation practises and includes other states in addition to Kuwait, including Bahrain and the United Arab Emirates. In addition, the

⁴⁰ See F. Al-Zumai, *supra* no. 37.

thesis explores the period before the 2008 crisis and before the issuance of Law No. 7 of 2010.

In addition, there is a master's thesis by Abdulla Al-Shbully entitled 'Market Manipulation in Stock Markets'.⁴¹ Although this thesis was presented at Kuwait University, it did not specifically address the problem of market manipulation practises in the KSE. In addition, the research dealt with periods prior to the 2008 crisis and before the issuance of Law No. 7 of 2010. Furthermore, there is a book that deals with Law No. 7 and it has been published after the issuance of the law. The author of the book is Bader Al-Mulla and it is entitled 'The Legal System of Stock Markets'.⁴² In addition to discussing Law No. 7 of 2010, it also discusses the new Capital Market Authority (CMA) and the stock exchange. However, it does not consider the background of the law in terms of the 2008 crisis and there is no special focus on the regulation of market manipulation; it merely describes the law. These are the only local studies that are related to the current research topic to a certain extent. This thesis exhibits originality from many perspectives. It can be considered one of the first studies to analyse market manipulation under Law No. 7 of 2010. Furthermore, it investigates the financial crises of the KSE and offers some explanations for them. In addition, this thesis follows a new method of examining the existence of market manipulation practises in the KSE—the questionnaire approach.

This absence of legal literature on market manipulation in the KSE is partially due to the KSE's status as a young market with new regulations. Arabic literature does not

⁴¹ See A. Al-Shbully, 'Almotharabat alwahmiya fe alborsa (Market Manipulation in the Stock Market), (Master's thesis, Kuwait University 2008), p. 51-53.

⁴² See B. Al-Mulla, *Alnetham Alganony le aswag almal (Legal System for Stock Markets)*, (1st ed., 2011 Kuwait).

contain books or articles that deal with market manipulation or market abuse in general. A paper by Mohamad Alsuhebani entitled ‘Altalaob Fe Alaswaq Almaliya (Market manipulation in financial markets)’ (Seminar of Speculation and market manipulation in financial markets, Alriyath 2008) defines market manipulation and its forms; however, it has no special focus on specific markets or a specific regulation. In addition, there exists a study by Sa’eed Bo Hawara entitled ‘Altalaob Fe Alaswaq Almaliya (Market Manipulation in financial markets)’, (Aldawra aleshron lelmojtam’ alfeghi, Makka 2010). This research defines market manipulation and its forms by attempting to examine the Sharia regime and apply the understanding gained on market manipulation.

On the contrary, there are numerous studies regarding market manipulation in Western literature, since their systems and stock markets are more mature. These previous studies regarding market manipulation are addressed in Chapter 2 of this thesis.⁴³ Hence, this thesis has used this literature as a foundation for the criticism of the Kuwaiti system. The literature and experiences of the US and the UK are the main sources for defining the term ‘market manipulation’ and its forms. However, it should be clarified that it is not the purpose of this thesis to analyse or criticize the studies conducted in the UK and US.

⁴³ For example, see Daniel R. Fischel and David J. Ross, ‘Should the law prohibit ‘Manipulation’ in Financial Markets?’, (1991) 105 Harvard Law Review p. 504. See also Eva Lomnicka, ‘Preventing and controlling the manipulation of financial markets towards a definition of market manipulation’, (2001) 8 Journal of Financial Crime, p. 297. See also Wendy C. Perdue, ‘Manipulation of future markets: redefining the offense’, (1987) 56 Fordham Law Review. See also Frank E Easterbook, ‘Monopoly, Manipulation and the regulation of futures markets’, (1986) 59 The Journal of Business, p. 345. See also E. Avgouleas, *supra* no. 39. See also Michael J Watson, Q.C., ‘The Regulation of Capital Markets: Market Manipulation and Insider Dealing’, British Columbia, Canada. Available at: < http://www.icclr.law.ubc.ca/Publications/Reports/wats_pap.pdf > Last accessed on 30 June 2013.

7. Contribution to the General Theories of Law

It might be useful to acknowledge first in this research the impact of regulatory theory on Kuwaiti regulation.⁴⁴ Economic regulation theory will be discussed briefly in Chapter 3 of this thesis; however, providing a small introduction to Kuwait's regulatory history is necessary to helping the reader understand the wider implications in Kuwait.

It can be said that prior to the Soq Al-Manakh crisis,⁴⁵ the market was self-regulated; in other words, private interest theory was especially pertinent during that period. Having incomplete securities regulation and not regulating market manipulation were beneficial to small groups of people.⁴⁶

On the other hand, passing the 1983 decree in response to the Soq Al-Manakh crisis can be justified as a public interest policy that brings benefits to the entire financial market.⁴⁷ The decree has regulated the establishment of an official financial market in Kuwait. Nevertheless, market manipulation was not regulated directly.⁴⁸ Hence, aside from public interest policy, there has been resistance to private interests, since the prohibition of market manipulation would hamper the profits of those few parties. This can be seen in the unwillingness to tackle the problem of manipulation until very recently. Law no. 7, which regulates market manipulation, came very late and after two severe failures.⁴⁹ In 2010, Law no. 7 was issued while taking into account the public interest. This law can be considered a complete securities regulation instrument that

⁴⁴ It might be useful to mention that the regulatory theories is discussed in Chapter 3 under section 1.

⁴⁵ Almanakh crisis is discussed under section 1.1 of Chapter 1.

⁴⁶ See the private interest theory under section 1 of Chapter 3.

⁴⁷ The 1983 decree is explained under section 1.2 of Chapter 1.

⁴⁸ The lack of regulation of market manipulation in Kuwait is argued under section 2 of Chapter 3.

⁴⁹ The Soq Almanakh crisis in 1983 and the 2008 trust crisis.

came about in response to a need for public and markets welfare.⁵⁰ In addition, it has regulated market manipulation, thus enhancing the level of protection for the public with respect to the Kuwaiti market.

Overall, this is a brief introduction to regulatory theory and its impact on Kuwaiti regulations, so as to bring about a clearer understanding of the case of Kuwait.

⁵⁰ Law no. 7 of 2010 is evaluated in Chapter 4.

Chapter One: Introduction to the Kuwait Stock Exchange

Introduction

As this thesis revolves around the Kuwait Stock Exchange (KSE),¹ it would be useful to pave the way by providing a brief introduction to this market. Reviewing the history of the establishment of the KSE maybe important as it included a revolutionary economic incident, the Al-Manakh crisis, which divided Kuwait's economy into two main periods: before the Al-Manakh crisis and after the Al-Manakh crisis. Moreover, this chapter will highlight the main guiding principles of the trading system in the KSE.

It must be noted that discussing the above periods involves a repetitive reference to the so-called merchant class in Kuwait. Before the discovery of oil, Kuwait was a poor country whose economy depended on the sea, specifically, diving for pearls.² This led to the creation of a class of wealthy merchants, whose wealth amounted to millions of Rupees.³ This class played a significant role in the economic and political policy of the country to the extent that Kuwaiti rulers, the Sheikhs, used to consult members of the

¹ It should be noted that Kuwait has no stock market other than KSE.

² Many projects implemented in Kuwait were attributed to the individual efforts of the merchants. In addition, they contributed to society and helped in all social aspects, not seeking fame or position, but because they considered it an obligation. See A. Al-Shurbasi, *Ayam alKuwait (Kuwait's days)*, (1st ed., Kuwait 1953) p. 58.

³ From 1921 to 1960, the Indian rupee was considered as the only official currency in Kuwait until it was replaced by the Kuwaiti Dinar as the national currency in 1960. See Y. Al-Haji, *AlKuwait Algadema Sowar wa Thekrya*, (Kuwait Researches & Studies Centre, Kuwait 1997) p. 72. See also Y. A. Al-Rushaid (ed), *Tarekh alKuwait (Kuwait's History)*, (Dar Maktbat ALhayat, Beirut) p. 42. See also A. Al-Nufaisy, *Kuwait: Alrai Alakhar (Kuwait: Other view)*, (Dar Faz'a, London 2009) p. 37.

merchant class in many political matters and the latter attained a significant status in terms of richness and respect. In his book, Othman Abdulmalik Al Saleh⁴—the famous Kuwaiti constitutional law scholar—describes the important role played by this class in determining Kuwait's economy in those times.⁵ According to him, they could be regarded as partners of the ruling family, Al Sabah, in drawing the path of the economy and industry in Kuwait.⁶ After the discovery of oil in Kuwait,⁷ the merchant class continued to enjoy their authoritative position in the economic and political spheres in Kuwait.⁸ Therefore, this chapter and some portions of the subsequent chapters indicate the influence of this class of society on economic events in Kuwait.

⁴ Othman Abdulmalik Al-Saleh was one of the first professors at the School of Law at Kuwait University in the field of constitutional law.

⁵ See O. Al Saleh, *Alnetham aldestory wa almoasasat alseyasya fe alKuwait (The Constitutional system and political institutions in Kuwait)*, (1st ed., Kuwait 1989).

⁶ See *ibid*, p. 20.

⁷ Kuwait's economy basically depends on oil revenues generated by the national oil industry. See A. Al-Nufaisy, *supra* no. 3, p. 35. See also Jassem Al-Sa'doon, *Manakh alazma wa azmat alManakh (The crisis climate and the Manakh crisis): economic studies*, (1st ed., Alrubaian Kuwait 1984) p. 68.

⁸ This merchant class includes some wealthy families such as Al Khurafi, Al Ghanim, AlSaqr and Almarzoq. Moreover, when considering the history of the Kuwait National Assembly, 'Majls Aloma', it becomes evident that people from these families have held positions such as senators or even the president of the National Assembly. For example, Jasem Mohammed Al Khurafi was the president for 12 years and his brother Nasser Mohammed Al Khurafi was the chairman of Al Khurafi company that owns Alkhair company, which owns over 5% of the shares in 14 listed companies in the KSE. It should be noted that this is the declared percentage. See the National Assembly website < <http://kna.kw/clt/run.asp?id=258#sthash.GqMiNUiN.dpbs> > Last accessed on 18th August 2013. See also the official website of the KSE < <http://www.kuwaitse.com/A/Stock/Companies.aspx> > Last accessed on 18 August 2013. Another example is Abdulatif Thunaiyan Al Ghanim who was the president of the first National Assembly 'Almajls Atase'se' that was enacted for the purpose of drafting the Kuwaiti Constitution. His brother, Ali Thunaiyan Al Ghanim, is the Chairman of the Kuwait Chamber of Commerce and Industry (KCCI). Moreover, Marzog Ali Al Ghanim, son of Ali Al Ghanim and nephew of Jassem Al Khurafi, is the current president of the National Assembly. The Al Ghanim family owns over of 5% shares in 10 listed companies in the KSE. See the National Assembly website < <http://kna.kw/clt/run.asp?id=258#sthash.GqMiNUiN.dpbs> > Last accessed on 18 August 2013. See also

Thus, this chapter is divided into two main portions—the first portion deals with the emergence of the stock exchange in Kuwait and the second portion deals with the general trading system in the KSE.

1. The Emergence of the Stock Exchange System in Kuwait

Corporations or joint stock companies were established in Kuwait when the National Bank of Kuwait (NBK) was incorporated in 1952.⁹ This was considered the first private local company in the region, with an initial capital of 19,465,875 KWD.¹⁰ This company was incorporated prior to the enactment of the Kuwaiti company law, Law No. 15 of 1960. During the 1960s and 70s the number of companies that were incorporated in Kuwait increased to 18.¹¹ This increase may be explained by the fact that Kuwait gained its independence in 1961, which further promoted its progress and development.

the official website of the Kuwait Chamber of Commerce and Industry < http://www.kuwaitchamber.org.kw/echamber/website/index.jsp?pageID=ws_boardmembers.jsp&undefined#:searchListReport@1 > Last accessed on 18 August 2013. See also the National Assembly website < <http://www.kna.kw/clt/run.asp?id=1837#sthash.2EJ6yFDG.dpbs> > Last accessed on 18 August 2013. See also the official website of the KSE < <http://www.kuwaitse.com/A/Stock/Companies.aspx> > Last accessed on 18 August 2013.

⁹ See A. Al-Mutari, 'Empirical Testing of Various Aspects of Investment in the Kuwait Stock Exchange (KSE)' (PhD thesis, University of Wales Cardiff, 2004) p. 37. See also the foundation of NBK at the official website of the NBK: <http://www.kuwait.nbk.com/about/profile/history_en_gb.aspx> Last accessed on 2 July 2013.

¹⁰ See F. Al-Zumai, 'The Protection of Investors in Gulf Cooperation Council Stock Markets: A Case Study of Kuwait, Bahrain and the United Arab Emirates' (PhD dissertation, University of SOAS 2006) p. 53.

¹¹ See Y. Sarkho, *Alogod altejarya fe alganon altejari alkuwaitii (Commercial contracts in Kuwaiti commercial law)* (Kuwait, 3rd ed., the author 1998) p. 442-443. See also N. AbuMustafa, 'A Review of Regulation, Opportunity and Risk in Gulf Cooperation Council Stock Markets: The Case of Kuwait' (2007) 8th International Research Journal of Finance and Economics, p. 134-136.

After attaining independence, the Kuwaiti government initiated a compensation scheme for real estate property owned by citizens as a significant step in the direction of establishing a modern nation. The compensation funds were utilised by citizens to establish new commercial companies. This occurred along with general financial surpluses, particularly after the discovery of oil in Kuwait and its subsequent export. Oil provided funds for the investment and establishment of companies, since Kuwaitis invested their cash in rising companies.¹² By 1975, Kuwait claimed the establishment of 35 companies, with 32 million shares.¹³

Despite this increase in the number of companies and shareholders, the investors' understanding of trading shares was primitive. At the time, Kuwaitis lacked experience in trading and in recognising its many dimensions and the extent of its risks, particularly considering that education was rudimentary in comparison to other developed countries.¹⁴ The trading of shares was conducted on the Jet market (Berseem market) through brokers' offices that were scattered around the market. However, this market was not licenced by the Ministry of Commerce as an official market for trading shares.¹⁵

The increase in the number of companies also created the need for a legal system that would regulate the 'legal framework' for trading. Therefore, the first commercial law to

¹² See F. Al-Zumai, *supra* no. 10, p. 53.

¹³ See Y. Sarkho, *Alogod altejarya fe alganon altejari alkuwaiti*, *supra* no. 11, p. 442. See also N. AbuMustafa, *supra* no. 11, p. 136-137.

¹⁴ See Y. Sarkho, *Alogod altejarya fe alganon altejari alkuwaiti* *supra* no. 11, p. 443.

¹⁵ See T. Al-Shimmary, 'Altanthen alganony lesog alkuwait lel awrag almaliya (legal organization of Kuwait Stock Exchange)' (1983) 4 Law School Journal Kuwait University, p. 57. The Jet market is for trading clover.

be issued was Law no. 2 of 1961 (cancelled).¹⁶ Based on this law, in the mid-1970s, the Ministry of Commerce established the first official stock exchange,¹⁷ which was considered the official market for trading at that time. Undoubtedly, this market emerged late in comparison to other developed global markets.¹⁸ The trading of shares was also conducted on another market known as the ‘Al-Manakh’ market, which will be discussed in detail below. In other words, despite the existence of an official stock exchange, at that time, traders decided to trade on the Al-Manakh market to escape from the surveillance of the ministry; this will be discussed subsequently.

With regard to the legal and legislative developments for regulating the stock exchange, the fact is that the majority of laws developed by the Kuwaiti legislature were not devised by legislators who had experience in or were knowledgeable about the stock exchange. Rather, they relied on reproducing the legislation of neighbouring countries; however, these countries also had little experience in the field of stocks and trading.¹⁹

This section attempts to provide a snapshot of the chronological development of the rules relating to the stock exchange in Kuwait, particularly for the period before the

¹⁶ It was replaced by the current commercial Law No. 68 of 1980.

¹⁷ This was the first stock exchange in Kuwait. After the Soq Al-Manakh crisis, it was cancelled and the current Kuwait Stock Exchange (KSE) was established in 1983. See Y. Sarkho, *Alogod altejarya fe alganon altejari alkuwaiti*, supra no. 11, p. 443.

¹⁸ See Y. Sarkho, *Alogod altejarya fe alganon altejari alkuwaiti*, supra no. 11, p. 442. The historical roots of the London Stock Exchange, New York Stock Exchange and Amsterdam Stock Exchange are approximately 300 years old. For more details, see the official website of the London Stock Exchange <<http://www.londonstockexchange.com/products-and-services/rns/history/history.htm>> Last accessed on 2 July 2013, and the official website of New York Stock Exchange <<http://www.nyx.com/who-we-are/history>> Last accessed on 2 July 2013.

¹⁹ See S. Al-Bassam, ‘Ba’th jawanb altanhem almohasaby lesoq alkuwait lelawrag almaliya (Some accounting organization for Kuwait Stock Exchange)’ (1983) 4 Law School Journal Kuwait University, p. 12. See also Y. Sarkho, *Alogod altejarya fe alganon altejari alkuwaiti*, supra no. 11, p. 443.

establishment of the official stock exchange in 1983 (the KSE). These rules would provide explanations for the crisis, which will be explained in the next section. It is also shown that the lack of regulations was the main cause of the Al-Manakh crisis.

1.1. The Period before the year 1982

The first regulation of the stock exchange was contained in sections 614-618 of Law No. 2 of 1961 (now cancelled).²⁰ This law established an outline for trading operations. Hence, based on this law, Law No. 27 of 1962 was then issued in connection with regulating the securities of companies incorporated abroad. In 1967, Ministerial Decree No. 1 of 1967 was passed to regulate brokerages in general. Section 606 of this law stipulated that brokerages include regulation of brokerages in securities. This last decree laid down the conditions required of the brokers (section 2 of the decree) and obliged them to maintain records and register transactions.²¹

With the increase in the number of shareholding companies in Kuwait and the legislators' perception of a legislative gap in the trading of shares of companies, Law

²⁰ It is worth mentioning in this matter that the second section of the Kuwaiti constitution affirmed that 'The religion of the state is Islam, and Sharia Law is a main source of legislation'. Hence, it seems evident that the Kuwaiti legislature would adopt Islamic ideology in its legislation. However, the Constitution does not stipulate that Sharia Laws are the main source of legislation whereby they are not contested by any other source. Clearly, this phrase does not bind the ordinary legislator to derive his provisions from Sharia Laws. The current commercial law did not adopt provisions of the Islamic Laws in its rules, and therefore provides for relations with Western countries. For example, the Kuwaiti legislature regulated interest rates that are in fact synonymous with the word 'usury', which is absolutely prohibited under Sharia laws. The Almighty God said 'Allah permitted trading and forbade usury'. In conclusion, the commercial law in Kuwait is not based on Sharia law. See the Cow Chapter of the Quran, Verse 275. For provisions of usury interests in Kuwaiti laws and Islamic Laws, see N. Al-Hajri, *Ahkam alfawa'ed alrabaweya fe alqanon alKuwaiti wa alSharia alEslamiya (Interests in Kuwaiti law and Islam Share'a)*, (1st ed., Kuwait 2005) p. 37. See also A. J. Awad, *Alqanon altejary (Commercial law)*, (Maarif Est., Alexandria 1989) p. 16.

²¹ See Y. Sarkho, *Alogod altejarya fe alqanon altejari alkuwaiti*, supra no. 11, p. 445.

No. 32 of 1970 was issued in relation to regulating the trading of corporate stocks; this replaced Law No. 27 of 1962 and missed a number of controls for trading the stocks of companies incorporated outside of Kuwait. This law stipulated the formation of an advisory committee for the affairs of trading securities. Section 12 of the law also imposed penalties for violating provisions of the law.²²

Pursuant to Law No. 27 of 1962, Ministerial Decree No. 10 of 1971 was passed to regulate the trading of securities of Kuwaiti joint stock companies. The decree stipulated that a special department was to be established in the Ministry of Commerce to regulate the trading of securities of Kuwaiti shareholding companies. Further, it required a certain type of broker, the security broker, for securities trading.²³

In response to the development of trading operations, Ministerial Decree No. 61 of 1976 was passed to regulate Kuwaiti shareholder securities, excluding those of foreign companies incorporated abroad.²⁴ This legal gap with respect to regulating companies incorporated abroad drove a number of individuals to incorporate Gulf companies as a way of evading this particular condition of the decree, as will be described subsequently.

The above-mentioned aspects were the important legal rules and their development give rise to the legal gap in regulation and the Al-Manakh crisis. The legislations noted above indicated that Kuwaiti legislators aimed to protect trading in securities and regulate trading under a legal framework. This framework stipulated the legal regulation of trading processes, with the intention of protecting traders and the national economy.

²² See *ibid.*

²³ See *ibid.*

²⁴ See *ibid.*, p. 445-446.

This is why section (614) of Law No. 2 of 1961 (cancelled)—which was followed by the current commercial law, Law No. 68 of 1980, section (324)—stipulated that ‘a stock exchange may only be opened according to a licence from the concerned minister and each stock exchange opened without licence shall be closed by administrative means’. Therefore, the concerned ministry licenced the opening of the stock exchange. If trading was conducted at an unlicensed stock exchange, it would be closed by the ministry.

As stated earlier, despite the issuance of a licence to open a stock exchange in the mid-seventies, trading was mostly conducted on the Al-Manakh market. Securities that were traded on the Al-Manakh market were not licenced to trade their shares on the official market.²⁵ In addition, trading was also conducted at the Clover market for small amounts of shares that were not accepted for trading by brokers in the Al-Manakh market and the stock exchange due to their small amounts.²⁶

Unfortunately, the situation remained unchanged and both markets remained operational until the occurrence of the Al-Manakh crisis in 1982, which will be addressed in detail shortly. In an attempt to resolve the crisis, the Kuwait Clearing Company (KCC) was established in 1982²⁷ in response to the provision of Section 325 of the commercial law, which represents the cornerstone for regulating and incorporating the current KSE. A decree was also passed on 14 August 1983 to regulate the KSE. The ministerial decree for the code of the KSE was passed in November 1983, and a decree for registering brokers and their assistants at the KSE was passed in August 1984. The legislators

²⁵ The next section explains the position of corporations in Kuwaiti company law.

²⁶ For example, the brokers did not accept brokerage for any quantity less than 1,000 shares. See T. Al-Shimmary, *Alwaseet fe derasat ganon Alsharekat Altejariya alkuwaiti wa ta'delateh (Mediator in the study in the Kuwaiti commercial companies law and its amendments)*, (3rd ed., Kuwait 1999), p. 339

²⁷ See the official site of Kuwait Clearing Company <<http://www.maqasa.com/a/indexa.html>> Last accessed on 5 May 2010.

granted the stock exchange an independent artificial personality, litigation rights and the capacity to transact in its funds.²⁸

1.1.1. The Al-Manakh market crisis of 1982

As this section explores the Al-Manakh market crisis, it would be helpful first to define a joint stock company as outlined in Kuwaiti law—Law No. 15 of 1961.²⁹ Corporations or joint stock companies basically comprise shares traded by shareholders. These shareholders are only liable according to the value of shares they have invested in the company.³⁰ Corporations are divided into open joint stock companies and closed subscription or closed joint stock companies. An open joint stock company requires the passing of a decree for its incorporation and open public subscription. In contrast, a closed subscription company does not need a decree for its incorporation. Moreover, its subscription is closed to limited shareholders.³¹

As mentioned above, the number of companies in Kuwait increased in response to the financial abundance of the 1960s and 1970s. With regard to the legal gap in terms of the incorporation of public joint stock companies incorporated abroad and private joint

²⁸ Section 1 of the 1983 Decree states that the ‘Kuwaiti Stock Exchange shall exercise its activity in accordance with the provision of this Decree. The Stock Exchange shall enjoy an independent judicial entity, with competence and capacity to dispose of its property and funds, besides managing the same and shall have the right of litigation’. Translated by the researcher.

²⁹ Corporations are explained according to Company Law No. 15 of 1960 (cancelled recently and replaced by Law No. 25 of 2012) because the cancelled law was valid before the Al-Manakh crisis and until late 2012. In reality, the definitions of corporations in the new law have not changed; for more information in this regard, see sections 119 and 265 in Law No. 25 of 2012 for the definitions of joint stock companies and closed joint stock companies.

³⁰ See T. Al-Shimmary, *Alwaseet fe derasat ganon Alsharekat Altejariya alkuwaiti wa ta'delateh*, supra no. 26, p. 259-261.

³¹ For more details, see *ibid*, p. 493.

stock companies, there was an increasing demand for the creation of Gulf joint stock companies. Such companies could evade the provisions of Kuwaiti law for joint stock companies; these provisions stipulated that to be allowed to trade their shares, these companies had to post three profitable balance sheets after incorporation.³² Thus, to escape from this rule, traders decided to trade their shares in the Al-Manakh market.

Private joint stock companies were the other type of company that were incorporated at the time and avoided the legal rules. The law at that time had required the passing of a decree for the incorporation of open joint stock companies, private joint stock companies were not required to take this step, which implied that they could be incorporated without government regulation. Furthermore, the shares of these Gulf and private companies were traded on the Al-Manakh market, an unofficial venue for trading shares that were not listed in the official market at that time.

Therefore, Kuwaitis incorporated shareholding companies in a number of Arab Gulf states that did not stipulate these types of conditions. They indicated that their head offices were situated in other countries when in fact they were not. These companies were founded by Kuwaitis and managed by them in Kuwait.³³

In addition to incorporating such Gulf companies, a demand existed for the incorporation of Kuwaiti shareholding companies with closed subscriptions. The goal was to benefit from the ease of incorporation procedures of this type of company, which

³² See A. Al-Najar, 'Aba'ad mostagbal soq alashom bel Kuwait (The future of the stock market in Kuwait)', (1982) 2 Year 2 Law School Journal, p. 113. See also Y. Sarkho, 'Algoyod alwareda ala tadawol alas'hom wa azmat soq alawraq almaliya (Limitations on securities trading and stock market crisis)', (1983) 4 Law School Journal, p. 87.

³³ In 1982, there were 49 Gulf companies incorporated by Kuwaitis, whose shares were traded in Kuwait. For more details, see F. Al-Zumai supra no. 10, p. 65.

contrasted with the relatively difficult procedures required of public shareholding companies with public subscriptions. Closed companies were incorporated according to an official document issued by all founders, which included the company memorandum and articles of association. In contrast, public shareholding companies required the passing of a decree for their incorporation.³⁴

The shares of companies incorporated in the Gulf and Kuwait were traded on the Al-Manakh market, which was considered the unofficial market for trading shares. This market is located in the middle of the capital of Kuwait.³⁵ Even if they were incorporated companies with closed subscription, their shares were traded in the Al-Manakh market and occasionally they were traded even before the legal incorporation of the companies.³⁶ These companies were not licenced to trade their shares in the official market at that time. In fact, trading in the Al-Manakh market involved many

³⁴ The concept of a closed subscription revolves around the idea of incorporating a joint stock company. When a project occupies a person, he/she identifies its components, convinces others with it; then, they begin executing the project and collecting data for it, as well as determine a place for its incorporation and its capital, while fully recognising the laws governing it, in addition to other matters that assist in the success of such a project. If they select a joint stock company they must agree that they do not need others to assist them financially or to share the profits of their company and its management, as well as that this company shall be according to a closed subscription to confine the project to them and benefit from the advantages of capital companies. For more information, see A. Al-Hefnawi, 'Ta'ses sharikat almosahma (Establishing joint stock companies)', (PhD thesis, Cairo University, 1988) p. 69. See also, M. Al-Shamali, 'Weak form efficiency and factors leading to market efficiency in the Kuwait Stock Market', (PhD thesis, Loughborough University, 1989) p. 159.

³⁵ It is called Manakh because it was a resting place for camel caravans coming from the desert from Saudi Arabia and Iraq to buy goods from the Kuwaiti market, before the appearance of oil and before changes in the economic conditions of Kuwait. See T. Al-Shimmary, *Alwaseet fe derasat ganon Alsharekat Altejariya alkuwaiti wa ta'delateh*, supra no. 26, p. 339 and also Y. Sarkho, *Alogod altejariya fe alganon altejari alkuwaiti*, supra no. 11, p. 443.

³⁶ See Y. Sarkho, 'Algoyod alwarda ala tadawol alas'hom wa azmat soq alawraq almaliya' supra no. 32, p. 90.

tampering practises conducted for the purpose of obtaining quick profits.³⁷ It is these practises that drove the market towards collapse, as will be shown in detail below.

With the increase in the number of companies, many traders entered the Manakh market without knowledge of trade and trading matters. They participated in the market out of a desire to make quick profits. The principle of trust prevailed, without referring to laws and regulations. Millions of trading operations were conducted without verifying the buyers or their financial capacities.³⁸ In fact, the market did not appeal to Kuwaitis only, but foreigners and Arabs were also attracted by the market. The banks also played a role, as they offered facilities and loans without guarantees to attract more clients.³⁹

Because the shares of Gulf companies and closed companies were not licenced to be traded in the official market at the time, they were traded in the unofficial Al-Manakh market. The shares of these companies were traded in this market to avoid the legal rules in the official market, such as the conditions for listing companies and the conditions for obtaining a licence to practise as brokers and portfolio managers. Notably, the shares of such companies were occasionally traded even before any actual activity of the company commenced.⁴⁰

Strangely, shares were traded in the Al-Manakh market by a real estate broker who would move on foot through the market to offer shares to traders, the majority of whom did not know what shareholding companies were. The real estate broker provided long

³⁷ See *ibid*, p. 90. It has been said that even students entered the Al-Manakh market, claiming that Kuwait's economy needed them and that this was more important than studying and attending lectures. See also A. Al-Najar, *supra* no. 32, p. 92.

³⁸ See F. Al-Zumai, *supra* no. 10, p. 67.

³⁹ See Y. Sarkho, 'Algoyod alwareda ala tadawol alas'hom wa azmat soq alawraq almaliya', *supra* no. 32, p. 87.

⁴⁰ See F. Al-Zumai, *supra* no. 10, p. 66.

explanations of the advantages of investment in shares before he succeeded in finalising the transaction and registering the sale or purchase transaction in official records, which was prepared principally for selling and buying real estate.⁴¹ Brokers also had a significant role in trading in the market, as they provided false information to urge traders to buy shares.⁴² They also exploited the principle of trust by conducting purchase operations for shares for their own personal accounts.⁴³ This was a conflict of interest between the broker and client.

As mentioned earlier, the shares of a number of companies were traded even before the companies initiated any activity, which was a violation of the provision of the law that bans trading prior to the company's posting of three profitable financials. This indicates that trading involved speculation in shares without any basis of what underlay the shares and their profits. The volume of trading among individuals was significant—for example, the volume of trading among 208 persons amounted to 25 billion KWD.⁴⁴ In this regard, an example could be that a company offered its shares for trading without prior submission of its memorandum of association, despite the lapse of eight years for

⁴¹ Contrary to Section 328 of the Kuwaiti commercial law, the stock exchange operations are valid only if conducted by brokers 'whose names are registered in a list issued by the KSE committee'. In addition, contrary to Section 18 of Ministerial Decree No. 6 of 1976 that regulates the trading of securities, 'trading in securities under supervision of the Securities Committee is confined to brokers and their assistants who obtained a valid licence from the Ministry of Commerce and Industry'. See Y. Sarkho, 'Algoyod alwareda ala tadawol alas'hom wa azmat soq alawraq almaliya', supra no. 32, p. 39.

⁴² See Y. Sarkho, 'Algoyod alwareda ala tadawol alas'hom wa azmat soq alawraq almaliya', supra no. 32, p. 89. See also T. Alshimmary, 'Altanthen alganony lesog alkuwait lel awrag almaliya', supra no. 15, p. 63.

⁴³ See Y. Sarkho, 'Algoyod alwareda ala tadawol alas'hom wa azmat soq alawraq almaliya', supra no. 32, p. 89. See also T. Alshimmary, 'Altanthen alganony lesog alkuwait lel awrag almaliya', supra no. 15, p. 63.

⁴⁴ See Y. Sarkho, 'Algoyod alwareda ala tadawol alas'hom wa azmat soq alawraq almaliya', supra no. 32 p. 87.

claiming its incorporation. Instead, it sufficed for this company to present certificates from official authorities in Antilles, Paris and Panama, which also included correspondence relating to the intention of incorporation of the company. These certificates were provided to falsely convince traders of the legal position of the company. In reality, this company possessed neither the specifications agreed upon with the subscribers nor the information declared regarding its incorporation.⁴⁵

In the Al-Manakh market, there was a case related to individuals who filed against a company (X), requesting an award of \$6,160,050 or its equivalent in Kuwaiti Dinar and legal interests of 7%, effective from the date of receiving complete payment on 15 April 1982. According to these individuals, the fictitious company announced on the Al-Manakh market in the beginning of 1982 that it intended to incorporate a Kuwaiti joint stock company under the name S investment company, and that it was ready to sell shares to potential shareholders. Due to their confidence in the market, the claimants expressed their desire to hold shares in the company, which announced its incorporation at a capitalisation of \$5 million. On 14 April 1982, the claimants received a letter from the company that urged them to deposit this amount into an account with Burgan Bank under No. 7/1422, plus a sum of \$50,000 to cover incorporation expenses, no later than 15 April 1982. As these individuals wished to contribute an additional amount of \$1 million, they transferred a sum of \$6,060,000 from their account with the Bank of Kuwait and the Middle East to the account of the defendant. On the same date, a cheque was issued to the defendant company from their account with the Bank of Kuwait and the Middle East worth 39,037,500 KWD (equivalent to \$150,000) as an additional contribution under their name to the new company.

⁴⁵ See *Kuwaiti Cassation Court* (verdict no. 331 of 1990) Commercial.

After waiting for a long time for this company to complete its incorporation procedures, the investors found—upon checking with the Ministry of Commerce and Industry—that there was no trace of this company and that the defendant company had invested its funds and the funds of its remaining shareholders into its own account. In other words, this company was a fictitious one that conned people into investing money. Therefore, the company had breached its obligations towards the claimants and it was accountable for the damages sustained as a result of depriving benefit from these funds for a period exceeding seven years.⁴⁶

Gulf companies also traded over 80% of their capital in the market.⁴⁷ Closed shareholding companies did not invest their funds to fulfil the objectives for which they were incorporated. Rather, they invested them in the purchase of shares of other companies for the purpose of speculation.⁴⁸ This confirms that the founders of the companies were not serious about laying down the objectives of their companies at the time of incorporation. Instead, they were incorporated solely for investment by share speculation. This indicates that these were fictitious companies incorporated for the purpose of bringing in the funds of investors and exploiting them by speculating in shares.

Dr Y. Sarkho likened the Al-Manakh crisis to the South Sea Company crisis, the details of which are discussed in Chapter 2.⁴⁹ He argued that this was the first lesson for the

⁴⁶ See *Kuwait Cassation Court* (verdict no. 111 of 1992) Commercial.

⁴⁷ See Jassem Al-Sa'doon, cited in F. Al-Zumai, *supra* no. 10, p. 165.

⁴⁸ See Y. Sarkho, 'Algoyod alwareda ala tadawol alas'hom wa azmat soq alawraq almaliya', *supra* no. 32, p. 88.

⁴⁹ See Y. Sarkho, 'Algoyod alwareda ala tadawol alas'hom wa azmat soq alawraq almaliya', *supra* no. 32, p. 89. See also T. Alshimmary, *Alwaseet fe derasat ganon Alsharekat Altejariya alkuwaiti wa ta'delateh*, *supra* no. 26, p. 441-442.

English nation in the field of securities markets. Similarly, the Al-Manakh crisis is considered the first harsh lesson for the Kuwaiti society in this field.⁵⁰

The trading system that was followed in the Al-Manakh market was based on negotiations between the buyer and seller, without recourse or reference to laws and regulations. Furthermore, fictitious trades were rather likely to appear when there were no real trades. For example, some people would sell shares to a relative, while at the same time buying the same share from that person and then reselling the same share to yet another person; these fake trades had the effect of causing an increase in share prices, thereby influencing other traders to buy. In this process, the buyer would resell a share to the same person he bought it from on the same day, at a higher or lower price according to their agreement.⁵¹ Unfortunately, these fictitious trades caused a bubbling of fake prices in the market; this practise is considered manipulation in many other qualified and developed markets.

In view of the foregoing discussion, these buying and selling activities in the Al-Manakh market were termed 'future transactions', which occurred without strict economic criteria governing commercial contracts and transactions. Traders bought shares with cheques that were post-dated by approximately three to six months.⁵² The principle of confidence controlled the financial dealings in this market. Commercial banks at the time approved these transactions indirectly by personal lending or holding

⁵⁰ See Y. Sarkho, 'Algoyod alwareda ala tadawol alas'hom wa azmat soq alawraq almaliya', supra no. 32, p. 441-442.

⁵¹ See J. Mohamad, *Alazmat ALegtesadiya fe aswag almal aldwllya wa mda tatherha ala soq alawrag almaliya (Economic crisis in the global financial markets and its impacts on stock markets)*, (Dar alnahtha alarabiya 2000) p. 80.

⁵² See Y. Sarkho, 'Algoyod alwarida Ala tadawol alas'hom wa azmat Soq alawrag almaliya', supra no. 32, p. 89.

post-dated cheques used to buy shares on the Al-Manakh market. Therefore, personal lending constituted a larger proportion of banking transactions than did deposit accounts.⁵³

The absence of liquidity with most dealers in the market implies that settlements and set-offs were implemented through negotiable post-dated bank cheques. Here, a high-risk future sales contract market (futures) was activated unofficially and was one of the major reasons behind the Al-Manakh crisis, since the entire market was based on post-dated cheques; for example, the total sales of shares on the spot was 207,000,000 and the total sale of futures was 274,000,000 shares.⁵⁴ These contracts helped to recycle capital in the Al-Manakh market.⁵⁵

A drop in the prices of shares created some risks in future transactions and this was evident from the non-compliance of some speculators when faced with payment of the transaction value upon maturity date. As has been noted, the majority of investors rushed to cash their post-dated cheques.⁵⁶ Moreover, the share prices fell as a result of the large amount of supply. Most investors attempted to sell their shares to cover their cheques. Therefore, they were forced to repurchase the principal amount due to the absence of sufficient liquidity to repay their obligations to the banks. Consequently, a number of traders in the stock exchange stopped repaying their liabilities. This occurred with the overlapping of transactions and claims among a large number of traders in this market and was one of the reasons for the financial crisis. Further, the selling of

⁵³ See *ibid*, p. 89

⁵⁴ See F. Al-Zumai, *supra* no. 10, p. 68.

⁵⁵ See Y. Sarkho, 'Algyod alwarida Ala tadawol alas'hom wa azmat Soq alawrag almaliya', *supra* no. 32, p. 89.

⁵⁶ See F. Al-Zumai, *supra* no. 10, p. 68.

corporate shares on credit was one of the causes of the crisis in securities in 1982, known locally as the 'Soq Al-Manakh crisis'.⁵⁷

The Al-Manakh crisis is considered the worst Arab financial crisis in the region, as the Al-Manakh market was considered the back door for trading in securities. This independent market had become parallel to an official market at that time, without being under the formal control of any authority or ministry. It enabled some individuals to amass tremendous capital. Therefore, trading increased, stock prices became inflated and debts accumulated for small and large traders. Many traders defaulted on repayment of their debts and the Al-Manakh market subsequently collapsed.⁵⁸ Some people valued the losses at approximately 26.7 billion KWD in 1982, involving 6,031 investors.⁵⁹

1.2. The period after the year 1982

The Al-Manakh crisis was basically caused by trading in the unofficial Al-Manakh market. Although there was an official market at that time, most traders traded on the Manakh market. This happened in response to the legal gap discussed earlier, since the two types of companies that were incorporated at the time were not governed by rules or laws and therefore remained unlisted in the official market. Therefore, open joint stock companies were incorporated in Gulf countries to evade the Kuwaiti law governing Kuwaiti corporations. They began trading in the shares of these corporations in the Al-Manakh market and benefitted from speculation. Furthermore, closed-subscription joint

⁵⁷ See *Kuwait Cassation Court* (verdict no. 106 of 1993) Commercial.

⁵⁸ See S. Hassan, *Gathaya egtesadya mo'asera: alaswag almaliya*, (Cairo, Dar Al Fikr Al Arabi 2001) p. 276.

⁵⁹ It should be mentioned that 94% of the debt was a result of 308 investors. See N. Abumustafa, *supra* no. 11, p. 137. See also F. Darwiche, *The Gulf Stock Exchange Crash: The Rise and Fall of the Souq AL-Manakh*, (Croom Helm Ltd, 1986).

stock companies, which did not require the passing of a decree for their incorporation, were incorporated so that they could trade shares in the Al-Manakh market like the Gulf companies.

Kuwaiti stock prices and volumes in the official market were impacted by a recession trend in the second half of 1982 that continued into 1983, in real estate companies and banks.⁶⁰

Perhaps one of the positive results of the Al-Manakh crisis of 1982 was that it provided the first important lesson for the stock exchange. Kuwaiti legislators passed a decree on 14 August 1983 to establish the new official KSE (1983 Decree), and the stock exchange's code was passed on 12 November 1983. The legislators also gave the KSE an independent judicial entity with the competence and capacity to dispose of property and funds.⁶¹ The most important step towards solving the problems created by the Al-Manakh crisis was the incorporation of the KCC in 1982 because it was created to match and verify individual financial accounts.⁶² KCC was incorporated as the central clearing, settlement and depository entity for the Kuwaiti securities market, particularly for the period succeeding the Al-Manakh crisis. It provided clearing, settlement and depository services to all securities traded in the KSE. In fact, the KCC was created before the KSE was established in 1983. In 1986, the KSE entrusted the KCC with all the clearing and settlement involved in the KSE. Therefore, the KCC was responsible for all the clearing and settlements traded in the KSE and of all other securities. This kind of company placed trading security under the control of a qualified body, with the

⁶⁰ See Kuwait Industrial Bank, *Kuwaiti Economy Progress in 20 years (1974-1994)*, p. 78.

⁶¹ See Section 1 of the KSE 1983 Decree.

⁶² See the official KCC website: <<http://www.maqasa.com/contactusres.asp>> Last accessed on 13 December 2012. See also N. AbuMustafa, *supra* no. 11, p. 138.

goal of preventing a repeat of the Al-Manakh crisis.

The crisis of future trading in shares required prompt intervention through the passing of several consecutive laws designed to control the crisis and regulate the settlement of dues among parties. For example, there was intervention from Kuwaiti legislation in the form of passing the ‘Kuwaiti law of transacting joint stock shares and securities and their trading, No. 42 of 1984’. This was done to protect the national economy and for the settlement of the overlap among dealers.⁶³ This law was the first step in establishing a legal and official stock exchange with special stock exchange brokers and in accordance with new listing rules. This helped to create a new legal atmosphere of trading that was far removed from previous manipulative practises.

The question that arises here is whether there is a chance that the Al-Manakh crisis is repeated. The answer depends on the perspective from which one views the causes of the crisis. If the availability of an official market is considered, the problem should be solved by passing the 1983 Decree and the incorporation of the official KSE, which is governed by various rules and regulations. Moreover, the shares of all listed companies can be traded in the KSE in addition to the Gulf companies because they introduced a non-Kuwaiti sector which includes the share of GCC companies to be traded in the

⁶³ The first section of this law stipulates that the provisions of Section 109 of Law No. 15 of 1960, stated above, are applicable to joint stock companies formed before the enforcement of this law. The transactions conducted in the shares of these companies before the enforcement of these provisions in violation of the provisions of the first paragraph of Section 106 or Section 109 of Law No. 15 of 1960 are considered valid. Furthermore, the second section of the same law stipulates that the provisions of the first section of Law No. 32 in 1970 do not apply to companies whose securities were traded in Kuwait prior to the enforcement of this law. The trading in these securities prior to the enforcement of this law is considered valid.

KSE.⁶⁴ This would enable keeping the trading under the control of the KSE through the KCC.

On the other hand, if fake companies or those practicing heavy speculation are considered causes of the crisis, it is possible that the crisis is repeated, particularly if the traders have not learnt a lesson from the Al-Manakh crisis. Since these practises have not been specifically targeted by the 1983 Decree, the decree has not regulated market abuse practises in a direct manner. However, the creation of fake companies can be avoided by following the listing rules of the KSE that are applied by the KSE Commission. Irrespective of the cause, to avoid another crisis, traders should be aware of any practises that may negatively affect the market and drive it to a downfall.

One may argue about the role of the merchant class in the Al-Manakh crisis. Jassem Alsa'doon⁶⁵ has clearly declared that the merchant class was involved in the Al-Manakh crisis, as this market attracted them to establish these 'paper companies'.⁶⁶ Moreover, the legislature and government are known to have been trading in the Souk al-Manakh market. This fact might be a reason for the delay in government inference and enforcement of regulations.⁶⁷ This opinion might have a great chance to be a valid one; however, it would imply that the financial market in Kuwait is governed solely by the interest of this class of society. The involvement of the government in the Al-Manakh Crisis would explain the legal gap observed in the above-mentioned practises. However, the collapse had a negative impact on all the parties involved in the market and the

⁶⁴ The KSE includes around nine sectors—banks, investments, real estate, industry, services, foods, investment funds and non-Kuwaiti sectors.

⁶⁵ Jassem Al-Sa'doon is a Kuwaiti economist and the chairman of AlShall Investment Company. See the Alshall website < <http://www.alshall.com> > Last accessed 18th August 2013.

⁶⁶ See Jassem Al-Sa'doon, *supra* no. 7, p. 76.

⁶⁷ See *ibid*.

Kuwaiti society and drove the legislature to pass a decree for the establishment of the new official KSE.

2. *The Kuwait Stock Exchange and its General Trading System*

As already described, the 1983 Decree was passed for regulating the KSE in response to the Al-Manakh crisis and to control the trading process through a regulated official legal framework that was under the state's supervision and control. Accordingly, the 1983 Decree was passed for incorporating the KSE and its code.⁶⁸ This law granted KSE an independent artificial personality and the capacity to transact and administer its funds and litigation rights, thereby enabling it to administer its operations. Further, the provisions of the law would permit the KSE to achieve the objective of its incorporation in an optimal manner, under the framework of the laws and regulations related to the stock exchange's operations.⁶⁹ In this situation, it should be clarified that Law No. 7 of 2010 replaced the 1983 Decree and, simultaneously, Section 154 states that the KSE is licenced. Therefore, this section reviews the general trading conditions and trading rules that provide clear information of the trading atmosphere in the KSE, which may help address the issue of market manipulation in the following chapters.

On the other hand, the 1983 Decree established the significance of the stock exchange, which was based on its activity in rationalising securities and its taking all the required measures within the scope of its authority to develop and stabilise dealing in securities; the goal of these functions was to ensure the safety and accuracy of transactions. The overall aim was to avoid the occurrence of any disturbance in transactions.⁷⁰ The

⁶⁸ The code is used to indicate the implementation regulation or bylaw.

⁶⁹ See Section 1 of the code.

⁷⁰ See Section 2 of the code.

objective of the stock exchange was to undertake research and studies, as well as to follow up the movement of transactions in securities by presenting opinions and advice to relevant government authorities in connection with the financial statuses of member companies in the market.⁷¹ Accordingly, the conditions of trading securities in the KSE and the controls put in place to prevent tampering in the stock exchange are investigated in the next section.

2.1. The Trading Conditions

Regardless of the fact that Law No. 7 of 2010 has cancelled the 1983 Decree of the establishment of the KSE and the new company Law No. 25 of 2012 has cancelled Law No. 15 of 1960, the trading conditions are regulated under commercial Law No. 68 of 1980. In other words, the trading conditions are the same and have not changed after the issuance of Law No. 7 of 2010.

Accordingly, Chapter 6 of the commercial law provides regulations for the general trading conditions in Kuwait. It can be concluded that trading securities in Kuwait requires a licenced stock market and licenced broker.⁷² Moreover, Section 4 of the 1983 Decree regulating the KSE provided the following stipulation:

‘Dealing in securities listed in the Stock Exchange and accepted for negotiation therein shall be made in accordance with the conditions and rules determined by the Stock Exchange Committee. The transactions of such securities shall be made at the Stock

⁷¹ See Section 3 of the code. See also the official website of the KSE <<http://www.kuwaitse.com/PORTAL/A/KSE/About.aspx>> Last accessed on 26 April 2012.

⁷² See sections 324 and 328 of the commercial law. See also T. Al-Shimmary, *Alwaset fe Derasat Ganon Alsharekat Altejarya Alkuwaity wa ta'delath*, supra no. 26, p. 332. See also T. Al-Shimmary, ‘Altanthen alganony lesog alkuwait lel awrag almaliya’, supra no. 15.

Exchange Floor through any middleman (stock-broker) who is registered at the Stock Exchange . . . ,⁷³

This section illustrates the conditions that are stipulated in the commercial law. In addition, it stipulates the condition for listed securities. Accordingly, trading of securities must take place in a licenced market through a licenced broker and these securities should be listed on the stock market. In addition, Section 79 of the code of Law No. 7 of 2010 has the same condition and it states that the stock market should regulate listed securities in the market. Therefore, the next section explains the three conditions necessary for trading securities: licenced market, licenced broker and listed securities.

2.2. *Licenced stock market*

As mentioned above, Section 324 of Law No. 68 of 1980 stipulates that no stock exchange may be created or opened unless with a licence from the concerned minister (Minister of Commerce and Industry). Each market that is opened without a licence would be closed by the ministry.⁷⁴ However, regrettably, two unofficial markets that had appeared in Kuwait—the Al-Manakh and Jet markets—were not closed and their presence was one of the reasons for the occurrence of the stock exchange crisis in 1982. Both markets were closed after the incorporation of the KSE in 1984.⁷⁵

The licenced KSE was established after the passing of the 1983 Decree regulating the

⁷³ Copied from the English version of the 1983 Decree and corrected by the researcher.

⁷⁴ See Section 324 of Law No. 68 of 1980.

⁷⁵ See T. Al-Shimmary, *Alwaseet fe derasat ganon alsharekat altejarya alkuwaiti wa ta'delateh*, supra no. 26, p. 339. The decree was passed in 1983, but the official incorporation of the KSE was in 1984.

KSE;⁷⁶ the KSE is located in the capital of Kuwait, in the Sharq area, opposite the Al-Manakh market. The KSE law recognised its artificial personality. The stock exchange is managed by the Securities Committee, which is considered the highest body in the stock exchange, in addition to the manager and a number of specialised technical bodies (i.e. the rates follow-up body; post-sale control body; information gathering, analysing and publishing board; and the investigations board). An arbitration committee was also created at the KSE for decision-making purposes and included a disciplinary committee and an appeal disciplinary council.⁷⁷

2.2.1. *Licenced brokers*

Section 328 of Law No. 68 of 1980 stipulates that Stock Exchange activities can be conducted only by one of the brokers whose names appear on a list issued by the Stock Exchange Committee. On the contrary, in the Al-Manakh market, real estate brokers were taking place at that time. In addition, according to Section 18 of Ministerial Decree No. 61 of 1971, which deals with regulating the trading of securities, trading must be conducted by brokers and their assistants holding a valid licence from the Ministry of Commerce and Industry. The brokers are responsible for all acts of their assistants and the associated effects. Accordingly, the validity of trading in shares at the stock exchange by a licenced broker is conditional upon the buyer and seller not dealing directly with each other.⁷⁸

It is noteworthy that a brokerage is a contract whereby the broker undertakes, for a

⁷⁶ Chapter 3 of Law No. 7 of 2010 regulates the new KSE that will be discussed in Chapter 5 of this thesis.

⁷⁷ See Sections 37, 46, 54 and 61 of the code. See also T. Al-Shimmary, *Alwaseet fe derasat ganon alsharekat altejarya alkuwaiti wa ta'delateh*, supra no. 26, p. 338.

⁷⁸ See T. Al-Shimmary, 'Altanthen alganony lesog alkuwait lel awrag almaliya', supra no. 15, p. 61.

person searching for a second party, to conclude a certain contract and mediate to conclude it for a fee.⁷⁹ Accordingly, the brokers undertake brokerage operations in the stock selling and purchase operations against a certain commission specified by the Securities Committee, which is usually a certain percentage of the value of purchased shares.⁸⁰

Pursuant to the above, brokerage operations in the KSE are confined to brokerage companies authorised to undertake brokerage activities.⁸¹ Brokers have a number of liabilities upon undertaking brokerage tasks, including compliance with the provisions of the decree that regulate the KSE and the code, as well as all regulations passed by the KSE. The broker may not conclude transactions on his own account unless through another broker and must refrain from any act which may imply or contribute to a finding of fake transactions that do not lead to a real transfer of the papers of the transaction.⁸² This prohibition achieves two significant goals: avoiding conflict of interest and protecting the KSE against tampering in connection with fake operations and the creation of fake transactions devised to drive other traders to purchase or sell.

In addition, Section 17 of Ministerial Decree No. 10 of 1971 prohibits brokers from tampering with prices and posting false or misleading information. Furthermore, Section 23 of the same decree permits the Minister of Commerce and Industry to withdraw the licence of any broker who tampers with prices or circulates rumours or misleading news regarding the prices of shares, or who fails to maintain commercial records or register

⁷⁹ See section 306 of Law No. 68 of 1980.

⁸⁰ See T. Al-Shimmary, 'Altanthen alganony lesog alkuwait lel awrag almaliya', supra no. 15, p. 62.

⁸¹ According to the latest update, there are 14 brokerage companies in the KSE. See the official website of the KSE <<http://www.kuwaitse.com/A/KSE/Broker.aspx>> last accessed on 16 August 2013.

⁸² See Section 25 of the code.

required data.⁸³

Moreover, although no explicit, clear provisions prohibiting market manipulation existed before 2010, Section 25 of the code stipulated the obligations of the brokers, including ‘abstention from any act which may arrange or contribute in finding false transactions that do not lead to a real transfer of the securities under the transaction . . .’ This section obliged the broker to abstain from any operations deemed to be fictitious dealings that do not lead to a change in the ownership of shares, but only create false trades to make others believe in the purchase or sale. These are forms of manipulation, as indicated in Chapter 2. However, this section did not stipulate a penalty for the broker; it is merely a recommendation or a direction.

2.2.2. Listed securities

To trade securities in the KSE, companies issuing such papers must be listed on the stock exchange and be accepted for trading therein by the Stock Exchange Committee. In this respect, Section 7 of the code⁸⁴ contains the following stipulation:

‘Dealing in securities shall be confined to the following:

- a. Stocks of Kuwaiti joint stock companies (open subscription Kuwaiti shareholding companies) which are members of the Stock Exchange, duly offering their shares for public subscription:
- b. Stocks of closed Kuwaiti joint stock companies whose membership is accepted by the Stock Exchange Committee.
- c. Stocks of non-Kuwaiti joint stock companies whose shares are licenced by the

⁸³ See T. Al-Shimmary, ‘Altanthem alganony lesog alkuwait lel awrag almaliya’, supra no. 15, p. 63.

⁸⁴ See the code of the 1983 Decree pertaining to the issuance of shares in the KSE.

Stock Exchange Committee to be dealt in at the Stock Exchange.

- d. Debentures accepted for dealing by the Stock Exchange Committee.
- e. Any other Kuwaiti or non-Kuwaiti securities licenced by the Stock Exchange Committee to be dealt in'.⁸⁵

Based on this section, stocks that can be traded on the KSE are basically the stocks of Kuwaiti joint stock companies with open subscription. This implies that all open subscription companies that are already licenced do not necessarily need to be accepted by the KSE Committee. On the other hand, incorporated Kuwaiti companies with closed subscriptions can be traded on the KSE after their acceptance by the KSE Committee with respect to their regularly changed conditions. In addition to Kuwaiti companies, stocks of non-Kuwaiti joint companies, debentures, or any other securities (Kuwaiti or non-Kuwaiti) can be traded on the KSE, again after acceptance of conditions by the KSE Committee.

A long procedure is followed for the incorporation of open joint stock companies or corporations. They first need to obtain a licence from the Ministry of Commerce after presenting the company's proposal to the ministry. The ministry will refuse if the proposal contains aspects that are contrary to Kuwaiti law or culture or if the proposal has weak economic feasibility.⁸⁶ Therefore, the Ministry of Commerce may refuse the licence for legal or economic reasons. For example, if the company's project breaches general laws, such as trading in liquor, the ministry may refuse the company's licence

⁸⁵ Quoted from the English version of the code.

⁸⁶ See Section 1 of Law No. 31 of 1990 that regulates the trading in securities and creation of investment funds. See also Sections 71–74 of Law No. 5 of 1960.

request.⁸⁷ Furthermore, approval from the Central Bank of Kuwait must be obtained prior to issuing licences for these companies, a process that is subject to the control of the Central Bank if these companies operate in the banking, insurance, or financial investment sectors.⁸⁸

It should be mentioned that after the incorporation of an open-subscription joint stock company, another condition exists for trading its shares on the KSE that is unrelated to listing the company in the market. This condition is imposed by the KSE Committee and is usually related to the company's realisation of a certain profit. The condition changes on a regular basis, but usually profitable financial statements of three years are required. This aims to provide traders with more protection by ensuring that they are trading with qualified companies that are far removed from fake companies, such as those associated with the Al-Manakh market.

The administrative authority that undertakes the task of registering companies on the KSE, as per the applicable laws and regulations, is the Stock Exchange Committee. A company that wishes to have its shares offered for trading on the KSE is required to submit an application to the Stock Exchange Committee to list the company on the stock exchange, along with all the documents, data and information requested by the stock exchange management.⁸⁹ These requirements are usually concerned with the

⁸⁷ See T. Al-Shimmary, *Alwaseet fe derasat ganon alsharekat altejarya alkuwaiti wa ta'delateh*, supra no. 26, p. 271.

⁸⁸ See Section 4 of Law No. 31 of 1990. A joint stock company is a company in which persons subscribe to negotiable shares and are not liable for the company's liabilities unless by the amount of the face value of the shares they subscribed in. Further, joint stock companies are of two types: public and closed. For more details on joint stock companies, see Chapter 4 of the Kuwaiti companies law. See also T. Al-Shimmary, *Alwaseet fe derasat ganon alsharekat altejarya alkuwaiti wa ta'delateh*, supra no. 26, p. 333.

⁸⁹ See Section 10 of the code.

amount of the company's capital; for example, a minimum capital may be required. This may imply that the committee remains aware to list more effective or powerful companies. In addition, the committee takes into consideration the financial status of the company, its significance for the national economy, the extent of its progress in achieving its objectives and its profitability.⁹⁰ In fact, the condition of the amount of the companies capital is not fixed as it is usually changed by the committee.

Finally, the fact remains that companies listed on the KSE belong to more than one sector (banks, investment, insurance, real estate, industry, services, foods, investment funds and non-Kuwaiti sectors) and there are presently a total of 225 companies listed on the KSE.⁹¹

2.3. *Trading rules*

The first requirement of trading on the KSE is that the trader opens an account with the KCC.⁹² This company was founded in 1982 as a first step to resolving the Al-Manakh crisis, as it is the body that organises set-ups, settlements and deposits for the KSE.⁹³ As a second step, the client selects a brokerage company according to his preference, and this company would obtain the brokerage commission for the client's trades on the KSE.⁹⁴

Among the underestimated factors that have driven many to market manipulation is the

⁹⁰ See Section 12 of the code.

⁹¹ This was the last division before the application of the new trading system (May 2012) available at <<http://www.kuwaitse.com/PORTAL/A/Stock/Companies.aspx>> last accessed on 29 April 2012.

⁹² See the official website of the KCC <<http://www.maqasa.com>> last accessed on 26 April 2012. See also the KSE website <<http://www.kuwaitse.com/KSE/Trading.aspx>> last accessed on 16 August 2013.

⁹³ Chapter 4 of Law No. 7 of 2010 has regulated the Clearing Company.

⁹⁴ For the list of the brokerage companies in the KSE see <<http://www.kuwaitse.com/KSE/Broker.aspx>> Last accessed 16 August 2013.

non-stipulation that the seller of shares should also be the owner of the shares. There is nothing preventing the trader from placing a sales order for a share when, in fact, he does not own it. This scheme is not short selling, it is just that the KSE system does not require owning the share to sell or having cash to buy. The broker must hand over the share certificate to the clearing company no later than 11:00 a.m. on the day following the conclusion of the transaction.⁹⁵ This indicates that it is not necessary for the trader to be the owner of the shares when he places the sales order. This creates a false and misleading impression of trading operations. In addition, the share purchase order may be placed when the required sum of money is not available in the account. The payment of the amount is required to be made no later than 11:00 a.m. on the day following the conclusion of the transaction.⁹⁶ This also facilitates manipulation operations.

As a result of the Al-Manakh crisis, the daily price change limits system has been followed in the KSE. This system was implemented to control the price changes in the KSE from collapsing after the heavy speculation in the Al-Manakh market.⁹⁷ Changes in the prices of shares and the minimum limit for selling are regulated as shown in the following table:

⁹⁵ See the KSE website < <http://www.kuwaitse.com/PORTAL/KSE/Trading.aspx> > last accessed on 29 April 2012.

⁹⁶ See *ibid.*

⁹⁷ See Kabir M. Hassan et al., 'Stock Market Efficiency in the Gulf Cooperation Council Countries (GCC): The case of Kuwait Stock Exchange', (2003) 1 Scientific Journal of Administrative Development, p. 7. See also Kirt C. Butter and S. J. Malaikah, 'Efficiency and inefficiency in thinly traded stock markets: Kuwait and Saudi Arabia', (1992) 16 Journal of Banking and Finance, p. 199.

Share price (fils)	Minimum quantity of shares that should be purchased	Each unit for daily movements It can go upward/ downward by 5 units daily
From 1 to 50	80,000 shares	0.5 fils
From 51 to 100	40,000 shares	1 fils
From 102 to 250	20,000 shares	2 fils
From 255 to 500	10,000 shares	5 fils
From 510 to 1000	5,000 shares	10 fils
From 1020 to 2500	2,500 shares	20 fils
From 2520 to 5000	1,000 shares	20 fils
From 5050 to 9900	500 shares	50 fils

(Table 2) The daily price change limits system⁹⁸

The shares were divided into groups, as shown in the first column (ranging from a division of 1–50 fils to 5,050–9,900 fils).⁹⁹ Each division of shares has a certain measuring unit for the upward and downward movement of the share. In addition, the share can go upward or downward only by five units per day. For example, if the share that is priced at 51 fils moves by 5 units every day, the value of each movement can be only 1 fils. This implies that this share would only attain a price of 56 fils on that day.

That is, the share price can move only five units upward or downward per day. The problem with this units system is possibly that the increase and decrease of share prices does not occur in equal proportion for all shares. Some shares can increase by approximately 20% a day and others by only 2%.¹⁰⁰ This discrepancy led the National Investment Company to recommend the determination of a certain percentage for daily increases and decreases in all shares, a system that would replace that of units.¹⁰¹

⁹⁸ See the KSE website <<http://www.kuwaitse.com/PORTAL/A/KSE/Trading.aspx>> last accessed on 29 April 2012.

⁹⁹ 1 Kuwaiti Dinar (KD) comprises 1000 fils.

¹⁰⁰ See National Investment Company, 'Tagrer Hawl Ada soq alKuwait lelawraq almaliya khelall aam 2008 (Kuwait Stock Exchange performance report for 2008) p. 8.

¹⁰¹ See National Investment Company Report, supra no. 100, p. 8.

Further, units will not always reflect the supply and demand situation. Since the maximum price is limited, this will keep the price from reflecting the available information or the latest announcement or disclosure to a certain extent. Thus, the prices will still fail to reflect the real prices that would be governed by an open market without limits. Unfortunately, this system is still used in the KSE and was not cancelled even after the issuance of Law No. 7 of 2010, an aspect which will be discussed in the next chapter.

On the other hand, the second column of the table shows the minimum limit for each division that must be bought. Each division has a minimum amount established for the quantity of shares that can be purchased. This indicates the minimum amount of cash required to enter the KSE. Thus, there was a stipulation for the minimum number of shares that could be bought in the KSE. Usually, traders used to need a minimum cash of approximately 2500–3000 KWD to enter the KSE and buy shares;¹⁰² they were not permitted to buy any quantity of shares they wished. This rule was created to ensure the seriousness of traders and their financial solvency.

It must be noted that this rule was cancelled after the issuance of Law No. 7 of 2010 and the restriction of purchasing a certain minimum quantity of shares was omitted; now anyone can enter the KSE and buy even just one share. However, the units rule continues to exist.¹⁰³ In fact, this system was replaced with a new system, called X-stream, which has been applied since 13 May 2012; the minimum purchase limit was

¹⁰² As at that time, before the 2008 crisis, the share prices were approximately over 100 fils. For example, see the historical data of the KSE <<http://www.kuwaitse.com/A/History/QuotesHistory.aspx>> last accessed on 20 April 2013.

¹⁰³ For more details on the new trading units, see the website <<http://www.kuwaitse.com/KSE/Trading.aspx>> last accessed on 16 August 2013.

eliminated in this new system.¹⁰⁴ Thus, traders can now buy only one share of such company.

Summary

This chapter illustrates that self regulation in an unlicensed market had driven the Al-Manakh market to be replete with fictitious companies conceived by traders to conduct fictitious transactions and spread rumours. As a result of these unregulated practises, a severe crisis occurred in 1982 in the very early days of Kuwaiti financial history. As a result of this crisis, the 1983 Decree was passed to regulate the incorporation of the KSE in 1983. It became one of the first markets in the Gulf region¹⁰⁵ and represents one of the most important stock exchanges in the Arab context.¹⁰⁶ However, this decree failed to clarify and regulate market manipulation practises. A review of the rules followed by the KSE revealed that these rules were very tolerant to manipulative practises since the 1983 Decree did not have any specific regulation to tackle market manipulation. In this sense, Chapter 3 discusses the applicability of the general rules of Civil and Criminal Law to tackling manipulative practises; however, the next chapter will address the concept of manipulation that would help achieve this objective.

¹⁰⁴ For the difference between the old and the new trading systems, see the KSE website <http://www.kse.com.kw/Portal/Report/Gap%20analysis%20KATS&X-stream%20for%20public%2011April2012_Arabic.pdf> last accessed on 3 July 2013.

¹⁰⁵ The Saudi stock exchange was established in 1984; the Bahraini stock exchange, in 1987; the Oman stock exchange, in 1988; the Qatar Stock Exchange, in 1995; and the Dubai stock exchange, in 2000. See Union of Investment Companies, *Aham alborsat, (The most important stock exchanges in the world)*, (1st ed., Kuwait 2008). See also the finance map of the world <<http://finance.mapsofworld.com/stock-market/kuwait-stock-exchange.html>> last accessed 2 July 2013.

¹⁰⁶ The KSE financial crises occurred in 1997 and 2006. For more details, see N. AbuMustafa, *supra* no. 11, p. 137.

Chapter Two: Market Manipulation Definition and Forms

Introduction

The term market manipulation has been described as ‘a term of art’ by the US Supreme Court.¹ This indicates how difficult it is to define the term with one complete definition. As the word manipulation has variable meanings,² it may be expanded to include many practises or, on the contrary, be summarised into a few activities, as is discussed in this chapter. In addition, market manipulation also manifests in different forms or types of behaviour and this may make the job of defining the term even more difficult, as will be shown in this chapter.

With regard to the KSE, the term ‘market manipulation’ includes several controversial concepts as investors display numerous abusive behaviours.³ In addition, there are a variety of possible meanings of the term ‘manipulation’. Furthermore, the term has barely been addressed in Kuwaiti literature. Therefore, it is necessary to determine the definition of market manipulation to clearly identify its meaning and differentiate it

¹ See *Santa Fe Industries, Inc v Green* (1977) 430 US 462, 477.

² According to the Oxford English Dictionary, the word ‘manipulation’ comes from the verb ‘manipulate’, which means (1) *to handle skilfully*, (2) *control or influence in a clever or underhand way*. However, these definitions do not provide a clear indication of the breadth of the term. The first definition indicates skilful behaviour. The second definition gives the impression that manipulation is wrong or bad behaviour, thereby signalling malicious intent and skill in influencing others. However, these definitions are general; therefore, the term needs to be defined in the context of manipulating the financial market. See Oxford English Dictionary.

³ See previously Section 1 of the introduction chapter as there are no previous studies on market manipulation in the KSE; thus, the definition of manipulation is not clear in Kuwaiti literature.

from other phrases. It is essential to clarify the definition of market manipulation and the type of practises that are included in this term in the process of evaluating how well Kuwait's regulatory system encompasses these practises and revealing the areas that the Kuwaiti law is deficient in. Therefore, this chapter tackles the first objective of the thesis.

Several attempts have been made to define the term market manipulation in the jurisprudential and judicial contexts. These attempts are not satisfactory and are reviewed in the chapter. On the other hand, this absence of a satisfactory definition of market manipulation enhances the importance of discovering manipulative forms, thereby enabling the development of a clear concept of the term market manipulation.

Therefore, this chapter is divided into three sections. Firstly, the definition of market manipulation in the jurisprudential and judicial contexts is explored to identify the common elements among the definitions. Secondly, the forms of manipulative practises are identified and explained. Thirdly, the need for prohibiting market manipulation is discussed as well.

1. The Definition of Market Manipulation

In order to understand the definition of market manipulation, it may be helpful initially to clarify the concept of an efficient market. The theory of an efficient market was developed by Eugene Fama in the 1960s.⁴ According to the Efficient Market

⁴ See Sebastian Harder, 'The Efficient Market Hypothesis and its Application to Stock Markets', (2008) GRIN Verlag Research paper. See also Ronald Gilson and Reinier Kraaman, 'The Mechanism of Market Efficiency Twenty Years Later: The Hindsight Bias', in Armour and McCahery (eds.) *After Enron: Improving Corporate Law and Modernising Securities Regulation in Europe and the US* (Hart, Oxford 2006) p. 33.

Hypothesis, share prices reflect all the relevant information in a financial market.⁵ Therefore, it is essential to analyse the relationship between security prices and the available information in the market. However, it is first important to clarify the prices of securities and how they are determined as a first step towards understanding the concept of market manipulation.

The prices of securities are primarily determined by supply and demand. Therefore, if the supply of a security is high, then the price of the security will decrease. In contrast, if the demand for a security is high, then the price of the security will increase. Therefore, the supply and demand of securities are indicative of what investors believe to be shares in the stock market that are worth paying a particular price for or the price at which they are prepared to sell the securities.⁶ In this sense, investors' decisions regarding what shares to buy or sell are made on the basis of the only known information on such shares. However, in practise, these rules are not as simple as this because another factor that affects the price is what causes the supply and demand to be high. That is, available information on a security affects investors' beliefs regarding the price of a security.⁷ Accordingly, efficient information is important because it affects investors' opinions regarding trade. Thus, information should be perfect or complete.⁸ Therefore, this theory is related to information available in the market that affects share prices. The market can be said to be efficient when the stock prices reflect the relevant information on the share. In this case, market efficiency has three levels. The first is

⁵ See Eugene Fama, 'Efficient Capital Markets: A review of Theory and Empirical Work', (1970) 25 Journal of Finance, p. 383. See also Sebastian Harder, *supra* no.4. See Also Paul Barnes, *Stock Market Efficiency, Insider Dealing and Market Abuse*, (Gower 2009) p. 4.

⁶ See Paul Barnes, *Stock Market Efficiency, Insider Dealing and Market Abuse*, (Gower 2009) p. 130.

⁷ See *ibid*, p. 3.

⁸ See *ibid*, p. 7.

weak efficiency, which is when prices reflect all past historical information. The second is semi-strong efficiency, which is when prices reflect the past and new public information. The third is strong efficiency, which is when prices reflect hidden or insider information.⁹

Therefore, according to this concept, market manipulation depends to a large extent on false or misleading information, as is clearly explained in subsequent sections. Manipulation affects the quality of information available in the market. Accordingly, it distorts the supply and demand in the market since the information is not efficient or accurate. Thus, market manipulation leads to inefficient information, which in turn leads to inefficient pricing in the market.¹⁰ That is, market manipulation could harm market efficiency. Thus, the question that arises at this stage is what is market manipulation?

To define the term market manipulation, it is essential to differentiate between market manipulation and market abuse. In fact, these two terms is usually erroneously been used interchangeably by academia.¹¹ In addition, some legislation failed to use the term ‘market manipulation’ and instead used the term ‘market abuse’; for example, the FMSA 2000 Act does not use the term market manipulation.¹² On the contrary, section 9 of SEA 1934 has used the term. Moreover, legislations generally refer to market manipulation practises instead of using the term market manipulation.¹³ Thus, it is important to differentiate between these two terms.

⁹ See Eugene Fama, *supra* no. 5, p. 383. See Ronald Gilson and Reinier Kraaman, *supra* no. 4, p. 55.

¹⁰ See E. Avgouleas, *The Mechanics and Regulation of Market Abuse: a Legal and economic analysis*, (1st ed., Oxford 2005) p. 212.

¹¹ See Paul Barnes, *supra* no.6, p. 147.

¹² The FSMA 2000 uses the term ‘market abuse’ as a whole and has not specified the term ‘market manipulation’; this is discussed briefly under section 1 of chapter 4 of the thesis.

¹³ See E. Avgouleas, *supra* no. 10, p. 105.

Market abuse is an offence towards investors in the financial market.¹⁴ Therefore, it is ‘a general term to describe actions by investors that unfairly take advantage of other investors’.¹⁵ Therefore, it is considered an offence in the market and legislation determines its practices.¹⁶ In general, market abuse takes the form of market manipulation and insider dealing.¹⁷ Insider dealing may be defined as using or seeking to use inside information (i.e. information that is not available to the public) at the interest or advantage of an inside dealer.¹⁸ As mentioned earlier, this thesis does not address insider dealing; the focus is on market manipulation. Market manipulation can be defined as influencing other traders to trade according to the manipulator’s interest.¹⁹

¹⁴ Financial markets are places where people trade financial assets—such as securities, commodities and currencies—at prices that reflect current supply and demand. Therefore, a financial market is both a place in which people who want to buy and sell certain assets may communicate and a place that regulates prices according to the principles of supply and demand. The financial market itself is divided into different markets. These include futures markets, commodities markets, currencies markets and stock markets. This thesis does not discuss these classifications of financial markets in-depth, but rather will focus on the specific securities market of the KSE. See George J. Stigler and Robert A. Sherwin, ‘The Extent of the Market’, (1985) 28 *Journal of Law and Economics*, p. 555. See also Ruben Lee, *What is an Exchange? The Automation, Management, and Regulation of Financial Markets*, (Oxford 1998). See also Franklin Allen and Douglas Gale, *Comparing Financial Systems*, (MIT Press 2000) p. 3. See also Mohamad Farooq Abdulrasol, *AlHemaya aljena’eya lelawrag almaliya: Criminal protection for the financial market: comparative study*, (Dar Aljamea aljadida 2007) p. 3-5.

¹⁵ See Paul Barnes, *supra* no. 6, p. 9.

¹⁶ See Barry Rider et al., *Market abuse and insider dealing*, (2nd ed., Tottel Publishing Ltd 2009) p. 71. See also Edward J Swan and John Virgo, *Market Abuse Regulation*, (2nd ed., Oxford University Press 2010) p. 35.

¹⁷ See FSMA 2000 and the EU Market Abuse Directive.

¹⁸ ‘FSMA market abuse regime: a review of the sunset clauses A consultation’ (2008) HM TREASURY p. 5. See also Morgan Lewis, ‘A summary of the financial services authority’s (market abuse regime) in the United Kingdom’, (2006) available at:

< <http://www.morganlewis.com/pubs/Market%20Enforcement.pdf> > Last accessed on 30 June 2012. See also Utpal Bhattacharya and Hazem Daouk, ‘The world price of insider trading’, (2002) 57 *The Journal of Finance*, p. 75.

¹⁹ See Section 5 of this chapter.

In summary, market abuse is an offence, controlled by regulations, which may include market manipulation and insider dealing. Hence, market abuse and market manipulation are different terms. Although they are occasionally used interchangeably, market abuse is a much broader term that includes any offence towards the market, whereas market manipulation has a more narrow definition that only includes the manipulative practises that will be discussed in the following section.

In terms of defining the term market manipulation, it should be declared first that the term ‘market manipulation’ by itself is unclear. However, judicial and jurisprudential bodies have suggested definitions for the term ‘manipulation’, although these are still not very satisfactory.²⁰ The legal definitions are not considered in this section because both the FSMA 2000 and SEA 1934 as well as the EC Market Abuse Directive have not defined market manipulation.²¹ Their approaches may be divided into two categories. The first is to attempt to determine the core of the concept of market manipulation. The second is to give examples of manipulative forms or practises.²² In fact, different forms of manipulation may have different cores or concepts, and it may be difficult to include all the manipulative forms in the definition that is based on the core. A discussion of the different forms in the next section will help explain this concept. The next section presents various attempts of defining market manipulation.

²⁰ See Wendy C. Perdue, ‘Manipulation of future markets: redefining the offense’, (1987) 56 Fordham Law Review, p. 347. From the cases, for example, see *Cargil Inc. v. Hardin* (1971) 452 F. 2d 1154; *Volkart Bros. v. Freeman* (1962) 311 F. 2d.

²¹ These are the important legislations that the researcher considered in this thesis.

²² See Eva Lomnicka, ‘Preventing and controlling the manipulation of financial markets towards a definition of market manipulation’, (2001) 8 Journal of Financial Crime, p. 298.

1.1. Judicial approach

Judicial bodies have made many attempts to define manipulation in financial markets. In fact, market manipulation has been described as ‘virtually a term of art’ by the US Supreme Court.²³ This description suggests that it is difficult to provide a clear definition of the term because it is a variable concept that differs in every practise.

According to Avgouleas, one of the classical definitions was used in the US case of *Cargil Inc v Hardin*.²⁴ It was stated that manipulation is the result of ‘conduct that has been intentionally engaged in which has resulted in a price which does not reflect basic forces of supply and demand’. This definition indicates that manipulation is not based on supply and demand or supply and demand principles cannot be manipulated. In addition, ‘manipulation of prices by means not reflecting basic supply and demand factors creates conditions that prevent the futures market from performing its basic economic function, and hence diminishes its utility to those members of the trade and general public who rely on its basic purposes’. In this context, manipulation is conduct that is not related to the basics of supply and demand that influences the price of a financial asset.²⁵ This form of manipulation requires a real intent to change the security price according to the manipulator’s needs and interests, thereby suggesting that the price of the security does not reflect the principle of supply and demand.²⁶ This

²³ See *Santa Fe Industries, Inc v Green* (1977) 430 US 462, 477.

²⁴ See *Cargil, Inc. v. Hardin* (1971) 452 F. 2d 1154. See also E. Avgouleas, supra no. 10, p. 105.

²⁵ For a more critical view of the case, see Frank E Easterbook, ‘Monopoly, Manipulation and the regulation of futures markets’, (1986) 59 The Journal of Business, p. S119.

²⁶ In other words, prices are ‘set by the justified judgment of buyer and sellers, market manipulation violates the integrity of the market because it alters the independent trading and pricing mechanisms of the market. See Michael J Watson, Q.C., ‘The Regulation of Capital Markets: Market Manipulation and Insider Dealing’, British Columbia, Canada. P. 15, Available at:

< http://www.icclr.law.ubc.ca/Publications/Reports/wats_pap.pdf > Last accessed on 30 June 2013.

definition may be helpful in explaining the aim of manipulation, but not depending on the term itself.

Another influential definition of the term ‘manipulation’ was given in the case of *General Food Corp. v. Brannan*. Here, it was suggested that manipulation is ‘the creation of an artificial price by planned action, whether by one man or a group of men’.²⁷ Although this definition is very simple, the concept of an artificial price remains undefined and unclear.²⁸ Moreover, a description of the term ‘planned actions’ is absent and it is not clear whether these actions are legal or illegal. This implies that the term manipulation is not yet well defined, since it is not clear whether it is important to determine these actions according to law or sufficient for manipulators to create artificial prices to be defined as manipulation.

Another definition for the term ‘manipulation’ arose in the case of *Santa Fe Industries, Inc v Green*.²⁹ In this case, manipulation referred generally to ‘practises, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity’.³⁰ This definition mentions the issue of misleading and this may be a good step towards defining manipulation. However, ‘misleading’ practises remain unclear and unidentified. Moreover, this definition narrows market manipulation to misleading other investors and away from manipulating prices. However, the aim is not to mislead others, but rather to benefit from price differences

²⁷ See *General Foods Corp. v. Brannan* (1948) 170 F.2d 220, 231.

²⁸ See Wendy Perdue, *supra* no. 20, p. 347.

²⁹ See *Santa Fe Industries, Inc v Green* (1977) 430 US 462, 477.

³⁰ See Rutherford B Campbell, ‘Santa Fe Industries, Inc. v. Green: An analysis two years later’, (1979) 30 Maine Law Review, p. 189. For more details on matched orders, wash sales, or rigged prices, see Daniel R. Fischel and David J. Ross, ‘Should the law prohibit ‘Manipulation’ in Financial Markets?’, (1991) 105 Harvard Law Review p. 504.

that have been caused by misleading people. However, this definition is incomplete because the term ‘artificially affecting’ is not defined and the difference between artificial and real is questionable in this case. Consequently, the next section reviews the jurisprudential approach.

1.2. Jurisprudential approach

Within academia, several attempts have been made to define manipulation. One definition is ‘conduct intended to induce people to trade a security or force its price to an artificial level’.³¹ This represents another use of the term ‘artificial level’ and thus this term remains undefined. Another possible definition of market manipulation is ‘...where someone seeks to distort the price of financial instruments, or effect transactions or orders to trade or disseminate information in a manner that gives or is likely to give false or misleading signals about financial instruments’.³² This definition is more applicable, as it provides three ways in which market manipulation occurs, rather than just providing a general definition. However, this definition is a more complete review of market manipulation practises. Based on the above definitions, it can be concluded that the term ‘market manipulation’ is difficult to define³³ and both approaches have failed to provide a clear definition. However, the approach that focuses on manipulative forms may be more practical, rather than attempting to identify the core of market manipulation, because manipulative behaviour itself has different forms or practises, with each form having its own core and concept. In this regard, regulations

³¹ See Steve Thel, ‘The original conception of section 10(b) of the Securities Exchange Act,’ (1990) 42 Stanford Law Review, p. 393.

³² See ‘FSMA market abuse regime: a review of the sunset clauses A consultation’, supra no. 18, p. 5.

³³ There are many definitions that have been proposed for ‘market manipulation’ and these are overlapping. Therefore, the definitions mentioned above have been the main focus because they have been included in most literature and share the major elements of the term ‘market manipulation’.

must define market manipulation by specifying its various forms. Therefore, 'manipulation' is a flexible term and, as such, differs according to regulations.

As a result of the failure of many courts and commentators to define the term 'manipulation' satisfactorily, Avgouleas has offered a definition comprising the main elements of the missing parts in the above-mentioned definitions, with some additional elements intended to help the definition endure. According to Avgouleas, manipulation can be defined in the following manner:

'Behaviour effected through any one, or a combination of any of the following: misrepresentations and other false statements or concealments, artificial transactions and trading schemes, which are made or structured in such a way as to induce market participants to engage in the trading of financial investments or the exercise of rights in financial investments. Relevant trading must be in such a direction or the exercise of rights must be effected in such a way as to either lead the price of these investments to an artificial level, and/or enable the perpetrators of the behaviour to materialise, from interests held in the specific or related investments, financial gains that would not be possible, in the absence of such behaviour'.³⁴

This definition is much more organised than the previous definitions and includes the important elements of manipulation, such as manipulative practises, intent, direction of the practises and manipulation measurements. This definition also states that manipulative practises may be combined or performed individually and that other

³⁴ See E. Avgouleas, *supra* no. 10, p. 116.

traders may be influenced to trade by false impressions created through ‘false statements or concealments, artificial transactions and trade-based manipulation’. These practises may reveal artificial prices in the interest of the manipulator. In this particular definition, the measurement indicates that the manipulator will not benefit unless these practises are undertaken. Although this definition is satisfactory to a certain extent, several elements are undefined, such as ‘artificial transactions’ and ‘artificial level’. Thus, although this attempt at defining market manipulation is better than previous attempts, it is still incomplete.

1.3. Concluding Definition of Market Manipulation

It is evident that the definitions provided in the preceding section share common elements. According to Fischel and Ross, the conduct would be considered manipulation if it is related to the following elements: (1) Interfering with the free process of supply and demand, (2) inducing others to trade, or (3) forcing the price of a security to an artificial level.³⁵ These three elements might be stretched into two elements, as interfering with supply and demand would simultaneously induce others to trade in addition to creating an artificial price. Accordingly, it is useful to consider each of the following remaining elements separately: (1) Creating artificial prices and (2) the intent of inducing others to trade.

1.3.1. Creating artificial prices

Creating artificial prices is one of the most common elements taken into account when defining manipulation as it is considered to be at the core of manipulation, which is evident from the previously mentioned definitions. However, the term ‘artificial prices’

³⁵ See also D. Fischel and D. Ross, *supra* no. 30, p. 507.

has not been clearly defined and there is no clear division between artificial and non-artificial prices.³⁶ What is of significance here is not whether the causes of artificial prices are derived from false information, rumours or artificial transactions, but rather that these prices have an impact on the ‘markets’ information efficiency’.³⁷ Accordingly, the difference between artificial and non-artificial prices should be clarified. To that end, the International Organisation of Securities Commissions (IOSCO) defined artificial prices as ‘the divergence of price from legitimate force of supply and demand’. However, this clarification may be unsatisfactory because manipulation itself is accomplished through supply and demand. This implies that manipulation creates artificial prices as well. Thus, the distinction between artificial and non-artificial prices is difficult and may be unavoidable. One possible way to clarify this distinction might be by associating the creation of artificial prices with the bad intent of influencing others.

1.3.2. The intent of inducing others trades to trade

Manipulation should be defined ‘with respect to the intent’.³⁸ As a consequence of manipulation, there is a strong need for adequate evidence of intent.³⁹ The intent of inducing others to trade is actually the distinction between ‘innocent’ manipulative practises and ‘guilty’ ones. However, finding evidence of intent can be difficult.⁴⁰ The need for sufficient evidence of intent is such that ‘...the manipulator intended to cause

³⁶ See Wendy Perdue, *supra* no. 20, p. 348. See also D. Fischel and D. Ross, *supra* no. 30, p. 507. See also E. Avgouleas, *supra* no. 10, p. 108.

³⁷ E. Avgouleas (2005) suggests that ‘econometric tests’ could be the best solution to prove the existence of artificial prices. See E. Avgouleas, *supra* no. 10, p. 108.

³⁸ See D. Fischel and D. Ross, *supra* no. 30, p. 506.

³⁹ See E. Avgouleas, *supra* no. 10, p. 111.

⁴⁰ For more details, see D. Fischel and D. Ross, *supra* no. 30, p. 507.

the relevant price effect or to induce market participants, by virtue of the resulting price (or the creation of misleading impressions by other means), to trade in the instruments affected by manipulative scheme'.⁴¹ With regard to this view, it is important to assess the effect of market manipulation on creating artificial prices in addition to proving the intent for such actions.

From the above-mentioned elements and considering the incomplete nature of the above definitions, it is evident that market manipulation is difficult to define. Thus, it can be concluded that it is difficult to have one complete definition for the term market manipulation. However, based on the discussions above and in the preceding section, it can be summarized that market manipulation definitions revolve around a central theme defined as 'a conduct with the intent to create an artificial price in order to influence other traders to trade or to benefit from price changing. Artificial prices in the case of market manipulation are the result prices from false information, fake orders, increasing or decreasing the price or artificial transactions'. This definition may contain all important and related aspects of market manipulation; however, it requires clarifications and explanation of manipulation forms.

Regardless of whether a precise definition is provided, the term will remain ambiguous unless regulations introduce a clear clarification of what is considered market manipulation with a thorough explanation. In addition, since market manipulation could have numerous different forms, its regulation will require defining market manipulation by prohibiting more forms of manipulation. Following this concept, the more forms the regulation will include, the more sufficient such regulation would be to protect the market. Hence, the next section discusses the common market manipulation forms.

⁴¹ See E. Avgouleas, *supra* no.10, p. 112.

2. *Forms of Market Manipulation*

Although there is no clear definition of the term ‘market manipulation’, there are some common practises that are believed to be manipulative because they contain commonly occurring elements. These forms are classified as manipulation by analysts and commentators. While addressing these forms, many classifications of market manipulation become evident.⁴² However, Avgouleas has created a clear division that includes many forms and practises and hence, this division has been followed in this section. He has divided market manipulation forms into three categories: (1) manipulation based on information, (2) manipulation based on artificial transactions and (3) price manipulation.⁴³ Each of these categories will be addressed separately.

2.1. *Information-based Manipulation*

The first category is called information-based manipulation and implies spreading false information using information channels, such as the Internet, text messages, email etc. This is important because information has a direct impact on the prices of securities and trading. One of the important elements used in determining stock prices is accurate information.⁴⁴ Therefore, when information is inaccurate, such as the spreading of rumours, it affects prices in a manipulative manner. Thus, manipulators spread rumours or false information to serve their own interests and to manipulate other investors.

⁴² See D. Fischel and D. Ross, *supra* no. 30, p. 507. See also, ‘Market Abuse part 1: Consultation on a Draft Code of Market Conduct’ (1998) paper 10 Financial Services Authority (Consultation paper) p. 10-17. See also ‘Technical Committee of the International Organization of Securities Commissions, ‘Investigating and prosecuting market manipulation’, (2000) 13 Hereinafter IOSCO Market Manipulation, p. 5.

⁴³ See E. Avgouleas, *supra* no. 10, p. 118.

⁴⁴ See AA Berle, ‘Liability for Stock Market Manipulation’ (1931) 31 Columbia Law Review, p. 268.

Information-based manipulation is generally based on news, recommendations or advice on a certain security, company or the market as whole, but this information is factually incorrect.⁴⁵ Such fake information will have a negative impact on the security's price and/or movement. However, if the information were correct, then it would affect the security in a legal manner and not a manipulative manner. Market manipulation that is based on information is generally conducted through the dissemination of false information or misrepresentation by others.⁴⁶ This form of market manipulation usually occurs through brokers, analysts, journalists or market rigging.

Indeed, disseminating false information is also called market rigging⁴⁷ and is based on circulating rumours as well as misleading information and news to affect the prices of securities.⁴⁸ For example, a rumour may be spread regarding a contract with high earnings regarding a specific company. This would encourage investors to buy shares in this specific company according to that false news of the contract; this would also increase the share price. This form of manipulation can take place in Internet chat rooms, blogs, newspapers or through text messages and other forms of media. It can be considered the easiest form of market manipulation as well as the first step towards other forms of market manipulation, such as artificial transactions or price manipulation.

Another possible form of information-based manipulation is broker misrepresentation; this is when a broker provides misleading advice regarding a security to benefit from the misinformation. In other words, the broker could be an issuer or have taken a stock

⁴⁵ See E. Avgouleas, *supra* no. 10, p. 119.

⁴⁶ See *ibid.*

⁴⁷ See *ibid.*, p. 121.

⁴⁸ See *ibid.*

option and may take this route to promote the price of securities.⁴⁹ In addition, if the broker owns shares, a conflict of interest will arise. In such cases, a broker advises his client to purchase a particular share and, before recommending it to others, collects this share for himself so that he can benefit from the increase in the price, which occurred specifically after his recommendation.

2.2. *Manipulation Based on Artificial Transactions*

The second form of market manipulation is an artificial transaction. Artificial transactions are based on fictitious trades.⁵⁰ As the name suggests, artificial transactions are not real and there are no actual changes in ownership of the security.⁵¹ This form is also called a wash sale, matched orders, or pools.⁵² In reality, matched orders are where an order to buy or sell a security is entered with the knowledge that there is a similar order of the amount, price, or time. In this case, the manipulator benefits from influencing others to trade by creating such fictitious trades.

In theory, all parties in the market agree that trading should represent an actual purchase and sale.⁵³ Hence, artificial transactions are viewed as real transactions. However, while these are real transactions, there is no actual change in the ownership of the security.

⁴⁹ See *ibid*, p. 119. See also The Ministry of Economic Development, 'Part II: What is meant by market manipulation and should it be regulated?' (2005) 2 Reform of securities trading law: Market manipulation law, available at:

< http://www.med.govt.nz/templates/MultipageDocumentPage_6861.aspx > Last accessed on 11 February 2010.

⁵⁰ See F. Al-Zumai, 'The Protection of Investors in Gulf Cooperation Council Stock Markets: A Case Study of Kuwait, Bahrain and the United Arab Emirates' (PhD dissertation, University of SOAS 2006) p. 229.

⁵¹ See *ibid*.

⁵² See *ibid*. See also Eva Lomnicka, *supra* no. 22, p. 298.

⁵³ See Berle, *supra* no. 44, p. 270.

Transactions may be conducted through one person or two persons under one agreement. Matched orders can be made when a person begins trading with a specific security; in other words, the buyer and the seller are the same. They begin buying and selling to give a false impression to other traders regarding the state of the security.⁵⁴ This matched-order technique should have the same number of shares at the same time and at the same price. The manipulator will benefit by inducing others to buy this security, which will in turn increase its price.⁵⁵ ‘Pools’ are the same as matched orders, but require more than one person to order.⁵⁶ The buyer(s) and seller(s) have an agreement to buy and sell to create a false impression. Thus, pool transactions influence others to trade by creating artificial transactions, and the manipulator may benefit from price changes as well. ‘Wash sales’ require one person to perform the same process of buying and selling a specific security. There is no change in the ownership of the security but, in this case, the manipulator benefits from the price difference rather than by creating a false impression.⁵⁷ In other words, wash sales are transactions that are similar to matched orders intended to create a false impression, but there would not be an actual change in the ownership of the shares. In addition, in wash sales, the manipulator benefits from the price changes of the security.⁵⁸ The requirement to disseminate information is highly apparent in this kind of manipulation, since rumours and misleading information are parallel with fictitious trades in the sense that rumours

⁵⁴ See ‘Regulation of stock market manipulation’, (1947) 56 The Yale Law Journal, p. 513. See also The Ministry of Economic Development, ‘Part II: What is meant by market manipulation and should it be regulated?’, supra no. 49, p. 5-6.

⁵⁵ See The Ministry of Economic Development, Part II: What is meant by market manipulation and should it be regulated? supra no. 49, p. 5.

⁵⁶ See *ibid.*

⁵⁷ See *ibid.*, p. 5-6.

⁵⁸ For more details see D. Fischel and D. Ross, supra no. 30, p. 504.

influence investors to trade under artificial circumstances.⁵⁹

2.3. Price Manipulation

Price manipulation is defined as manipulating the price of a security in the market. It usually takes place in the form of trade-based manipulation, contract-based manipulation or market-power manipulation.⁶⁰ These three forms are discussed separately.

2.3.1. Trade-based manipulation

This form of manipulation is related to the trading itself, whether it is buying or selling, and is done to push the price of a security up or down and create a false impression.⁶¹ This occurs because it is assumed that there is a link between trading and price movements, since purchases increase the price of a security and sales decrease the price.⁶² It is called trade-based manipulation because the manipulator's profit is derived from trades.⁶³ In this case, there is a great need to determine intent, since the intent of the manipulator should be to influence others by creating a misleading impression. Trade-based manipulation has different forms, such as trading at the end of the day, purchase-based manipulation and sale-based manipulation. Trading may be conducted in the last few minutes of the day to increase the reported price of a security in a special direction or to give a false impression that a certain security is in demand.⁶⁴ This

⁵⁹ See Eva Lomnicka, *supra* no. 22, p. 298.

⁶⁰ See E. Avgouleas, *supra* no. 10, p. 131-154.

⁶¹ See *ibid*, p. 132.

⁶² See D. Fischel and D. Ross, *supra* no. 30, p. 513.

⁶³ See *ibid*, p. 523. See also The Ministry of Economic Development, Part II: What is meant by market manipulation and should it be regulated?, *supra* no. 49, p. 6.

⁶⁴ See E. Avgouleas, *supra* no. 10, p. 137.

practise is usually performed to create an unreal closing price.⁶⁵ This form of manipulation aims to create false high prices in addition to creating a false impression of the share.

In this regard, Fischel states that last minute trades are ‘often alleged to be strong evidence of manipulation’ because trades at the end of the day are more likely to affect the closing price.⁶⁶ Trading at the end of the day is most likely to be defined as manipulation when it aims to influence other traders to purchase a security.⁶⁷ However, this kind of trading can be considered normal trading without any intention to manipulate others when the trader is innocent and really intends to purchase a security.⁶⁸

There are two other different forms of trade-based manipulation, namely purchase-based manipulation and sale-based manipulation; arguably, they are two faces of the same coin.⁶⁹ Purchase-based manipulation (which is also termed market pegging) is when a manipulator purchases a particular security to control the supply and, as a result, controls the price.⁷⁰ The aim of this scheme is to corner the market. It works particularly well when the manipulator has the ability to control such a security. Furthermore, manipulators benefit from this form when they sell the security after increasing the

⁶⁵ See D. Fischel and D. Ross, *supra* no. 30, p. 520.

⁶⁶ See *ibid.*

⁶⁷ See Michael J Watson, *supra* no. 26, p. 16.

⁶⁸ See E. Avgouleas, *supra* no. 10, p. 137. See also D. Fischel and D. Ross, *supra* no. 30, p. 520.

⁶⁹ See Guy Sears, ‘Market manipulation’, p. 77, available at:

<[http://www.bankofengland.co.uk/publications/Documents/fsr/1997/art9\(Issue%203\).pdf](http://www.bankofengland.co.uk/publications/Documents/fsr/1997/art9(Issue%203).pdf)> Last accessed on 30 June 2013.

⁷⁰ See Steve Thel, ‘Regulation of Manipulation, under Section 10(b): Securities prices and the text of the Securities Exchange Act of 1934’, (1988) 2 Columbia Business Law Review, p. 22. See also E. Avgouleas, *supra* no. 10, p. 140.

price.⁷¹

Sale-based manipulation is based on the idea of selling a security to decrease its price to benefit from this lower price and purchase it at its lower price. The aim of this scenario is to profit from the price difference because selling gives a negative impression of a certain security, which leads traders to sell at lower prices.⁷² The result is that the manipulator will buy the share at lower prices, collect a large quantity of shares, and subsequently benefit when the share price goes back up.

2.3.2. Contract-based manipulation

Contract-based manipulation is a form in which the manipulator profits indirectly from a security price through the other contract that is related to this security.⁷³ In other words, the trader would not aim to purchase a security at a low price or sell at a high price, but would rather benefit from the manipulative practise in terms of another contract or clause.⁷⁴ This may occur in a situation where a corporate officer increases the price of his firm's share to 'trigger a bonus clause in his compensation package based on the firm's stock price'.⁷⁵

2.3.3. Market power

Market power may also be identified as market control.⁷⁶ It refers to the ability of a person to control the supply and demand of a certain financial asset in the market. The

⁷¹ See E. Avgouleas, *supra* no. 10, p. 140.

⁷² See D. Fischel and D. Ross, *supra* no. 30, p. 521.

⁷³ See *ibid*, 523.

⁷⁴ See *ibid*.

⁷⁵ See *ibid*.

⁷⁶ See E. Avgouleas, *supra* no. 10, p. 147.

concept of this scheme is that the manipulator has the power to control a security and change the price according to individual interests.⁷⁷ In reality, this form may not necessarily be classified as a form of market manipulation as it could be a characteristic unique to the manipulator, rather than to other investors. Hence, the manipulator generally has the power to influence supply and demand as well as trades, which helps control the security price in the advantage of the manipulator.⁷⁸ Moreover, most forms of manipulation require the manipulator to have the power to control and manipulate the prices and market.

Based on the above-mentioned forms of manipulation, it can be concluded that market manipulation has different forms or practises and each form has its own concept or characteristic behaviour. However, they all revolve around the concept of controlling or creating the price of a security or share. In addition, it can be concluded that the main objective of market manipulation is to create a false impression of trading.⁷⁹ However, one question that may arise is how does the manipulator benefit from manipulation? The main objective of the manipulator is often to benefit either directly through price differences in transactions themselves or indirectly by influencing others to trade under false circumstances.⁸⁰ There is a unique way of making money from each type of manipulative conduct. For example, influencing other traders to trade a specific share by spreading rumours can help the manipulator sell shares at higher prices. Moreover,

⁷⁷ See Benjamin E. Kozinn, 'The Great Copper Caper: Is market manipulation really a problem in the wake of the Sumitomo debacle?', (2000) 69 Fordham Law Review, p. 256.

⁷⁸ For more information regarding market power and large traders, see Robert A Jarrow, 'Market manipulation, bubbles, corners and short squeezes', (1992) 27 Journal of Financial and Quantitative Analysis, p. 311.

⁷⁹ See F. Al-Zumai, *supra* no. 50, p. 221.

⁸⁰ See 'Technical Committee of the International Organization of Securities Commissions, 'Investigating and prosecuting market manipulation', *supra* no. 42, p. 6.

creating fictitious trades can influence other traders to trade as well. This case depends on whether the manipulator's aim is to either increase or decrease the price of the share. If the manipulator works to decrease the price, then the objective is to buy at lower prices; if the manipulator works to increase the price, then the objective is to profit from higher prices.⁸¹ In addition, last-minute trades are mainly to support a flagging price, which may affect the market index or portfolio valuation.⁸² In addition, manipulative conduct may be indulged in with the aim of influencing the price of shares to an underlying index or to persuade someone to buy or sell shares.⁸³ The following section argues the need of prohibiting market manipulation in a financial market.

3. *The need for Prohibiting Market Manipulation*

Questions that may arise in this regard are 'Should market manipulation be regulated or prohibited?' and 'Are market manipulation practises a normal practise that reflects the freedom of supply and demand?' In fact, there is a great degree of consensus on the importance of prohibiting market manipulation, which will be discussed in the following account.⁸⁴

According to Barnes, 'the price of a share is determined by supply and demand... Its price is... what an investor believes it is worth. A share price reflects all known information... of all investors'.⁸⁵ This concept briefly presents the concept of market efficiency, as has been clarified earlier in this chapter. Conversely, market manipulation

⁸¹ See *ibid.*

⁸² See The Ministry of Economic Development, Part II: What is meant by market manipulation and should it be regulated?, *supra* no. 49, p. 6.

⁸³ See *ibid.*, p. 5. See also F. Al-Zumai, *supra* no. 50, p. 221.

⁸⁴ See Eva Lomnicka, *supra* no. 22, p. 297.

⁸⁵ See Paul Barnes, *supra* no. 6, p. 4.

undermines this efficiency. For example, the supply and demand principle is hampered by the artificial transactions of market manipulation.⁸⁶ Furthermore, disseminating false information or circulating rumours conflicts with the act of providing information in an efficient and truthful manner. Hence, manipulators spread rumours that affect the price of the share according to their plan, which is often in opposition to the supply and demand rule. In other words, by reviewing forms of market manipulation, such as information-based manipulation, artificial transactions, and price manipulation, it can be assumed that market manipulation leads to the creation of false information, fictitious trades and fake prices. All these effects reduce market efficiency, as trading is not based on financial fundamentals.⁸⁷ Since all investors must have access to the same information and the same opportunity to obtain and analyse that information to make trading decisions, market manipulation can be considered harmful to fair market practises.⁸⁸ This is also contrary to the traders' right to have a healthy environment for trading with trustworthy information and documentation. Further, manipulation weakens traders' confidence in the market, thereby reducing liquidity and opportunities for big investments.⁸⁹ Manipulative practises can put the market at a higher risk for turmoil and collapse. This has a negative effect on the economy as a whole.⁹⁰ As mentioned earlier, stock markets mirror the state of a country's economy. Thus, manipulation will give a minority of people the power to govern the market and its

⁸⁶ See Guy Sears, *supra* no. 69, p. 74.

⁸⁷ For more information on market abuse and market efficiency, see Paul Barnes, *supra* no. 6, p. 3-15.

⁸⁸ See The Ministry of Economic Development, Part II, What is meant by market manipulation and should it be regulated?', *supra* no. 49, p. 3.

⁸⁹ See Eva Lomnicka, *supra* no. 22, p. 298.

⁹⁰ See Guy Sears, *supra* no. 69, p. 74.

prices at the expense of the majority.⁹¹

Based on these findings and to achieve functioning financial markets, market manipulation should be regulated because it conflicts with healthy market functions. Put simply, market manipulation requires the creation of false impressions, false trading activity and false price movement; these behaviours are incompatible with the efficient functioning of financial markets. Attaining higher transparency requires a healthy market with effective real prices and trades. In addition, information should always be as accurate as possible and unaffected by rumours. Conversely, manipulators often spread false information and create artificial trades, which ruin the effectiveness of a fair market.

Market manipulation is harmful to traders, particularly when traders are affected in their decisions by false information, rumours and artificial transactions; this has a negative effect on their trades. Moreover, manipulation harms the market because these manipulative practises reduce market efficiency and create artificial prices, thereby leading to financial bubbles that may collapse and create great economic losses for innocent parties. On the other hand, the more protection there is for investors through regulation, the stronger the markets will be.⁹² Therefore, regulations that prohibit market manipulation would help provide an efficient market with accurate information available for all investors.⁹³ In other words, in order to achieve a high level of efficiency, market manipulation and disclosure should be regulated as well. Although

⁹¹ See Robert A. Jarrow, *supra* no. 78, p. 311. See also Paul Barnes, 'Insider Dealing and Market Abuse: The UK's record on enforcement', (2011) 39 *International Journal of Law, Crime and Justice*, p. 147.

⁹² See John Armour et al, 'Shareholder protection and stock market development: an empirical test of the legal origins hypothesis', (2009) 6 *Journal of Empirical Legal Studies*, p. 343. See also Rafael La Porta et al, 'Law and Finance', (1998) 106 *Journal of Political Economy*, p. 1113.

⁹³ In addition, good disclosure requirements are also important for an efficient market.

disclosure is not discussed here, however, good disclosure would help tackling manipulative practises that are basically based on information. Hence, this would help with achieving market efficiency. Moreover, a true balance between supply and demand increases confidence in the market, which leads to greater protection for investors and, ultimately, to a stronger market.

Considering manipulation as being harmful will influence legislators to implement regulation to determine what legislation should primarily protect: the market as a whole or individuals. Protecting markets and achieving market confidence requires regulating market manipulation. However, protecting individuals may require giving them the freedom to buy and sell, which would clash with prohibiting market manipulation. This will create the same risk as in unregulated markets. Therefore, market manipulation should be regulated and prohibited, and trading systems should help to protect the market from manipulative practises.⁹⁴ In summary, all investors should be able to have 'equal access to information, confidence in the public setting mechanism, and confidence that the public information is not false or misleading'.⁹⁵ This may be achieved if market manipulation is regulated.

Summary

In this chapter, the concept of market manipulation has been discussed, and proved that market manipulation as a form of market abuse reduces market efficiency. Hence, to achieve a market that functions well, manipulative practises should be regulated and

⁹⁴ See The Ministry of Economic Development, Part II: What is meant by market manipulation and should it be regulated?, supra no. 49, p. 3.

⁹⁵ See *ibid*, p. 2.

prohibited. In addition, arguments of defining the concept of market manipulation have been presented. It was concluded that there is no single definition for the term market manipulation as there is no clear definition of the term 'manipulation'. Regardless of this aspect, market manipulation can be defined as 'a conduct with the intent to create an artificial price in order to influence other traders to trade or to benefit from price changing. Artificial prices in the case of market manipulation are the result of false information, fake orders, increasing or decreasing the price or artificial transactions'. In fact, these practises included in the definition are considered the common forms of manipulation; regulations must be aimed at defining and prohibiting these forms. Therefore, it is more practical to identify regulations and definitions of manipulation to ascertain what manipulative forms are regulated by law. In other words, regulations should be aimed at defining market manipulation by determining legitimate and illegitimate practises in the market. Hence, regulating a greater number of forms of manipulation would protect investors and the market as a whole from abusive practises. Thus, the concept of the term market manipulation defined in this chapter is extended to the next chapter by addressing the possibility of applying the general rules in Kuwaiti law on manipulative practises, particularly in the period before the implementation of Law No. 7 of 2010. In addition, this concept would help to address the 2008 financial crisis and ascertain whether manipulative practises existed at the time.

Chapter Three: Market Manipulation Regulation Prior to Law No. 7 of 2010

Introduction

Based on the definition of market manipulation and its common forms described in the previous chapter, this chapter focuses on the case of the KSE. This chapter attempts to identify whether there were any Kuwaiti rules that may have been applicable to combat market manipulation practises in Kuwait before the issuance of Law No. 7 of 2010 (manipulation was first clearly regulated under this law). Therefore, this chapter addresses the second objective of the thesis. It aims to address the applicability of Civil (tort law) and Criminal Law to market manipulation practises. Furthermore, this chapter also considers the 2008 Trust Crisis, as it was the result of the lack of securities regulations in the KSE and was the reason for issuing Law No. 7 of 2010. Before addressing the case in Kuwait, it may be useful to have an introductory section on the general theories of regulation, as this would help in evaluating the Kuwaiti regulation.

This chapter is divided into three parts. The first addresses the theories of regulation, and discusses the regulatory instruments and the objective of securities regulation. The second explores the civil and criminal approaches to regulating market manipulation in Kuwait and argues about the possible reasons for the delay in issuing a securities regulation. The third focuses on the 2008 Trust crisis and its problematic practises.

1. Theories of Economic Regulation

Financial markets may be considered one of the most important bodies in developed

countries¹ as they have a large impact in terms of influencing economic development.² They may be the most ‘vital economic institution’ of societies, which can be defined as places for the selling and buying of securities.³ As market manipulation harms the efficiency of these markets, there is no doubt of the need to prohibit manipulation in order to protect markets from such operations.⁴ This may explain why regulating financial markets as well as regulating market manipulation is important in order for markets to operate optimally,⁵ which is to say that regulation is essential in financial markets. For this reason, it is appropriate to discuss some of the general theories of regulation in addition to the regulatory instruments and its objectives.

A fundamental question to address is what is the meaning of regulation? Generally there are a number of approaches to defining regulation, or, rather, it can be said that regulation has been defined in different ways⁶, which basically means that it does not

¹ See Rebecca Soderstrom, ‘Regulating Market Manipulation: An Approach to Designing Regulatory Principles’, (2011) Uppsala Faculty of Law Working Paper, p. 5. Check <<http://uu.diva-portal.org/smash/get/diva2:398256/FULLTEXT01>> Last accessed on 4 August 2012. See also Joseph E. Stiglitz, ‘Financial markets and development’, (1989) 5 Oxford Review of Economic Policy, p. 56.

² See previously section 3 of Chapter 2 of the thesis. See also A Demircuc-Kunt et al, ‘Optimal Financial Structures and Development: The evolving importance of banks and markets’, (2011) available at <<http://siteresources.worldbank.org/INTFR/Resources/DemircucFeyenLevine060311.pdf>> Last accessed on 7 November 2012. See also Stanley Fischer, ‘The Importance of Financial Markets in Economic Growth’, (2003) available at < <http://www.piie.com/fischer/pdf/fischer081103.pdf> > Last accessed on 7 November 2012.

³ See James W. Williams, *Policing the Markets: Inside the Black Box of Securities Enforcement*, (1st ed., Routledge 2012) p. 19. See also Rebecca Soderstrom, *supra* no. 1, p. 5.

⁴ See previously section 3 of Chapter 2 of the thesis.

⁵ See Lawrence R. Klein, *Regulating Competition in Stock Markets*, (Wiley 2012).

⁶ Since the word regulation is being used for different situations, for instance for a ‘specific set of commands’ or ‘deliberate state influence’ or ‘social or economic influences’ or ‘facilitative behaviours’, for more details see Robert Baldwin et al, *Understanding Regulation: Theory, Strategy, and Practise*, (2nd ed., Oxford University Press 2012).

have a specific meaning.⁷ Roger Bowles states that ‘The term regulation covers a wide variety of legal (and other) machinery which is used to influence a wide variety of economic activity.’⁸ Hence, in this particular field of research, regulation should refer to government interference or ‘a device for influencing economic activity.’⁹ The only other thing that needs to be clarified in this context is that regulations that prohibit market manipulation fall under financial market regulation, which ultimately comes under economic regulation. Hence, economic regulation would mean government law.¹⁰

While addressing the concept of regulation, one would be led to question how and why does such regulation emerge? The answer to this question would help address the theory of regulation,¹¹ meaning the goal of such regulation explains the theory of regulation. In fact, Morgan and Yeung have argued that theories of regulation can be divided into private interest, public interest and institutionalist.¹² Regarding the field of this research (i.e., economic regulation),¹³ the most important theories that explain economic

⁷ This research is not interested in going too far with the term regulation, but for more details see R. Baldwin et al, supra no.6, p. 15. See also Bronwen Morgan and Karen Yeung, *An Introduction to Law and Regulation* (Cambridge 2007). See also Anthony I Ogus, *Regulation: Legal Form and Economic Theory*, (1st ed., Hart Publishing 2004).

⁸ See Roger Bowles, *Law and the Economy*, (1st ed., Oxford 1982) p. 164.

⁹ See *ibid*, p. 164. In this regard, Posner argues that regulation here falls between the choice of public control and ‘the administrative system of direct public control’ rather than between the free market and public regulation. See Richard A Posner, *Economic Analysis of Law*, (7th ed., Aspen Publishers 2007). p. 23.

¹⁰ In fact, regulation covers a wide range of industrial and non-industrial activities. Regarding this thesis, economic regulation is primarily focused on.

¹¹ See Morgan and Yeung, supra no. 7, p. 2.

¹² See *ibid*.

¹³ Avgouleas declares financial market regulation is a ‘species of economic regulation.’ See E. Avgouleas, p. 160. See also Rebecca Soderstrom, supra no. 1, p. 5, 24

regulation are public interest theory and public choice theory, or the theory of capture.¹⁴ Accordingly, Posner has divided the theories of economic regulation into public interest and capture.¹⁵ The next section will review such theories since they may help to identify the beneficiary of economic regulation, as well as the form and influence of such regulation.¹⁶

Consequently, while discussing market manipulation regulation (which is part of financial market regulation) and clarifying its context, it may be useful to first discuss economic regulation theories which help to develop tools used to achieve regulatory aims. The most important theories that explain economic regulation are ‘public interest theory’ and ‘the theory of capture’ (the latter is also known as ‘the public choice theory’).¹⁷

It should be mentioned that theories of regulation contain explanatory and prescriptive elements, which explain why such regulation emerges and what its goals are.¹⁸ Accordingly, the public interest theory may be viewed as a response to market failure and how regulation should increase the market welfare.¹⁹ In fact, the ‘public interest theory’ revolves around the idea that regulation is supplied according to ‘the demand of

¹⁴ See Emiliós Avgouleas, *The Mechanics and Regulation of Market Abuse: A Legal and Economic Analysis*, (1st ed., Oxford 2005) p. 159. See also Anthony I Ogus, *supra* no. 7, p. 3. See also R. Baldwin, *supra* no. 6, p. 40.

¹⁵ See also Richard A Posner, ‘Theories of Economic Regulation’, (1974) 5 *The Bell Journal of Economics and Management Science*, p. 335.

¹⁶ See George J. Stigler, ‘The Theory of Economic Regulation’, (1971) 2 *The Bell Journal of Economics and Management Science*, p. 3.

¹⁷ See Morgan and Yeung, *supra* no. 7, Chapter two.

¹⁸ See *ibid*, p. 17.

¹⁹ See *ibid*, p. 17-18.

the public for the correction of inefficient or inequitable market practises.’²⁰ In simpler terms, this theory is a response from the government to the public that tries to achieve the dual aims of looking after the welfare of the community as well as the market.²¹ It suggests that the correction of ‘market failures’ would assist economic welfare.²² The concept of this theory is to drive the legislature to design regulation at the level of public interest goals.²³ However, these goals differ according to place and time, and the fact that what is considered of interest in one society may not be so in another.²⁴ Regarding market failure, Ogus argues that the description of market failure includes monopoly, fraud, externalities and information asymmetries.²⁵ Hence, regulations would be designed by the public with the desire for economic welfare striving to prevent market failures.

On the other hand, the ‘capture theory’ is about the interest of a particular group.²⁶ This theory revolves around the idea that regulation is supplied according to the ‘demands of interest groups struggling among themselves to maximise the incomes of their members.’²⁷ Some scholars have extended the application of this theory into parliamentary and government regulation and called it the ‘public choice theory’ or the

²⁰ See Richard A Posner, ‘Theories of Economic Regulation’, supra no. 15, p. 335.

²¹ See Morgan and Yeung, supra no. 7, p. 18.

²² See *ibid*, p. 18. See also R. Baldwin, supra no. 6, p. 68.

²³ See Karen Yeung, *Securing Compliance: A Principled Approach*, (Hart Publishing 2004) p. 7.

²⁴ See Richard A Posner, ‘Theories of Economic Regulation’, supra no.15, p. 29.

²⁵ See Anthony I Ogus, supra no. 7, p. 30–46. See also Emiliios Avgouleas, ‘The Regulation of Fraud and Manipulation in Financial Markets and Its Reforms: A UK – EC Prescriptive’, (PhD Thesis, London School of Economics 1999), p. 110. See also Morgan and Yeung, supra no. 7, p. 18. See also Richard A Posner, ‘Theories of Economic Regulation’, supra no.15, p. 335.

²⁶ See Karen Yeung, supra no. 23, p. 7.

²⁷ See Richard A Posner, ‘Theories of Economic Regulation’, supra no. 15, p. 335. See also Anthony I Ogus, supra no. 7, p. 63.

‘economic theory of regulation.’²⁸ Hence, private groups demand regulation according to their private interests. It is not clear whether any of the aforementioned theories enjoy a clear advantage over another; however, economic welfare should be an important objective of any such regulation. The analytical approach adopted in this research explicitly involves the ‘public interest theory’ in an attempt to understand and analyse the regulation of market manipulation under Kuwaiti law.

As has been declared earlier, addressing regulation theory would help to identify which form of regulation will be taken and the objectives of such regulation. Consequently, to achieve these objectives, there are different regulatory instruments such as statutory standards, administrative rules and licencing.²⁹ All these forms can be used by the government, which maximises economic welfare and prohibits market manipulation as well.³⁰

Statutory standards forbid behaviours or activities and threaten monetary penalties or imprisonment for violators.³¹ In this sense, regulatory action would be taken only after the occurrence of a breach.³² For instance, market manipulation is forbidden and monetary penalties or imprisonment will be applied to those involved with a breach.³³

Administrative rules or regulations give narrower directions for activities. These rules

²⁸ See E. Avgouleas, *supra* no. 14, p. 111.

²⁹ See Ross F Cranston, ‘Reform Through Legislation: The Dimension of Legislative Technique’, (1979) 73 *Northwestern University Law Review*, p. 880.

³⁰ See E. Avgouleas, *supra* no. 14, p. 113.

³¹ See Ross F Cranston, *supra* no. 29, p. 881.

³² See E. Avgouleas, *supra* no. 14, p. 165.

³³ The next chapter will show these standards in the case of market manipulation in both the UK and Kuwaiti regulation.

can be used to punish, deter or educate.³⁴ In the case of financial regulation, the agency designed to enforce securities regulations would produce rules that help to enforce regulations.³⁵ The FSA Handbook as shown in the next chapters is an example of these rules;³⁶ in addition, the disclosure of interest is a technique for administrative regulation as well.³⁷

In addition, licencing is a prior regulatory procedure to obtain legal approval to practise such activity.³⁸ The concept is that the state has a wider view of such industry, which means it has better sight of the industry members.³⁹ In the economic field, the state would require having a licence for such activities. Hence, licencing would help prevent manipulation, particularly when it is required for financial authorities conducting financial practises.⁴⁰ This mixture of forms of regulation would achieve a better regulatory body for financial affairs, including market manipulation. The next section will discuss the objectives of the financial regulations which regulate market manipulation more precisely.

The objectives of financial market regulation include rules that govern the operation of securities, commodities and investment intermediaries, and that also prohibit market abuse in order to protect investors.⁴¹ The intent of financial market regulation is to

³⁴ See Robert Baldwin, *Rules and Government*, (1st ed., Oxford 1995), p. 7.

³⁵ See E. Avgouleas, *supra* no. 14, p. 165.

³⁶ See *ibid.*

³⁷ For more details on the three basic techniques of administrative rules, such as imposition of detailed standards or control of trade practises, see Ross F Cranston, *supra* no. 29, p. 887–899.

³⁸ See Anthony I Ogus, *supra* no. 7, p. 216.

³⁹ See E. Avgouleas, *supra* no. 14, p. 166.

⁴⁰ See *ibid.*, p.114. See also Anthony I Ogus, *supra* no. 7, p. 216. See also Ross F Cranston, *supra* no. 29, p. 899.

⁴¹ See E. Avgouleas, *supra* no.14, p.167.

achieve a high level of protection for investors. However, to achieve this protection it is essential to provide accurate and updated information in the market⁴² to ensure that markets are transparent and efficient. In other words, successful regulation achieves its essential purposes or goals.⁴³ Thus, the IOSCO has adopted three objectives of financial market regulations, which consist of (1) investor protection; (2) market efficiency and transparency; and (3) systemic strength.⁴⁴ These three objectives are somewhat related, since efficiency and transparency aspire to achieve the same ends as investor protection, and they also require a strong system.⁴⁵

IOSCO has stated clearly that ‘investors should be protected from misleading, manipulative or fraudulent practises, including insider trading...’⁴⁶ Arguably, investor protection may be the main objective of financial market regulation.⁴⁷ This means that investors should be protected from abusive practises such as misleading data, insider dealing or rumours. Accordingly, an aim of regulation is to make investors confident that they are equal, meaning no one will be able to take advantage of them. Furthermore, investors should be confident of the efficiency of a share price and that it reflects the information available in the market; this way investors can be confident that market abusers will be apprehended and punished.⁴⁸ These issues summarise the essential needs of investors towards the market in terms of their own protection. In turn,

⁴² See Bernard S Black, ‘The Legal and Institutional Preconditions for Strong Securities Markets’, (2001) 48 UCLA Law Review, p. 781.

⁴³ For more information on the regulatory goals see Karen Yeung, *supra* no. 23, p. 30. See also Anthony I Ogus, *supra* no. 7, p. 29.

⁴⁴ See IOSCO, ‘Objective and Principles of Securities Regulation’, May 2003.

⁴⁵ See *Ibid*, p. 5.

⁴⁶ See IOSCO, *supra* no. 44, p. 5.

⁴⁷ See E. Avgouleas, *supra* no.14, p. 167.

⁴⁸ See B. Black, *supra* no. 42, p. 781. See also IOSCO, *supra* no. 44, p. 5.

this drives the need for regulations to prohibit abusive practises, including market manipulation and insider dealing, in order to achieve a high level of protection for investors.

In addition to market abuse regulation, regulating the disclosure of information is also one of the essential keys to guaranteeing protection for investors. Disclosure of information should ensure that the available information is accurate and equally available to all investors. Therefore, regulating the disclosure of information will prevent investors from market abuse practises since investors will be assured that all information is authentic and up-to-date, and not the result of rumours from potential abusers.

Moreover, regulations should encourage the market to reach a high level of transparency and efficiency, and at the same time to detect abusive or manipulative practises. This should mean that investors have fair access to the market and to price information, which will lead to ensuring high levels of transparency.⁴⁹ Transparency requires that information regarding trading is clear and available to all investors.⁵⁰ In this case, information has three meanings: (1) information related to the issuer, (2) information regarding supply and demand in the market, (3) and a successful evaluation of the information previously mentioned in (1) and (2).⁵¹ This kind of information should be available to investors, and investors are equally liable to receive such information through timely and efficient dissemination. Consequently, the goal of any regulatory scheme should be to achieve efficiency.⁵²

⁴⁹ See IOSCO, *supra* no. 44, p. 6.

⁵⁰ See *ibid*, p. 6.

⁵¹ See E. Avgouleas, *supra* no. 14, p.168.

⁵² See Karen Yeung, *supra* no. 23, p. 31.

In addition to the above, regulations should seek to prevent market failure, which requires a strong system.⁵³ Although regulators cannot guarantee market strength or that markets will not fail, regulations should guarantee reducing the risk of failure.⁵⁴ Furthermore, regulations should reduce the effects of any market failure.⁵⁵ In terms of market manipulation, regulation of financial markets should aim to support their failure in order to build and maintain systemic markets.⁵⁶ That is to say, regulations should seek to stabilise and mitigate the risk of market failure and should follow these objectives. This would require a complete securities regulation to prohibit abusive practises and to regulate the disclosure of information.

From the above discussion, an important point was raised that could help with analysing the Kuwaiti regulation. That is to say, regulation is a tool that the country or government would use to achieve its collective goals and objectives; evaluating the Kuwaiti regulation would involve examining to what extent this law is effective in achieving these goals.

2. *Criminal and Civil Approaches*

In fact, it can be said, according to Chapter 1 of the thesis and the history of the Soq Al-Manakh crisis, that the 1983 decree came after a severe failure of the Kuwaiti economy. This decree can be explained in terms of public interest theory; hence, it may possibly indicate that this decree was a result of the public's needs vis-à-vis the financial market.

⁵³ See IOSCO, *supra* no. 44, p. 6–7.

⁵⁴ Market failure is an economic concept associated with difficulties that would result in market failures. For more information about the market failure, see Roger Bowles, *supra* no. 8, p. 165.

⁵⁵ See IOSCO, *supra* no. 44, p. 6.

⁵⁶ See IOSCO, 'Causes, Effects and Regulatory Implications and Financial and Economic Turbulence in Emerging Markets', Sept. 1998 available at: <http://www.sc.com.my/clients/sccomm/Links/ioscosept98.pdf> Last accessed on 3 March 2013.

This theory could be used to assess market failures by looking forward to market welfare in Kuwait, by establishing a new official market and producing a new decree. It has been concluded following the Soq Al-Manakh crisis that regulating the financial market in Kuwait is essential; the question then arises: how effective was this decree in stamping out market manipulation?

In Kuwait, market manipulation was first regulated under Law No. 7 of 2010 in a very direct manner, as will be discussed briefly in the next chapter. However, the question that may arise at this stage is with regard to the rules that governed market manipulation prior to the issuance of this law and, of course, after the establishment of the official KSE of 1983. Answering this question is somewhat difficult, since there are no clear or direct rules that prohibited market manipulation and no sections from the laws in these periods explain what was considered market manipulation at that time. Therefore, apart from the general rules of Civil and Criminal Law, this section considers the 1983 Decree and its code.⁵⁷

It is important to note that the legal department of the KSE acknowledged that no explicit legal rules existed to prevent manipulative practises and no legislative provisions existed to criminalise manipulation.⁵⁸ Therefore, there were no strict rules in place regarding market manipulation, although section 3 of the 1983 Decree related to the KSE of 1983 stated that,

⁵⁷ The issuance of a law by the Kuwaiti parliament is usually followed by the issuance of a regulation by the governmental body in charge of enforcing this law. These regulations are professionally known by the Arabic legal term (La'eha). In UK, the term code is used in the 'Code of Market Conduct'; therefore, the term code has been used to indicate a Kuwait regulation or bylaw.

⁵⁸ This view of the legal department was certainly before Law No. 7 of 2010. It was concluded in a conversation with the department when the researcher attempted to identify any rules or regulations regarding manipulation in that period; this was in December 2009.

‘The KSE holds the responsibility of regulating and controlling the financial market, emphasizing on the following:

1. Organizing and protecting trading securities.
2. Organizing the disclosure of interests and the financial reports.
3. Specifying the methods of dealing with securities in order to protect trading and traders . . .’⁵⁹

Unfortunately, this section is a kind of a general recommendation and it needs a regulation (code) to explain it and specify exactly what kind of protection is required for trading and traders.

In addition to this section, Section 1 of the KSE code defined the stock exchange objectives in the following manner:

‘The KSE shall, within its activity, act to direct and rationalise dealings in stocks and securities within the scope of its powers in order to develop and stabilise dealing in securities in a manner that is safe, easy and accurate transactions so as to avoid any confusion in dealings’.⁶⁰

In fact, it can clearly be shown from the aforementioned sections that the 1983 Decree has clearly mentioned its objectives. However, these two sections repeat each other. Although they have provided the stock exchange with an objective, they fail to clarify what might be considered to be confusion about dealing or about the nature of the developments and stabilisation that a stock exchange should achieve. In addition, these sections are not similar to the IOSCO objectives mentioned in the previous section.

⁵⁹ The section is copied from the English version of the code and revised by the researcher.

⁶⁰ See the code of the 1983 Decree.

Moreover, these objectives are just general recommendations as long as no regulatory tool was specified to achieve them.

These two sections were the only ones that dealt with manipulation in an indirect manner. However, the code has not used the term ‘manipulation’ or even explain manipulative practises, but simply mentions ‘confusion in dealing’, which is unclear and excessively general. In other words, the code lacks a clear definition of manipulation.

Another aspect that must be emphasized is that even if members of the KSE Committee discovered manipulative practises, they would not be allowed to arrest manipulators because they are civil rather than judicial employees. Therefore, this gap limits the effectiveness of the KSE Committee.⁶¹

Although no direct rules governing market manipulation were established by Kuwaiti law before 2010, it is necessary to discuss the application of the general rules regarding manipulative practises from the perspectives of both civil and criminal law regimes.

In this regard, it should be clarified that although Kuwaiti law did not regulate market manipulation, surprisingly, the other form of market abuse—insider dealing—was prohibited in Kuwait under Section 140 of the Kuwaiti companies law by stipulating that ‘a member of the board of directors may not exploit the information he has gained by virtue of his position to obtain a benefit for himself or others . . .’. Thus, this section

⁶¹ It was stated that the ‘Kuwait Stock Exchange is an administrative body and has no judicial power’. See *Kuwait Cassation Court* (verdict no. 272 of 2007) Administrative.

did not set a criminal penalty for the abuser.⁶² Furthermore, ‘disclosure of interests’ was regulated as well, when the Kuwaiti legislature passed Law No. 2 of 1999 in relation to the disclosure of interests in the shares of joint stock companies, even though this occurred long after the 1983 Decree that incorporated the stock exchange. Nevertheless, this regulation may help to limit tampering in the market to a certain extent, despite the non-implementation of this law, except recently in the case of Al Sager and Al Khurafi.⁶³ It can be clarified in this situation that regarding to Al Sager desire to apply the law to his case. Since these two are families belonging to the merchant class in Kuwait, as mentioned in Chapter 1, and because of their wealth and power they were able to take legal recourse. That is, the law was applied and enforced when they decided to do so, and this could be an example of the power and impact of the families. On the contrary, small investors in the KSE are not informed of the regulations that protect their rights.

2.1. Criminal Approach

Kuwaiti criminal law holds that the basic principle of criminalisation and punishment is ‘no crime or punishment without law’.⁶⁴ This implies that the criminalisation of an act or a punishment for it is not permitted as long as the law does not criminalise it. The law is what determines crimes. If the law does not criminalise behaviour in a direct manner,

⁶² For more information on insider dealing in Kuwaiti law, see A. Al-Melhem, *Hathr estgelal alma'lomat gher almo'olana alkhassa besharekat fe alta'amol belawrag almaliya (Insider Trading or Dealing): comparative study*, (1st ed., Majls Alnashr Alelmy Kuwait 1998).

⁶³ See *Kuwait Cassation Court* (verdict no. 272 of 2007) Administrative. For more details on the law, see A. Al-Melhem, ‘Ta’leq ala ganon no. 2 of 1999 fe sha’an ale’lan an almasalh fe as’hm sharekat almosahma fe tho alganon almogaren (Comment on Law No. 2 of 1999 in connection with disclosure of interests in joint stock companies' shares: comparative law)’, (2010) Year 26 Lawyer Journal (January–February–March) p. 85.

⁶⁴ See Section 1 of the Kuwaiti criminal law. Translated by the researcher.

it cannot be considered as criminal.

Following this concept, market manipulation should be regulated directly in criminal law to apply sanctions on the manipulator. In this regard, the researcher has questioned members in the legal department in the KSE in Dec 2009 with regard to the applicable rules or laws of market manipulation practises. The legal department of the KSE indicated the possibility of applying Section 231 of criminal law, which regulates the crime of ‘fraud’ to market manipulation practises.⁶⁵ According to Section 231, ‘Fraud is considered as deception when the doer intends to drive a person to commit an error or continue being in the error he committed, in order to drive him to hand over funds in his custody, and this has resulted in handing over the money by the doer to another person, whether fraud was by words, writing or signal. In addition to using deceptive means to make people believe in the existence of a non-existing incident or concealing its existence, or inducing hope for a false profit or finding a debenture which has no existence, or concealing an existing debenture, or transacting in funds for which the transacting party has no right to transact with, or taking a false name or impersonating an incorrect title is considered deception’.⁶⁶

As has been shown, this section regulates fraud without using the term ‘market manipulation’. However, applying this section to market manipulation practises could entail the view that the manipulator intended to manipulate other traders through fictitious orders, fictitious trades, or spreading rumours to mislead others and influence them to trade (buy/sell). Hence, market manipulation could be criminalized by applying the crime of fraud to its practises.

⁶⁵ The researcher visited the legal department in the KSE in December 2009 with the objective of identifying regulations on market manipulation in the KSE.

⁶⁶ Translated by the researcher.

In reality, this section could be useful to a certain extent. Fraud can be applied to some forms of market manipulation, such as fictitious trades or orders. Thus, applying fraud could have been very helpful, particularly when there were no rules or sections that directly addressed market manipulation (i.e. to close the legislative gap at that time).

However, for many reasons, this section may be too general to be applied in the context of market manipulation. Firstly, fraud involves driving another party to an error, which means it involves a victim, while market manipulation offences do not necessarily involve harm to another party. Manipulation is prohibited in itself, that is to say it does not involve direct damage to other traders or the market. Manipulators should be liable and punished just after conducting such manipulative form, no matter whether this manipulative form has caused damage or not to others. That is, manipulative practises are banned in themselves irrespective of the identity of the victim. For example, spreading rumours or conducting fictitious trades is considered manipulation, even though these practises do not harm anyone. In other words, there are some manipulative practises that are considered manipulation in themselves even though they do not harm anyone. For example, spreading rumours in the market is considered a criminal offence even though it does not harm anyone. This concept makes fraud somewhat different from market manipulation. Fraud may not define all forms of market manipulation, such as last-minute trades that affect the market index as a whole. It would be difficult to apply fraud to market manipulation in general simply because such manipulation does not necessarily have a direct link to any specific trader or victim.

Secondly, establishing the criminal liability of manipulators in the KSE may be somewhat difficult in the absence of direct, clear rules prohibiting or criminalising market manipulation or defining the forms of manipulation. The lack of experience or

case law regarding market manipulation in the KSE or in Kuwaiti courts impedes judges from stepping forward to criminalise manipulation based on fraud. Moreover, investors themselves may not have the chance to realise that manipulative practises may be prohibited as fraudulent, simply because they have not been educated with regard to either the rules or regulations related to manipulation. Moreover, ‘fraud’ is a very general term that might be difficult to apply specifically to technical practises—that is, to trading shares in the stock market; it should be addressed by a specific section dealing with the orders and transactions of securities in a market. In other words, the stock exchange involves specialised financial techniques and a specialised trading system; thus, devoting a very general section to it, while effective in principle, may be difficult. On the other hand, traders in a new stock exchange who lack an understanding of market abuse need special regulations to educate them regarding what are considered legal or illegal practises. The stock market should have a special regime that deals clearly with trading and defines manipulation in its different forms. That is, market manipulation involves highly specific practises that occur in a qualified technical environment and general rules of fraud are not easily applicable to them.

In terms of evidence, criminalising market manipulation according to the section that deals with fraud is essentially an expansion of the application of fraud and requires the establishment of necessity of punishing this offence. It also requires a high standard of evidence, for which the trading system may be not very useful. In addition, no previous cases have been found in for market manipulation practises prior to the issuance of Law No. 7 of 2010. Nevertheless, the legal department of the KSE claimed to the researcher that many manipulative practises had occurred before the issuance of law no. 7 of 2010 and that they were transferred to public prosecution, but unfortunately no judicial

rulings were made on them.⁶⁷

2.2. Civil Approach

In the absence of specific rules, the Kuwaiti legislature considers civil legislation as a significant source of commercial law. Among the signs of this understanding is the provision of Section 2 of the Kuwaiti commercial law that:

‘taking into consideration the provision of section 96, the commercial customs rules apply on commercial matters where no specific clause is mentioned under this law or other laws related to commercial matters. If there is no commercial custom, the civil law provisions shall be applied’.⁶⁸

In addition, the provision of Section 96 at the beginning of the second book of commercial law, which is a book dedicated to commercial liabilities and contracts, stated that ‘excluding the provision of this book, the commercial liabilities and contracts are subject to the provisions stated under the civil law’.⁶⁹ According to the nature of the case, the existence of a special clause in commercial law explicitly for the implementation of civil law does not prevent considering such implementation obligatory for the judge, whenever required by a commercial clause or custom.⁷⁰

⁶⁷ The researcher visited the legal department of the KSE many times to ask for previous cases on market manipulation in December 2009, April 2010 and again in April 2012.

⁶⁸ Translated by the researcher. As a legal term, commercial custom is the rule that people are accustomed to follow in their daily affairs and feel the necessity to observe and comply, without a legal or contractual provision. See S. Al-Qaliobi, *Alganon Altejary (Commercial law)*, (Dar Al Nahda Al Arabia, Cairo 1982) p. 57.

⁶⁹ Translated by the Author.

⁷⁰ See N. Al-Hajri, *Ahkam alfawa'ed alrabaweya fe alganon alKuwaity wa alSharia alEslamiya (Interests in Kuwaiti law and Islam Share'a)*, (1st ed., Kuwait 2005) p. 37. See also A. J. Awad, *Alganon altejary (Commercial law)*, (Maarif Est., Alexandria 1989) p. 16.

Hence, commercial legislation has come to represent a special legislation, while the civil legislation is a general one that does not apply except in matters where no specific clause has been stipulated under commercial law. This segregation was reflected by the explanatory memorandum of the new Kuwaiti commercial law, which stated that:

‘the civil law is the general legislation for regulating transactions between individuals and that the commercial law is only a special law which in relation to the civil law is a branch of the original and is confined to addressing a number of the provisions required by the nature of commercial transactions and the requirements of speed, confidence, and trust’.⁷¹

This implies that irrespective of the absence of regulation of market manipulation in Kuwaiti Commercial Law, the general rules in civil law would be applicable to this legal gap.⁷²

Kuwaiti Civil Law indicates that the general principle for establishing civil liability requires three conditions: wrong conduct, error or damage to others and a causal relationship between the behaviour and error.⁷³

Applying this section to market manipulation first requires that the manipulator behaves in a wrongful manner; second, that an error to X results in losses (for example, from trading); and third, that a causal relationship exists between the manipulator’s behaviour and the damage or error that occurred to X as a result. However, some issues arise in the

⁷¹ Translated by the researcher. See *Kuwaiti Cassation Court*, (Verdict no. 250 of 89). See also Explanatory memorandum to the civil law (Edict department publications, Kuwait 1998) p. 2.

⁷² This is clearly explained in Chapter 4 of this thesis.

⁷³ Civil liability is regulated under Sections 227–237. For more details, see E. Al-Dsogi Abu Allail, *Almasolya almadaniya wa alethra don sabab (Civil Liability)*, (2nd ed., Dar Alkotob 1998).

application of this general rule to market manipulation.

The first condition, ‘wrongful conduct’, means a ‘deviation from the usual conduct of a person’s behaviour’.⁷⁴ This raises the question of whether market manipulation practises fit under the definition of wrongful behaviour. In fact, the answer is unclear. As long as the law has not determined the nature of manipulation and prohibited its practises, it is difficult to consider manipulative conduct as either wrongful or normal. Moreover, customs in the market may permit such operations, as will be shown in the next chapter. That is, the guiding principle could be the freedom of supply and demand, regardless of whether that negatively affects the prices of securities according to the interests of the manipulator. Consequently, these operations might not be considered ‘wrongful conduct’, since traders believe that they are normal actions. In addition, judges may find it difficult to apply this condition to normal trading techniques in the KSE and ascribe civil liability to the manipulator. All these concerns indicate the importance of issuing a special section that describes market manipulation and prohibits it, directly and clearly, so that the nature of market manipulation practises is clarified and a concept of ‘wrongful behaviour’ is formed that may establish civil liability if the other conditions are met.⁷⁵

In this regard, A. Al-Shubily has referred to the possibility of implementing the theory of ‘the abuse of rights’ as a criterion that may be interpreted in considering market manipulation a ‘wrongful conduct or error’.⁷⁶ This theory is stipulated under Section 30

⁷⁴ See *ibid*, p. 48.

⁷⁵ The question that may arise in this field is whether the new Law No. 7 of 2010 has regulated this practise. This will be discussed in next chapter.

⁷⁶ See A. Al-Shbully, ‘Almotharabat alwahmiya fe alborsa’ (‘Market Manipulation in the Stock Market’) (Master’s thesis, Kuwait University 2008) p. 99. For more information on ‘the abuse of rights’, see Al-

of Kuwaiti Civil Law: ‘Abuse of the rights means if the doer diverted his right from its objective or social function...’⁷⁷ According to this viewpoint, an investor in the market has the right to trade in the market and if he breaches this right he would become a manipulator. This view defines market manipulation as the investor breaching from the objective of the right of trading. Therefore, in this case, the use of the right of trading is illegitimate and ‘wrongful behaviour’ is manifested. According to this viewpoint, Kuwait has adopted the principle of a free economy and freedom of trading in the Kuwaiti market, which necessitates that the trader does not deviate from normal behaviour when trading in the stock exchange. This implies that the trader cannot tamper with prices and thus cause damage to other traders or to the stock market as a whole. This view also discriminates between legitimate speculation conducted by the speculator without deviation from the objective of this right and the illegitimate speculations that represent a prejudice in the use of the right to free trading, which has an extremely negative effect on trading operations and the market as a whole.⁷⁸

Despite the objectivity of this criterion and its applicability, it is nevertheless fraught with shortcomings. The 1983 Decree of the establishment of the KSE and its code have not regulated trading processes in terms of stipulating what the trader can and cannot do. Therefore, the definition of the right of trading is undetermined. From the customary viewpoint, market manipulation does not represent a deviation in behaviour or an

Sanhory, *Alwaset fe sharh alganon almadany (The civil law)*, Part 1 (masader aleltezam), (Cairo, 3rd ed., Dar Alnahtha Alarabiya 1981) p. 834.

⁷⁷ Translated by the researcher.

⁷⁸ See A. Al-Shbully, *supra* no. 76, p. 83. For more information on the application of the theory of the ‘abuse of rights’ to the protection of small traders, see A. B. Mostafa, *Hemayat agaliyat almosahemen fe sharekat almosahama: (The protection of small investors in joint stock companies): comparative study* (Dar alnahtha al-Arabiya Cairo 2008).

encroachment of the social function of the right to trade. The prevailing custom in the Kuwaiti market remains based on freedom of trading and freedom of supply and demand. Furthermore, speculation in itself is not considered a right, but the right lies in the trading itself.⁷⁹ In addition, the criterion of abusing the right is not suitable for market manipulation. For example, rumours, one of the most common forms of these practises, are not considered an abuse of rights. No right is damaged by rumours. Another example is fictitious supply and demand, which cannot be considered a right.

The above discussion encompasses the first condition of 'wrongful behaviour'. The conditions of 'error or damage to others' and 'a causal relationship between the behaviour and the error' are more difficult to establish. For example, it is difficult to prove that the error or damage that occurred to someone was a result of fictitious trades by a specific manipulator and deserves compensation for damages. Moreover, the trading system in the KSE does not aid in the identification of manipulators and no one except the KSE Committee knows who is trading. Even if the manipulator was identified by the committee, the causal relationship between the manipulative practise and the error may be very difficult to establish.

The issues addressed in this section indicate the legislative shortcomings in the provisions and sections of Kuwaiti law that address and regulate market manipulation, stipulate its forms and types, and specify punishments, such as imprisonment and fines. Therefore, Law No. 7 of 2010 was enacted, which stipulates the regulation and criminalisation of market manipulation in various forms and specifies punishment for them; this will be discussed in detail in the next chapter.

⁷⁹ For the definition of the freedom of supply and demand, see A. A. Basyoni, *Mabda' Horeyat tadawel alas'hom fe sharekat almosahma: (Principles for the trading freedom in joint stock companies) comparative study* (1st ed., Dar alfeqr aljame'ey 2007) p. 56.

From the above discussion it may be concluded that no special regulations were established for market manipulation in Kuwait. In other words, no special article or regime determined market manipulation and established criminal or civil remedies. No sanctions were imposed, for example, for fictitious trades, fake orders, or even last-minute trades. These practises are forbidden in other developed markets, but the situation is different in the KSE, where investors, brokers, and portfolio managers have not been made aware of manipulative practises or what is considered acceptable behaviour. In addition, market manipulation was not defined in Kuwaiti regulations before the issuance of Law No. 7 of 2010. This may explain the lack of case law in the field of manipulation because only general rules were applied to manipulative practises and these general rules do not specifically address the problem of manipulation in the KSE. It would be fairly difficult for judges to apply sanctions to practises that are not clearly defined.

2.3. Some Reasons for the Delay of Special Financial Regulation and Regulation of Market Manipulation

In Chapter 1 of this thesis, the history of KSE has been discussed, provided an account of the significant role of merchants in Kuwait's economy and indicated that this role was confined to certain families who were known as a result of their wealth and power.⁸⁰ Hence, after the emergence of the stock exchange system in Kuwait, traders avoided trading in the official market and began to trade in the Al-Manakh market, which was far removed from legal principles and rules, and created companies for the

⁸⁰ See previously Chapter 1. See also A. Al-Nufaisy, *Kuwait: Alrai Alakhar (Kuwait: Other view)*, (Dar Faz'a, London 2009) p. 37.

generation of quick wealth.⁸¹ In reality, the Al-Manakh market was ruled by certain people from wealthy and powerful families, who influenced the market according to their personal interests.⁸² Manipulative practises were pervasive in the Al-Manakh market, but the government believed that the market should be left to regulate itself.⁸³ As a result, this market collapsed. That is, self-regulation proved its failure in the case of the Al-Manakh market.

However, even with the establishment of the new official KSE market, manipulation was still not regulated. It should be emphasised that manipulation is a very easy way to make profits, particularly in a small market with a small number of traders.⁸⁴ People with wealth and power could easily manipulate trade in the KSE by influencing other traders or creating fictitious trades, while claiming that they were following the law of the freedom of supply and demand. It must be noted that rumours play a significant role in Kuwaiti society as people in Kuwait are very connected and sociable. This facilitates spreading of information; moreover, the current role of social media makes this much easier.

Therefore, it can be concluded that this legal gap in market manipulation has given the wealthy merchant class the ability to manipulate trade and gain profits at the expense of

⁸¹ See Y. Sarkho, 'Algoyod alwareda ala tadawol alas'hom wa azmat soq alawraq almaliya (Limitations on securities trading and stock market crisis)', (1983) 4 Law School Journal, p. 88-89.

⁸² For more information on the classes of Kuwaiti people, see Jassem Al Sa'doon, *Manakh alazma wa azmat alManakh (The crisis climate and the Manakh crisis): economic studies*, (1st ed., Alrubaian Kuwait 1984) p. 21.

⁸³ See F. Al-Zumai, 'The Protection of Investors in Gulf Cooperation Council Stock Markets: A Case Study of Kuwait, Bahrain and the United Arab Emirates' (PhD dissertation, University of SOAS 2006) p. 67.

⁸⁴ Since the KSE is limited to a small number of firms—as mentioned in the next chapter—and has special trading rules ('the limit up. and limit down law'), it made manipulation much easier in this market than in an open market.

small investors.⁸⁵ The problem with this state of affairs is that traders viewed manipulative practises as normal and believed that they were based on the freedom of supply and demand. It was made worse by the fact that although the KSE was considered a young market, investors lacked financial education, and it was governed by wealthy people who did not believe in the importance of regulating market manipulation. Taken together, these findings explain why the regulation of market manipulation emerged relatively late in Kuwait. One may argue that the merchant class had an impact and might be the reason for the delay in the issuance of Law No. 7 of 2010, so what finally motivated the issuance of the law in 2010? In fact, to answer this question, the 2008 crisis should be considered, as this crisis affected the entire Kuwaiti financial market. Hence, there was an intensive need to establish a new regulatory framework with a new securities regulation to protect the KSE. This crisis will be explained in the next section.

3. *The 2008 Trust Crisis*

The previous section clarifies that market manipulation was not regulated directly in Kuwaiti law before 2010. Hence, manipulation practises may have been considered legal according to the existing regulations at that time. It is argued that this lack of regulation led to the 2008 Trust Crisis, which was the main reason for issuing Law No. 7 of 2010.⁸⁶ Therefore, this section considers the 2008 crisis in an attempt to answer the question of whether the KSE suffered from market manipulation because of lack of regulations.

⁸⁵ See Jassem Al-Sa'doon, *supra* no. 82, p. 81-82.

⁸⁶ Law No. 7 of 2010 and its history will be discussed in the next chapter. See Al Joman Centre for Economic Consultancy, Al Joman report on listing new companies in the KSE on Sept. 29th, 2008.

Here, it must be noted that even though market manipulation practises were not considered illegal at the time, the discussion in this section is based on the definition of market manipulation and its common forms that have been concluded from Chapter 2 of this thesis.

3.1. *Events and factors that led to the crisis*

From 2002 to 2003, the market index in Kuwait grew at a record high.⁸⁷ In 2002, the market capitalisation of the KSE was 9.8 billion KWD, which was equivalent to 45% of the total capital of all stock exchanges in GCC states or 17% of the capital of all Arab stock exchanges.⁸⁸ After 2003, the KSE flourished, rising from 5,000 points in 2004 to a peak of 15,654 in 2008.⁸⁹ From 2008 onwards, the index dropped to 6,000 in 2012.⁹⁰ In fact, it is believed that the overthrow of the former Iraqi regime in 2003 improved feelings of security and assurance in Kuwait.⁹¹ Furthermore, high oil prices that positively affected the country's income and lowered interest rates may explain the increase in wealth and stock prices in subsequent years. The incorporation and listing of

⁸⁷ See N. AbuMustafa, 'A Review of Regulation, Opportunity and Risk in Gulf Cooperation Council Stock Markets: The Case of Kuwait', (2007) 8th International Research Journal of Finance and Economics, p. 138.

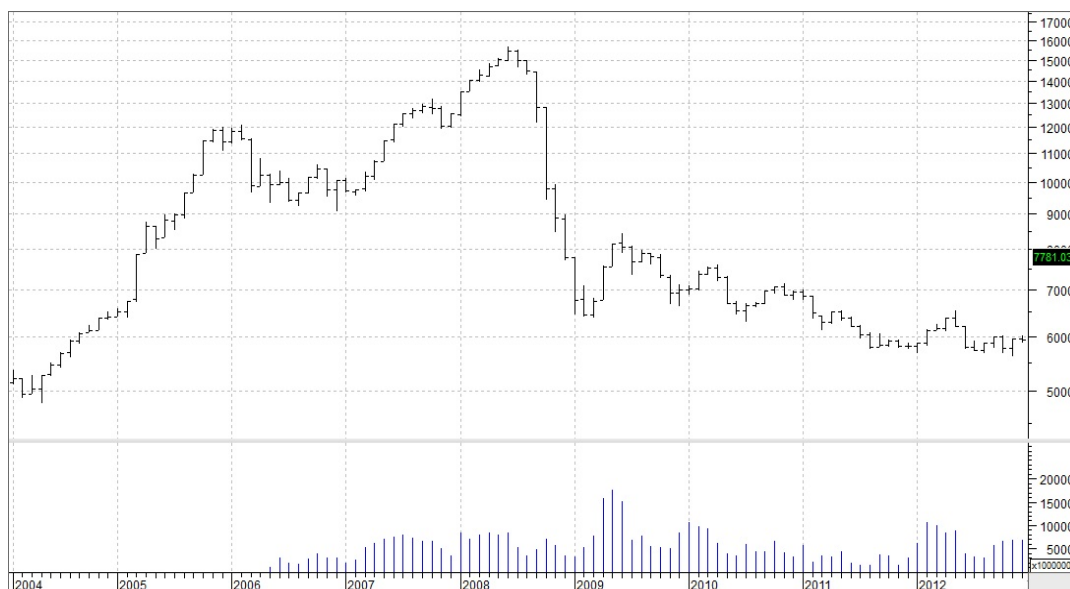
⁸⁸ See M. Al-Daihani and T. Al-Deehani, 'Portfolio Optimization Models and a Tabu Search Algorithm for the Kuwait Stock Exchange', (2008) 5 Investment Management and Financial Innovations, p. 2.

⁸⁹ See the KSE website <<http://www.kuwaitse.com/A/History/MarketIndex.aspx>> Last accessed on 2 July 2013. See also National Investment Company, 'Tagrer Hawl Ada soq alKuwait lelawraq almaliya khelall aam 2008 (Kuwait Stock Exchange performance report for 2008) p. 3.

⁹⁰ See the KSE website <<http://www.kuwaitse.com/A/History/MarketIndex.aspx>> Last accessed on 2 July 2013.

⁹¹ Iraq borders Kuwait on the north, and the Iraqis' brutal invasion of Kuwait in 1990 made the presence of Iraq, particularly Saddam Hussein, a determinant of security and stability in Kuwait. See also N. AbuMustafa, supra no. 87, p. 138.

companies in the Kuwaiti market multiplied and the market index increased rapidly.⁹² The year 2003 witnessed a record increase, as the market index increased by 101.7%, from 2375.3 points at the end of 2002 to 4790.2 points at the end of 2003. In December 2003, the market capital exceeded the sum of 18 billion KWD, which was an increase of 8 billion KWD over the previous year.⁹³ Furthermore, a report from the Central Bank of Kuwait indicated that the total number of traded shares in the KSE climbed by 78%, and the total value of shares climbed to 143.3% in 2003 compared to previous years.⁹⁴ The following chart indicates the upward movement of the KSE index since 2003.



(Figure 1) The KSE index since 2004⁹⁵

This graph shows that the market index began climbing in 2004, a prosperous year, after

⁹² See A. Al-Banwan, *Letter from the Chairman in National Investments Company Guide (Investors Pocket Guide)*, (National Investments Company, 2001-2003) p. 4. For details on trading movement in the Kuwaiti market, see the Al-Shall Company, 'Kuwait Stock Exchange ends 2005 with a record performance in indices and value', Dated 30 December 2005.

⁹³ See A. Al-Banwan, *supra* no. 92, p. 4.

⁹⁴ See the economic report of the Central Bank of Kuwait of 2003.

⁹⁵ See the KSE website <<http://www.kuwaitse.com/A/History/MarketIndex.aspx>> Last accessed on 2 July 2013.

which it witnessed great upward movement. Then, it then dropped in 2008, which was the beginning of the Trust Crisis; the index has yet to rise to the level it was at earlier. This crisis and its aftermath is discussed in detail below.

Traders who entered the market during its prosperous period aimed at quick, abundant profit. They did not have previous knowledge of trading matters or technical or financial analysis of shares.⁹⁶ Rumours or notable trends determined decisions to purchase shares. Among the news that had a significant impact on Kuwaitis' entry into the market and purchasing shares was the contract of the Agility Company (Al-Makhazin).⁹⁷ News was circulated that the Kuwait-based Al-Makhazin was to sign a contract with the US Defence Department—known by the name of its headquarters, the Pentagon—to render services and goods to the US army in the Gulf region. The contract value was expected to be worth several billion dollars. This contract became the focus of Kuwaitis who entered the market to buy Al-Makhazin shares for quick wealth.

Al-Makhazin began signing the first contracts of that kind in Kuwait with the US army for several billion dollars in 2003. The share price was approximately 600 fils per share and the demand for shares increased, which resulted in an increase in the share price of to 6,600 KWD by 24 April 2005 (i.e. it increased by approximately 1,000% in two years). This is a substantial increase, particularly considering that the Kuwaiti market is not open (it climbs daily by only five units).⁹⁸ The KSE was remarkably active,

⁹⁶ For the popular mistakes of investors, see N. AbuMustafa, *supra* no. 87, p. 135. See also N. Al-Sane, 'Tatwer Soq Alkuwait Lelawraq Almaliya (Kuwait Stock Exchange Development)' Kuwait Stock Exchange Market Conference, 2005, p. 7.

⁹⁷ The name 'Al-Makhazin' is used because this was the company's name at that time.

⁹⁸ This was explained previously, see table no. 2 in chapter 1; see also the table of prices of Agility shares and how transactions increased by millions of dinars each year, available at <<http://www.kuwaitse.com/A/Stock/StkHData.aspx?Stk-603>> Last accessed on 19 May 2012.

particularly after the announcement of the contract. The daily trading rate also increased after the announcement of the last contract, which amounted to several billion dollars; on 19 February 2005, it was at 100 million KWD, compared with 47 million KWD at the beginning of the year before the announcement. The weight index increased accordingly by 12%, while its performance before the announcement had only increased by 1.5%. However, the capital value of the market as a whole increased to 25.5 million KWD compared to 22.5 billion KWDs before the announcement of the news.⁹⁹

It is possible that the majority of people who demanded to purchase this share did so because they did not examine the significance of the contract and the company's profit beforehand. Newspapers played a role by providing daily commentary on the company's signing of the contract, which attracted the attention of traders who increasingly wanted to enter the stock exchange.

Accordingly, many rushed to purchase Al-Makhazin shares due to increased demand. They exploited the increase in demand to benefit from price differences and considered it a golden opportunity. Generally speaking, the majority did not have knowledge of or background in trading and were unaware of the technical and financial aspects of share movements.¹⁰⁰ The majority of people also did not consider contract profits. The traders' lack of investigation into the significance of the contract may have been due to their consideration of the issue from a superficial perspective. Concurrent with its

⁹⁹ For more detail, see the economic report of the Al-Joman Centre for Economic Consultancy, an important consultation company in Kuwait. See Al-Joman Economic Consultancy Centre (2005) *Al Joman Economic Consultancy Center report on the contract of Al-Makhazin Company at the amount of 3.27 billion US dollars*, Kuwait.

¹⁰⁰ See N. AbuMustafa, *supra* no. 87, p. 135.

upward movement, the KSE entered a new historical era.¹⁰¹ This contract introduced an unprecedented, overwhelming optimism among investors, even with regard to companies unrelated to the contract.¹⁰²

Apart from the Al-Makhazin issue, many common factors influenced the KSE's 2008 collapse. The number of listed companies increased two-fold and these companies began increasing their capital. Speculations became one of the stock exchange's main features, apart from the clear absence of the market maker's role. Each of these aspects is addressed separately.

3.1.1. Increase of the number of the listed companies in the KSE

Based on the state of stability, security and market prosperity, a trend of incorporating companies became apparent in 2003, when the number of companies listed on the KSE was 92. This number increased to 206 by the end of 2008.¹⁰³ This may be explained by the ease with which companies could be listed companies, the rules regulating listings and the Stock Exchange management's leniency with listings.¹⁰⁴ As most of these

¹⁰¹ See Al Joman Centre for Economic Consultancy, Kuwait Al Joman report of 12 April 2005 available at <http://www.Al_Joman.net/FreeZone/ShowSection.aspx?type=4§ionid=50> Last accessed on 2 July 2013.

¹⁰² See Al Joman Centre for Economic Consultancy, Kuwait Al Joman report of 13 March 2005. Check <http://www.Al_Joman.net/FreeZone/ShowSection.aspx?type=4§ionid=49> Last accessed on 2 July 2013.

¹⁰³ There were 34 companies in 1984, which increased to 209 in 2009. See Hussain Al-Omar and Abdulla Al-Mutairi, 'Private Information Trading in Kuwait Stock Exchange', (2010) 59 International Research Journal of Finance & Economics, p. 11. There were 196 companies in 2007, 180 in 2006, 158 in 2005, 125 in 2004 and 108 in 2003. See also National Investment Company, supra no. 89, p. 9. See also the Economic report of the Central Bank of Kuwait for the years 2003 and 2008. See also the KSE website <<http://www.kuwaitse.com/A/Stock/Companies.aspx>> Last accessed on 2 July 2013.

¹⁰⁴ See Al Joman Centre for Economic Consultancy, Al Joman report on listing new companies in the KSE on May 10th, 2005, available at <http://www.Al_Joman.net/FreeZone/ShowSection.aspx?type=4§ionid=52> last accessed on 2 July 2013.

companies existed at that time with two or more financials, but were not listed in the market. These companies were purchased by investors with the intent of listing them in the market so that they could take advantage of the companies' previous profitable financials. After one more profitable financial year these companies were to be listed in the KSE. The companies also used the market's rise and prosperity to incorporate new companies to benefit from investment in the stock exchange.

Companies began incorporating subsidiaries and listing them on the stock exchange and subsidiaries may or may not have been in the same sector as the parent company. Unfortunately, irrespective of the various sectors that companies belonged to—real estate, investment, or industry—they focused mostly on trading shares on the stock exchange, instead of focusing on their respective primary sectors.¹⁰⁵ In other words, the main goal of these operations was to take advantage of speculations in securities, not incorporate serious enterprises.¹⁰⁶

3.1.2. Increase in the capital of companies

Apart from the increase in the listing of companies, the phenomenon of increasing capital of companies also emerged.¹⁰⁷ There was a sharp rise in the trend of increasing

¹⁰⁵ The real estate, investment and non-Kuwaiti sectors had the largest shares, but the common denominator between them was investment in shares. See F. M. Al-Saqer, 'Aleslah alestethmary wa alhlol aljathriya lemo'alajat alazamat (Investment Reform and Developing Solutions to Address the Roots of Crises)', *Al-Nahar newspaper* (Kuwait 7 March 2009), available at <<http://www.annaharkw.com/annahar//ArticlePrint.aspx?id=132183>> Last accessed on 2 July 2013.

¹⁰⁶ To review the negative aspects of the multiple listing processes, see Al Joman Centre for Economic Consultancy, Kuwait Al Joman report dated 17 September 2008.

¹⁰⁷ See Ibid.

capital of companies with or without justification in most cases,¹⁰⁸ and the capital of listed companies increased two-fold in one year.¹⁰⁹ The table below illustrates the percentage of increase in capital for some prominent companies in 2005.

Company	Percentage of increase in capital	Premium issue	Face value	Cost per new share	Face value in 1,000 KWD	Issuing premium in 1,000 KWD	Subscription amount in 1,000 KWD
<i>Kuwait Finance House</i>	30%	0.750	0.100	0.850	23,442	175,816	199,258
<i>Securities Group KSCC</i>	10%	0.150	0.100	0.250	2,118	3,177	5,294
<i>International Finance Company KSC</i>	50%	0.100	0.100	0.200	11,277	11,277	22,554
<i>Kuwait Investment Company</i>	10%	0.400	0.100	0.500	1,500	6,000	7,500
<i>Global</i>	20%	0.500	0.100	0.600	4,162	20,809	24,971
<i>National International Holding</i>	328%	0.200	0.100	0.300	10,512	21,024	31,536
<i>ALMAL Group (real estate)</i>	20%	0.075	0.100	0.175	3,600	2,700	6,300
<i>Pipe Industries Company</i>	10%	0.300	0.100	0.400	1,597	4,790	6,387
<i>KFOUC</i>	20%	0.900	0.100	1.000	400	3,600	4,000
<i>Al-Makhazin</i>	16.6%	2.150	0.100	2.250	7,099	152,632	159,731

¹⁰⁸ For more information on the increase in the capital of companies, see M. Al-Moqate, 'Aleshkalat almotabeta bezaydat ra's almal alshareka almotadawela fe alsoq wa tajz'ateh wa alektetab beh wa alawat alesdar (Problems related to increasing the companies' capital that are trading in the market)', Kuwait Stock Exchange Market Conference, 2005, p. 23.

¹⁰⁹ See National Investment Company, supra no. 89, p. 4.

<i>IPG</i>	40%	0.300	0.100	0.400	4,350	13,050	17,400
<i>Americana Group Food</i>	10%	0800	0.100	0.900	1,304	10,430	11,734
<i>Gulf Cement Company</i>	20%	0.241	0.080	0.321	4,249	12,747	16,996
Total					75,609	438,052	513,661

(Table 3) The percentage of increase in capital of a few prominent companies¹¹⁰

This table illustrates how companies listed in the KSE increased their capital. This phenomenon was interpreted as the companies targeting an investment alternative that would cost less than borrowing. With an increase in capital, the company is able to increase its liquidity, thereby avoiding the necessity of borrowing from banks. However, companies followed this scheme in order to invest in the market rather than having strategic study.¹¹¹

3.1.3. Increase in bank credit

With regard to loans, economic reports provided by the Central Bank of Kuwait state that there was an increase in bank credit of companies. This credit amounted to 20,138.7 million KWD by the end of 2007, as compared to the 14,933.7 million KWD available in 2006, an effective increase of 34.9%. This increase was 26.3% higher compared to 2005.¹¹² Bank credit was further increased by 3,528.9 million KWD (17.5%) at the end of 2008.¹¹³ However, this percentage dropped by 59% in 2009 to 1,436.9 million

¹¹⁰ See Al Joman Centre for Economic Consultancy, Kuwait Al Joman report of 12 April 2005.

¹¹¹ For more details on the negative impact of the increasing the capital of companies on the KSE, see also National Investment Company, *supra* no. 89, p. 4.

¹¹² See the economic report of the Central Bank of Kuwait for 2007.

¹¹³ See the economic report of the Central Bank of Kuwait for 2008.

KWD.¹¹⁴

The Central Bank of Kuwait took wise steps when it restricted the procedures of loans aimed at reducing the growth of bank credit after the rates of loans reached as high as 34.9%. This liquidity from borrowing was mostly used for speculation in shares, which has driven the country to raise inflation rates imprudently. Moreover, bank customers breached the conditions of using the loans, which should have been spent on development projects, rather than on speculation in shares.¹¹⁵

3.1.4. High rate of trading and speculation

Among the matters most evident in this market was the multiplicity of trading or, more accurately, numerous speculations. For example, upon measuring the market's performance in 2008, it was found that the value of traded shares amounted to approximately 19.6 billion KWD compared to approximately 11.1 billion KWD during the first 10 months of 2009 (i.e. a remarkable drop of 43.7%). In this regard, Al-Shall observed that there was a remarkable increase in fake trading operations.¹¹⁶

Among the significant figures, on 16 January 2008, the highest value of trading was 358 million KWD, compared to 1.8 billion on 18 April 2007.¹¹⁷ The value of trading amounted to 21.85 billion KWD in 2009 compared to 35.37 billion KWD in 2008, which was a decrease of 38% due to the scarcity of liquidity and local banks abstaining from granting loans for trading shares. This was because trading in the market

¹¹⁴ See the economic report of the Central Bank of Kuwait for 2009.

¹¹⁵ See Al Joman Centre for Economic Consultancy, Kuwait Al Joman report of 17 September 2008.

¹¹⁶ Alshall is a Consulting Company, See 'AlShall report', *Al-Qabas* newspaper, (Kuwait 7 November 2010). See also F. M. Al-Saqr, *supra* no. 105.

¹¹⁷ See National Investment Company report, *supra* no. 89.

constituted a high risk, which could have led to extensive loss of trading volume.¹¹⁸

In 2009, the quantity of traded shares witnessed a year-on-year increase of 32.7%; the number of traded shares amounted to 106.6 billion shares compared to 80.3 billion shares in 2008. This reversal in the decrease in the value of trading and increase in the number of traded shares reflects the actual extent of the decrease in the value of share prices listed on the KSE.¹¹⁹

Therefore, it can be concluded that these events attracted investors to trade on the KSE with the hope of making quick money. Moreover, the lack of regulation caused some abusive or problematic practises in the KSE. In fact, these practises are considered as manipulative conduct, according to the discussion in the previous chapter. However, they cannot be deemed manipulation because there were no existing rules to define these practises as manipulation. Hence these practises were considered legal.

It is worth mentioning that these practises were common to some extent, but no evidence existed for them. This lack of evidence and lack of previous cases on market manipulation could have been the reason that there were no existing rules for manipulation. Therefore, the only evidence that is available to prove this issue are based on economic reports, conferences and newspapers.

Due to this lack of evidence, a questionnaire has been distributed in the KSE surveying people involved in the KSE regarding their experience with market manipulation. In this regard, a questionnaire was administered in the KSE in February 2011.¹²⁰ Although this

¹¹⁸ See KAMCO, 'Report on shares selling and purchase in Kuwait Stock Exchange, issued by the Investment Research Department at Kuwait Investment Projects Company', (Kuwait Assets Department).

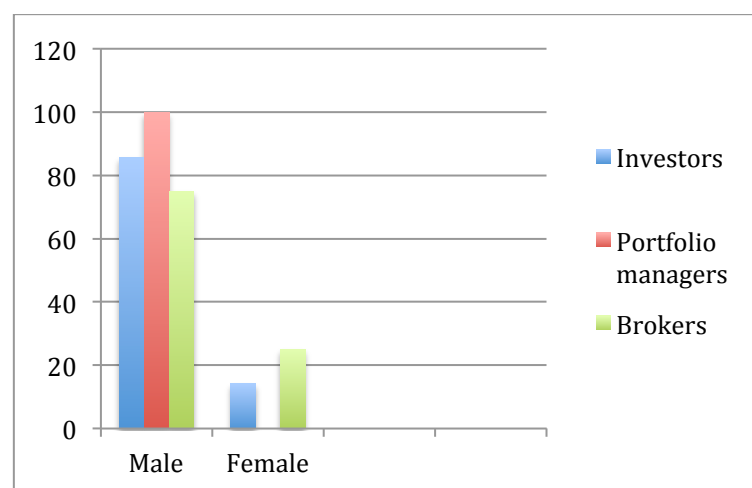
¹¹⁹ See *ibid.*

¹²⁰ This was briefly explained in the introduction chapter under section 4.

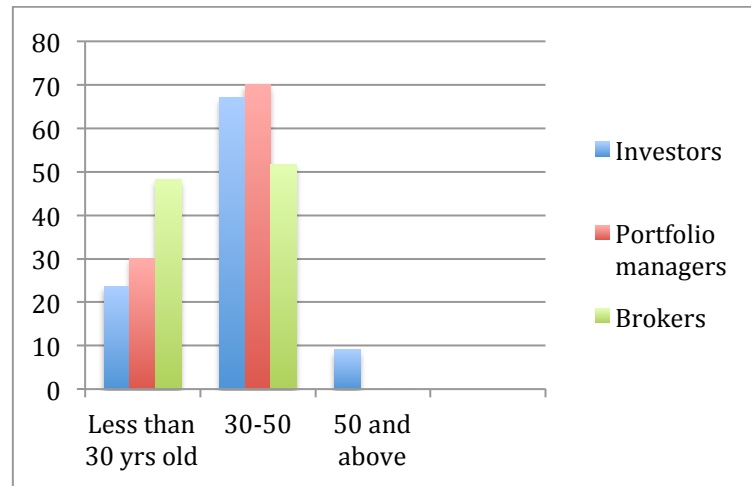
was after the 2008 crisis and the issuance of Law No. 7 of 2010, the respondents were questioned regarding their general experience in the KSE. Although the findings did not prove the problem of market manipulation, they provided support for the argument that the market is suffering from market manipulation. The results provide an indication to a certain extent of the situation of abusive practises in the KSE. The next section addresses the common problematic or dubious practises in the KSE.

3.2. *Problematic Practises*

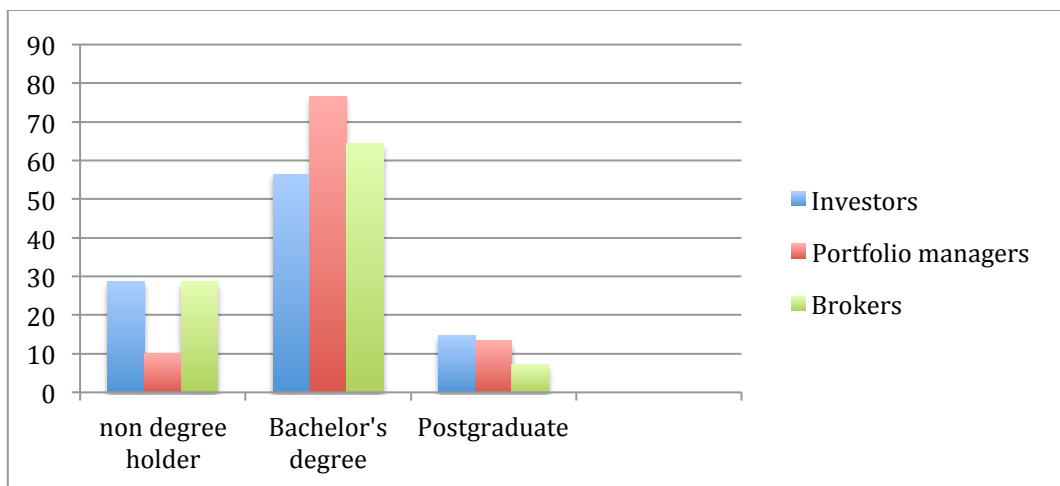
As it has been mentioned earlier in the introductory chapter that a questionnaire had been distributed among people involved in the market who are investors, portfolio managers and brokers, it might be worth mentioning here, before addressing the problematic practises, that the characteristics of the respondents to the questionnaire will be shown in the charts below. These charts help identify the majority gender of respondents trading in the KSE and the respondents' qualifications. In addition, the amount of money traded in the KSE by respondents and the way they are trading might give an indication of how serious investors are in the KSE.



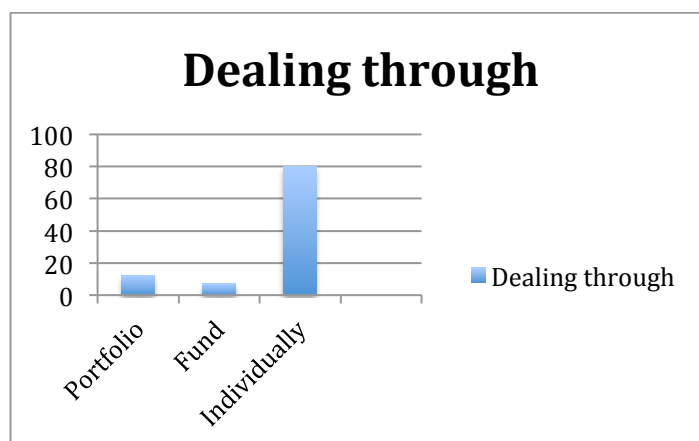
(Figure 2) Chart of the gender of respondents to the questionnaire



(Figure 3) Chart of the age of respondents to the questionnaire



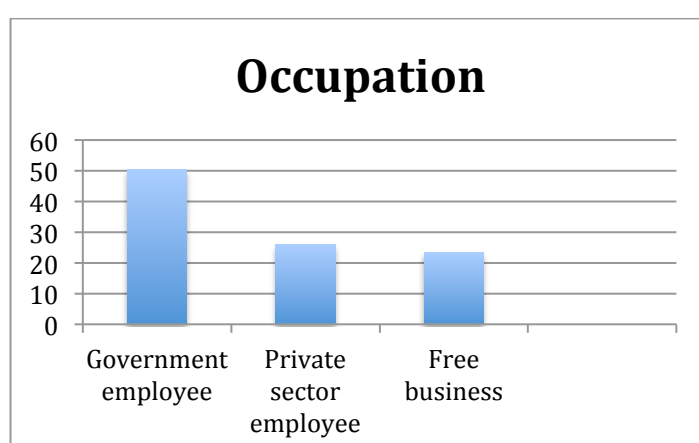
(Figure 4) Chart of questionnaire respondents' qualifications



(Figure 5) Chart shows how investors deal in the KSE



(Figure 6) The trading amount of K.D. traded by investors in the KSE



(Figure 7) Chart shows investors occupation

From the above-mentioned charts, it can be shown that the majority of the respondents to the questionnaire are male, and all the portfolio manager respondents are male. That is to say, 85.7% of investors, 100% of portfolio managers and 75% of brokers are male. This might indicate that the financial market in Kuwait is a male-dominated society. Although 25% of the brokers are female, female investors trading in the campus of the KSE and they have a special trading area. That is why there should be female brokers to take the orders from female investors in this room.

Regarding the age of the respondents, it can be shown that most range in age between 30 to 50 years old: 67.1% of investors, 70% of portfolio managers and 51.7% of brokers are between 30 to 50 years old. However, 48.3% of the brokers are under 30 years old. These results might be translated to mean that experience is not required to participate in the brokerage field, since many of the respondents are younger than 30, which does not indicate long experience. On the other hand, regarding qualifications, most respondents hold bachelor's degrees: 56.5% of investors, 70% of portfolio managers and 64.3% of brokers have such degrees. However, a small percentage of respondents lack qualifications, unfortunately: 28.7% of investors, 10% of portfolio managers and 28.6% of brokers. Although these are small percentages of the respondents, these statistics may clarify the characteristics of people involved in the KSE. In addition, the statistics might lead to the conclusion that there is no need to be academically qualified or educated to trade in the KSE; even more to the point, brokers and portfolio managers should not need qualifications to practise their jobs. On the contrary, a small percentage of respondents have higher qualifications, such as 14.6% of investors, 13.3% of portfolio managers and 7.1% of brokers. These percentages might be a good sign that some people might be involved in the market with the intention of having higher qualifications, leading to the enhancement of the level of education in the KSE.

Moreover, it can be shown that 80.3% of the investor respondents are dealing individually and not through portfolios or funds. Keeping in mind that 50.5% of them are dealing with amounts ranging between 10.000 to 50.000 K.D. and 36.2% dealing are with amounts over 50.000 K.D., this large amount of money and dealing individually might affect the market negatively. That is to say, investors with no qualifications and large amounts of money would not make good decisions while trading in the KSE. They might possibly rely on rumours and fake orders rather than make technical or financial decisions. Finally, it can be shown that the majority of the investor's occupations are under the government sector which is 50.5%. 23.5% of investors are free businessmen and 26% of investors works under the private sector. From this statistic, it can be concluded that being investor in the KSE would not require an occupation under special sector since even government employees are investing in the KSE. That was all regarding the characteristics of the respondents to the questionnaire; the next section discusses the problematic practises in the KSE.

The KSE has witnessed some problematic phenomena that were introduced by a former Senator in the Kuwaiti Parliament, Naser AlSana'e, and Undersecretary of the Ministry of Commerce and Industry, Rashed AlSayd Yousef Altantaba'e, in the Conference of the KSE.¹²¹ The KSE has suffered from several manipulative practises, which will be revealed based on economic reports and analyses of economic consultancy centres or investment companies. In addition, the researcher collected some views by administering a questionnaire to investors, portfolio managers and brokers on whether they believe that they have been manipulated during trading in the KSE (as shown in the

¹²¹ The conference was held under the patronage of the Minister of Commerce and Industry, Abdulla Al-Taweel. It was held on 19 December 2005 at the Sheraton Kuwait. It can be considered the first important conference to discuss all KSE matters.

table below). The responses of the different parties stating that respondents think that they have been manipulated are as follows: 83.5% of the investors, 66.7% of the portfolio managers and 58.6% of the brokers. This questionnaire was distributed after the 2008 crisis and after the issuance of Law No. 7 of 2010, which implies in the early period of the implementation of Law No. 7. Thus, the respondents are aware to a certain extent of what market manipulation is and what its various forms are. At least they had begun to believe that these practises are considered abuses to the market. This may indicate that there was an awareness, particularly among investors, that the KSE is being manipulated. Brokers and portfolio managers were less manipulated possibly because they are not in positions where it is easy to manipulate or they are aware of such practises. Hence, this section will review some of the major manipulation practises in the KSE.

-I been manipulated during your daily trading in the KSE?	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	167	83.5%	21	10.5%	12	6%
<i>-Portfolios managers</i>	20	66.7%	6	20%	4	13.3%
<i>-Brokers</i>	17	58.6%	9	31%	3	10.3%

(Table 4) The questionnaire responses to the statement ‘I have been manipulated in the KSE’

3.2.1. Information-based manipulation

Information-based manipulation is basically related to the information available in the market. It is important to regulate the disclosure of information to have an efficient market that is shielded from rumours or misleading information. In the KSE, there was a special regulation for the disclosure of interest, which was passed in 1999 but not applied or enforced (Law No. 2 of 1999). As N. AlSane’ and Rashed Altabtaba’e

declared, there were shortcomings in the disclosure procedure and lack of supervision of announcement processes.¹²² They claimed that the KSE suffers from delays in disclosure; moreover, the announcements are inefficient, since they do not provide complete information, conceal important negative information or highlight or exaggerate positive information.¹²³ With regard to this issue, some studies have concluded that the KSE can be considered an inefficient market.¹²⁴ As a consequence of the lack of applying the disclosure of interest law, rumours and false information began to appear as a way of influencing others to trade.¹²⁵ Rumours fall under the category of information-based manipulation, which is based on misrepresentation of information related to shares. The publication of inaccurate information may be related to information on issue stage or the publication stage during trading. In fact, the publication of this information on the status or performance of a specific company is not intended for this purpose only; rather, it is generally designed for other objectives, namely to positively or negatively impact share price in the stock exchange. In this regard, publishing information is a prelude to another crime, which is price manipulation.

Thus, falsities and rumours usually originate from speculators aiming to influence the trading of a specific share by reducing its price to buy shares at specific price levels or

¹²² See N. Al-Sane, *supra* no. 96, p. 11-12. See also Rashed Alsayed Yousef Altabtaba'e, '*Nathra tagyemeya lelamaleyat almaliya fe alsoq (Critical perspective on trading in the KSE)*', Kuwait Stock Exchange Market Conference, 2005, p. 185. For more details on the disclosure of interest, see Faisal Al-Anezi, 'Composition of corporate board of directors and voluntary disclosure in the annual reports: The case of Kuwait', (2011) 18 AJAS, p. 135.

¹²³ See *ibid*.

¹²⁴ See Kabir M. Hassan et al., 'Stock Market Efficiency in the Gulf Cooperation Council Countries (GCC): The case of Kuwait Stock Exchange', (2003) 1 Scientific Journal of Administrative Development, p. 1. See also Husain Al-Omar and Husain Al-Mutairi, *supra* no. 103, p. 65.

¹²⁵ See N. Al-Sane, *supra* no. 96, p. 12.

by increasing its price to sell shares at higher prices. These rumours are propagated through several channels, the most important being Internet chat rooms.¹²⁶ Some companies' managements intend to distort share prices by exaggerated rumours through interviews in newspapers, magazines and television shows. They manipulate investors by announcing huge projects, most of which are fictitious. In fact, this amounts to a camouflaged operation and a distortion that negatively impacts minor investors.¹²⁷

In addition, the most significant channels for spreading rumours in the Kuwaiti market are messages and forums, as the rule followed in the market is 'Buy upon receiving a rumour and sell once this rumour is confirmed'.¹²⁸ This rule has turned the scales upside down. In advanced markets, investors would buy the share after a company's official announcement regarding a profit or other positive news or following financial or technical charts. However, it is different in Kuwait, thereby underscoring the significance and extent of the spread of misleading rumours in the market.

Conversely, the lack of disclosure of interest has bled into insider dealing practises, which was confirmed by studies concluding that the KSE was harmed by insider dealing in 2008.¹²⁹ Although insider dealing is different from market manipulation, they are both forms of market abuse. The phenomenon of insider dealing has led to the creation of rumours and misinformation and, as mentioned above, these rumours were spread in different ways.

¹²⁶ For example, see some websites and chat rooms <www.indexsignal.com> and <www.alnawady.com>

¹²⁷ See Al Joman Centre for Economic Consultancy, Kuwait Al Joman report of 29 September 2008, available at <http://www.Al_Joman.net/FreeZone/ShowSection.aspx?type=4§ionid=214> Last accessed on 2 July 2013.

¹²⁸ See F. Al-Zumai, *supra* no. 83, p. 224.

¹²⁹ See Hussain Al-Omar and Abdulla Al-Mutairi, *supra* no. 103, p. 7. See also Naser I. Abumustafa and Salah A. Nusair, 'Insider trading during the 2008 financial crisis', (2011) Routledge, p. 301.

In this regard, the answers to the administered questionnaire revealed that 89.3% of the investors believed that they had been manipulated by false information. This percentage would strongly suggest that the KSE might suffer from rumours or misleading information, as shown in the table below.

-I have been influenced by rumours or misleading reports, which led to a loss	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	177	89.3%	16	8%	5	2.5%

(Table 5) The questionnaire responses to the statement ‘I have been influenced by rumours’

3.2.2. Manipulation through artificial transactions

Another manipulative practise that caused damage to the KSE is artificial transactions or fictitious trades.¹³⁰ Fictitious trades are transactions that do not result in any change in ownership or any actual economic result. The objective of these operations is to create active trading on a particular share when there are no actual transactions with this share. This is done to delude others that fair value-based price changes have occurred for a particular share, which may be considered fraud or deception for quick profit. The other party in this process is either the manipulator’s son or relative. Moreover, there can be an on-going agreement with another person to buy and sell securities. These operations bear fruit when the buyer resells the shares to the same person he bought from on the same day—at a higher or lower price according to their agreement. Thus, the main purpose of these operations is to create fictitious trades to attract other traders

¹³⁰ See Rashed Alsayed Yousef Altabtaba’e, *supra* no. 122, p. 185.

to those shares, after which the manipulators sell their shares to other traders and reap profits at their expense.¹³¹

This process can be difficult to complete through the electronic trading system because there are no personal transactions. However, the processes may be estimated because when the manipulator places a purchase order of 10 units and there are 20 units for sale, he knows his shares are among these 20. After the transaction is completed, it is easy for him to ascertain whether his shares are sold.¹³² It is important to note that it is difficult for a manipulator to set a purchase order and a sell order simultaneously in electronic trading. Thus, fictitious trades are usually conducted by two or more persons under mutual agreement.

Fictitious trades executed between a buyer and seller are normally carried out between portfolio managers, as claimed by the Al-Joman Centre.¹³³ Normal investors cannot typically track them easily, which usually results in the trading of large quantities of shares or holdings. However, portfolio managers with large amount of cash can easily conduct fictitious trades. These operations affect small investors, who lag behind the trends that these operations create.¹³⁴

The Al-Joman Centre has defined these operations in the Kuwaiti market as an agreement between two or more parties to trade a certain share intensively against a certain exaggerated price as a way of encouraging many traders to buy this share at

¹³¹ Shares are the same in value. For more details, see T. Al-Shumiri, *Alwaset fe Derasat Ganon Alsharekat Altejarya Alkuwaity wa ta'delath (Kuwaiti Company Law)*, (3rd ed., Kuwait 1999) p. 302.

¹³² See A. Al-Shbully, *supra* no. 76, p. 51-53.

¹³³ See Al Joman Centre for Economic Consultancy, Kuwait Al Joman report of 29 September 2008.

¹³⁴ See N. Al-Sane, *supra* no. 96, p. 13. See also Rashed Alsayed Yousef Altabtaba'e, *supra* no. 122, p. 185.

levels that are close to this rate. The manipulators then involve traders with this exaggerated priced share. Meanwhile, the manipulative parties settle the trading account between them outside the trading room on the basis that the real price of the share is, for example, 500 fils, and not 2 KWD.¹³⁵ This is the official price used to solicit traders to buy and the manipulators are usually selling most of the traded quantities. Thus, the manipulators exert an organised, agreed-upon effort to mislead the traders. The management of the company or its main shareholders usually participate in the manipulation process and create an intensive propaganda program and attractive media outreach to promote the company through its large, multiple projects, geographic outreach and brilliant success.¹³⁶

Investors in the KSE were asked whether they believed that they had been manipulated by fictitious trades. The table below shows that 88% of the investors think that they have been manipulated by artificial transactions in the KSE, which indicates that artificial transactions are rampant in the KSE. These fictitious trades are normally conducted with the agreement of one mediator who offers huge quantities of shares at varying prices to convince traders that particular shares are flourishing. As a result, the trader eventually buys the shares at low prices. The trader also offers huge quantities of shares at higher prices to apply pressure until traders reach 70% of the required quantity. The second stage of the manipulation involves the gradual disposal of shares until the shares are collected at higher prices through fictitious purchase operations.¹³⁷

¹³⁵ One KWD is equal to 1,000 fils.

¹³⁶ See Al-Joman Centre for Economic Consultancy, Kuwait Al-Joman report of 29 September 2008.

¹³⁷ For information on manipulation operations and agreements, see the Al Joman Centre for Economic Consultancy, Kuwait report dated 29 August 2008.

-I have been manipulated by fictitious trades	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	176	88%	17	8.5%	7	3.5%

(Table 6) The questionnaire responses to the statement ‘I have been manipulated by fictitious trades’

Furthermore, fake orders are when a manipulator sets a supply order for a large quantity, which is a misrepresentation of the security’s status. Conversely, a manipulator can also set a large volume of demand to attract other traders for this security. This practise was easily accomplished, particularly when it was noticed that the KSE’s trading system permits traders to place an order to sell or buy without owning such securities or without having sufficient cash in their accounts. Such orders are usually placed by investment companies and funds and are not backed up by real funds.¹³⁸ The objective behind such operations is either to pressurize to collect orders at low levels and then withdraw such orders upon achieving the objective, or support the share to raise it to benefit from the difference in prices. Companies themselves may turn to this method to maintain the share price, whether by placing exaggerated purchase orders or exaggerated sale orders. This problem was very common in the KSE and many small investors were adversely affected by these fake influences.¹³⁹ However, due to the desire for development, the KSE trading system has changed now, which will

¹³⁸ In fact, it is not conditional upon placing the purchase or selling order to be met with shares available in the account or met with funds in the account.

¹³⁹ Al Joman Centre for Economic Consultancy, Kuwait report of 29 August 2008. Also see a section in the newspaper that warns traders in the KSE with 10 manipulative practises and how to be aware of them. Fake orders were at the top of the list of practises to avoid. See M. Al-Sayed, ‘10 afkhakh mansoba yawmeyan ala shashat altadawol fa ehtharoha (10 traps available daily on the trading screem WATCH OUT!)’, *Al-Qabas* newspaper (Kuwait 13 April 2008) p. 57.

prevent such operations.

The empirical research in this study found that 89.5% of investors believe that they had been manipulated by fake orders. This may imply that orders in the KSE are being used to influence other traders. In other words, a large demand would not definitely mean that a share is good; however, it may mean that this demand is a technique to monitor the price of the security or influence others to buy this security as a way of increasing its price.

-I have been misled by fake orders of supply and demand that resulted in a loss	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	179	89.5%	20	10%	1	0.5%

(Table 7) The questionnaire responses to the statement ‘I have been misled by fake orders’

Regarding the abovementioned practises, manipulators used an extended scenario. They first disclosed negative rumours regarding a specific company, thereby causing many traders to begin selling this share, which decreased the share price, thereby allowing manipulators to buy the shares at low prices. Subsequently, good news would be disclosed, so many demand orders appeared and drove the stock price up. Then, the manipulators began selling their shares at higher prices, thus reaping the profits.¹⁴⁰

Many professional speculators in the Kuwaiti market may conduct pressurizing operations on a certain share, which normally begins with an agreement with a broker to offer the share in large quantities to place pressure on the share and make traders

¹⁴⁰ See National Investment Company Report, *supra* no.142. See also A. Al-Shbully, *supra* no. 76, p. 62-63.

believe it is undesirable. Then, manipulators buy the share at low prices, provided that purchase patterns are inconspicuous. When speculators reach 70% of the required quantity, the second phase begins, with gradual disposal of quantities collected at higher prices by placing fake orders, not to buy, but rather to make traders believe there is high demand for the shares. It should be noted that an increase in share price does not mean that the share is outstanding and should be purchased. Rather, patience is needed, as shares often reach maximum limits without clear reasons or technical factors supporting such escalation. Such operations were clearly evident, particularly when examining daily orders scheduled in the market, as purchasing or selling orders are exaggerated by millions.¹⁴¹

3.2.3. *Last-minute trades*

Last-minute trades were one of the most common phenomena in the KSE.¹⁴² Al-Zumai (2004) not only found that last minute trades were very popular in the KSE, but he also attached a report from the Al-shall Investment Company identifying these practises and how the company monitors the market index.¹⁴³ He commented that ‘silence’ was the only reaction to these actions.¹⁴⁴ These two tables present the total points gained in last-minute trades that have increased the market index. A total of 178.8 points were gained for 26 days in the last minutes of the trading day. The second table shows that a total of 236.7 points were gained during the last minutes of 27 working days. In addition, the market index increased by 415.5 points for the last trading minutes of a 53-day period,

¹⁴¹ For more details of the highest records in 2008, see National Investment Company Report, *supra* no. 89, p. 9.

¹⁴² See F. Al-Zumai, *supra* no. 83, p. 233-236.

¹⁴³ For Al-shall Consulting Company available at <<http://www.alshall.com>> Last accessed on 2 July 2013.

¹⁴⁴ See F. Al-Zumai, *supra* no. 83, p. 233-236.

which represents 35% of the index's total increase. Thus, the market index increased by 1,186.8 points in 53 days, of which 415.5 points were due to trading in the last minutes of trading.¹⁴⁵

Day	KSE Price Index Reading at 12:14	KSE Price Index Reading at 12:15	Change
<i>Saturday 01/01/2005</i>	Holiday		
<i>Sunday 02/01/2005</i>	42.0 +	39.0 +	3.0 -
<i>Monday 03/01/2005</i>	3.9 -	5.7 -	1.8 -
<i>Tuesday 04/01/2005</i>	2.1 +	7.1 +	5.0 +
<i>Wednesday 05/01/2005</i>	2.9 -	13.1 +	16.0 +
<i>Saturday 08/01/2005</i>	32.7 -	23.0 -	9.7 +
<i>Sunday 09/01/2005</i>	7.2 -	1.6 -	5.6 +
<i>Monday 10/01/2005</i>	4.9 +	8.1 +	3.2 +
<i>Tuesday 11/01/2005</i>	21.7 -	20.5 -	1.2 +
<i>Wednesday 12/01/2005</i>	22.9 +	27.7 +	4.8 +
<i>Saturday 15/01/2005</i>	18.2 +	18.9 +	0.7 +
<i>Sunday 16/01/2005</i>	40.8 -	28.4 -	12.4 +
<i>Monday 17/01/2005</i>	11.7 +	28.2 +	16.5 +
<i>Tuesday 18/01/2005</i>	0.1 -	8.4 +	8.5 +
<i>Wednesday 19/01/2005</i>	Holiday		
<i>Saturday 22/01/2005</i>	Holiday		
<i>Sunday 23/01/2005</i>	Holiday		
<i>Monday 24/01/2005</i>	18.4 +	29.7+	11.3 +
<i>Tuesday 25/01/2005</i>	23.5 +	37.0 +	14.4 +
<i>Wednesday 26/01/2005</i>	1.7 +	10.2 +	8.5 +
<i>Saturday 29/01/2005</i>	10.9 -	3.2 -	7.7 +
<i>Sunday 30/01/2005</i>	50.0 -	46.1 -	3.9 +
<i>Monday 31/01/2005</i>	12.8 -	2.6 -	10.2 +
<i>Tuesday 01/02/2005</i>	63.0 -	43.5 -	19.5 +

¹⁴⁵ Check the market index available at <<http://www.kuwaitse.com/A/History/MarketIndex.aspx>> Last accessed on 19 January 2013.

<i>Wednesday 02/02/2005</i>	1.1 -	2.7 +	3.8 +
<i>Saturday 05/02/2005</i>	26.0 +	36.0 +	10.0 +
<i>Sunday 06/02/2005</i>	19.9 -	11.8 -	8.1 +
<i>Monday 07/02/2005</i>	8.2 +	10.2 +	2.0 +
<i>Tuesday 08/02/2005</i>	32.0 -	28.5 -	3.5 +
<i>Wednesday 09/02/2005</i>	37.8 -	40.7 -	2.9 -
Total points gained in Last minute Trading – 23 trading days -			+ 186.5
Total points Lost in Last Minute Trading – 3 trading days -			- 7.7
Total Points – 26 trading days -			+ 178.8

(Table 8) Total points gained in last-minute trades ¹⁴⁶

Day	KSE Price Index Reading at 12:14	KSE Price Index Reading at 12:15	Change
<i>Saturday 12/02/2005</i>	Holiday		
<i>Sunday 13/02/2005</i>	10.4 +	5.4 +	5.0 -
<i>Monday 14/02/2005</i>	4.4 -	0.0	4.4 +
<i>Tuesday 15/02/2005</i>	24.3 -	6.8 -	17.5 +
<i>Wednesday 16/02/2005</i>	47.0 -	40.4 -	6.6 +
<i>Saturday 19/02/2005</i>	97.0 +	107.8 +	10.8 +
<i>Sunday 20/02/2005</i>	62.0 +	70.3 +	8.3 +
<i>Monday 21/02/2005</i>	27.4 -	19.4	8.0 +
<i>Tuesday 22/02/2005</i>	14.7 -	10.5 -	4.2 +
<i>Wednesday 23/02/2005</i>	73.0 +	95.1 +	22.1 +
<i>Saturday 26/02/2005</i>	Holiday		
<i>Sunday 27/02/2005</i>	Holiday		
<i>Monday 28/02/2005</i>	99.4 +	108.8 +	9.4 +
<i>Tuesday 01/03/2005</i>	16.0 -	4.2 -	11.8 +
<i>Wednesday 02/03/2005</i>	39.8 +	44.6 +	4.8 +
<i>Saturday 05/03/2005</i>	102.1 +	108.9 +	6.8 +
<i>Sunday 06/03/2005</i>	8.6 +	15.4 +	6.8 +
<i>Monday 07/03/2005</i>	79.0 +	89.0 +	10.0 +
<i>Tuesday 08/03/2005</i>	98.4 +	108.7 +	10.3 +
<i>Wednesday 09/03/2005</i>	89.9 +	94.2 +	4.3 +
<i>Saturday 12/03/2005</i>	96.5 +	101.6 +	5.1 +
<i>Sunday 13/03/2005</i>	139.8 +	146.7 +	6.9 +
<i>Monday 14/03/2005</i>	36.0 +	57.0 +	21.0 +
<i>Tuesday 15/03/2005</i>	153.8 -	148.0 -	5.8 +
<i>Wednesday 16/03/2005</i>	122.9 +	129.1 +	6.2 +
<i>Saturday 19/03/2005</i>	112.1 +	123.7 +	11.6 +

¹⁴⁶ Al-Shall economic report, Vol. 15, Issue 12, 26th of March 2005, cited in F. Al-Zumai, supra no. 83, p. 236.

<i>Sunday 20/03/2005</i>	8.4 -	1.3 +	9.7 +
<i>Monday 21/03/2005</i>	17.9 +	28.4 +	10.5 +
<i>Tuesday 22/03/2005</i>	74.4 -	66.2 -	8.2 +
<i>Wednesday 23/-3/2005</i>	14.1 +	24.7 +	10.6 +
Total points gained in Last minute Trading – 26 trading days -			+ 241.7
Total points Lost in Last Minute Trading – 1 trading days -			- 5.0
Total Points – 27 trading days -			+ 236.7

(Table 9) Total points gained in last-minute trades ¹⁴⁷

Last-minute trades were considered an adornment of the general indicator of the market. In the KSE, it was evident that the general indicator reduces its losses or increases the amount of its trading during the last ten minutes before closing of trade for the day. This phenomenon has become a notable feature in the Kuwaiti market. From a logical perspective, investment fund managers and portfolio managers were conducting such closings because they hold large capital, unlike small investors who do not have the power to change the index. Funds act on small investors; at the beginning of trading, funds offer many shares for sale and spread rumours to lower a share's value to motivate small investors to sell the shares they hold, thereby raising the quantity of shares offered. Therefore, their prices drop when the investor observes a constant drop in the share price and fears that the drop will continue. At the end of the trading day, fund managers then collect these shares after devaluation, thereby profiting to the extent that the price has decreased relative to the price at which they were originally sold.

The general index of the Kuwait market relies on market closings. The increased demand in last-minute trading raises the general index, and over time the index elevates remarkably. This leads to the inflation of share prices, which reach a value higher than their fair value. Therefore, traders demand a new indicator for the Stock Exchange that

¹⁴⁷ See Ibid.

reflects the real value of the stocks, thereby discounting final closings.¹⁴⁸

3.3. Some reasons for market manipulation practises in the KSE

It is evident from the preceding discussion that dubious practises were rampant in the KSE. Although the evidence is not very strong to prove this issue, it does indicate to a certain extent that there was lack of regulation and this drove the market to be abused by unregulated practises according to other developed regulations, as is shown in the next chapter.

This conclusion is based on economic reports and the Conference of KSE. R. Al-Tabtaba'e announced that these practises were considered offences according to Section 3 of the criminal law, which regulates fraud.¹⁴⁹ However, there were no previous cases in this regard. As explained previously in this chapter, although this section may deal with market manipulation or market abuse in general, it does not regulate market manipulation in a direct, clear manner. For example, it does not include or explain manipulative practises or forms. This may explain the lack of application of these sections on manipulative practises and the lack of case law regarding market manipulation. One question that may arise is what were the causes of manipulative practises in the KSE at that time? This section will review some of the reasons that may explain the issue of market manipulation in the KSE.

1) Lack of regulation of manipulative operations

The lack of a law for regulating and preventing manipulation is the primary, direct

¹⁴⁸ See 'Motadawelon yotalebon beste'hdath mo'asher jaded lelborosa yo'abr an ada'eha lelta'khalos mn thaherat alegfalat alaldaga'eg alakhera (Investors require a new market index in order to control last minutes trades)', *Al-Watan* newspaper (Kuwait 19 June 2008) p. 71.

¹⁴⁹ See Rashed Alsayed Yousef Altabtaba'e, *supra* no. 122.

reason for the existence and spread of manipulative operations in the KSE. It has been established in other international stock exchanges that a lack of laws for regulating manipulation has resulted in the collapse of stock exchanges, which is a fact that has expedited the promulgation of laws regulating manipulation in stock exchanges worldwide.¹⁵⁰

As part of Law No. 7 of 2010, which was specifically issued to address this legislative shortcoming, the Stock Market Authority was established and manipulative operations are to be regulated under the chapter on crimes. Furthermore, manipulation is now a crime punishable by law.

In the field research conducted in the KSE to determine the causes of market manipulation, it was discovered that 83.4% of investors, 86.7% of portfolio managers and 93.1% of brokers believe that the reason underlying manipulative operations in the KSE is the lack of laws to prevent such operations. This suggests that people involved in the KSE might be suffering due to the lack of regulation for market manipulation and believe in the importance of such regulation. The table below shows these percentages.

-The Lack of sufficient regulation is the cause of market manipulation in the KSE	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	162	83.4%	17	8.7%	15	7.7%
<i>-Portfolios managers</i>	26	86.7%	4	13.3%	0	0%
<i>-Brokers</i>	27	93.1%	2	6.9%	0	0%

(Table 10) The questionnaire responses to the statement ‘Is the lack of regulation the cause of market manipulation?’

¹⁵⁰ See section 1 of Chapter 4 of this thesis.

2) Surveillance department and investigation section

The surveillance department of the KSE has an essential role to play, as it controls trading operations and makes inquiries into suspicious operations of possible manipulation in accordance with the old regulation—the 1983 Decree.¹⁵¹ Nonetheless, there was basically no law criminalising manipulation or reflecting the essence of manipulation. Furthermore, there were no penalties for the surveillance department to apply. The department only summoned the person concerned with the manipulation and interrogated him; however, other than attracting his attention and obtaining a signed declaration that he would not repeat the behaviour, no actual action could be adopted against those involved in the manipulations. Consequently, the surveillance department might be helped spread market manipulation operations in the KSE to a certain extent. Although the legal department has claimed that they have followed many manipulative practises and transferred them to the public prosecution, the surveillance department was often not serious in following up on its operations and the investigation section was not in a position to investigate manipulative operations and refer them to the Public Prosecution, as there were no announcements by transferring such practises to the Public Prosecution. To be fair, the KSE employee did not have the judicial policy which would help tackling such practises. In addition, the lack of legislation was the reason behind the failure of the stock exchange management to take any action. Market manipulation operations were neither clear nor actively explained. Furthermore, market manipulation was not distinguished from legal speculation. Moreover, severe penalties

¹⁵¹ See N. Al-Sane, *supra* no. 96, p. 11, 12. See also Al Joman Centre for Economic Consultancy, Kuwait Al Joman report of 27 November 2008, available at <http://www.AlJoman.net/FreeZone/ShowSection.aspx?type=4§ionid=221> Last accessed on 2 July 2013.

did not exist; consequently, the surveillance department had a negative, enabling role rather than being strict in its investigations. This fact has been questioned in the questionnaire, and 86% of investors, 83.3% of portfolio managers and 82.2% of brokers thought that the surveillance department played a significant role in the spread of market manipulation operations in the KSE, as shown in the table below.

-The stock market surveillance department is the cause of market manipulation in the KSE	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	167	86%	22	11.3%	5	2.5%
<i>-Portfolios managers</i>	25	83.3%	5	16.6%	0	0%
<i>-Brokers</i>	24	82.8%	5	17.2%	0	0%

(Table 11) The questionnaire responses to the statement ‘Is the stock market surveillance department the cause of manipulation in the KSE?’

As previously mentioned, the new law and its code were both promulgated and it is important that they be robustly implemented. The Kuwaiti legislature has acted wisely in designating the capacity of judicial law enforcement to the staff of the Stock Market Authority, thereby giving them the authority to record the crimes that may be committed against the provisions of Law No. 7 of 2010 and its code resolutions and regulations in this regard. This will make the law stronger and enable the authorities to implement it in a satisfactory manner.

3) Trading systems and their role in manipulative operations

Trading systems in the KSE (or systems that tolerate or assist in manipulation, as some people call them) permit any person to bid for a purchase of shares even when he does not have the required amount for the purchase in a trading account. Furthermore, a

trader can call for the sale of shares even when he is not the owner of these shares. This system is considered one of the most important enablers of fictitious operations and orders. Before the 2010 legislation, the maximum action that could be adopted by an investigative division regarding these operations was to summon the concerned party and let them sign a document that they will not repeat this behaviour. The problem here is not a lack of legislation or penalty, but rather a system that permits these violations. Currently, brokers have been trained on a new system that prevents any person from bidding or calling for the sale or purchase of shares without having the required cash or shares in their account. This is considered an essential step toward eradicating manipulation operations.

Fortunately, the KSE has adopted a new trading system, XStream, which was officially implemented on 15 May 2012. This new trading system is a serious step forward in protecting the market from market manipulation, as will be discussed in the next chapter.¹⁵² There is no doubt that traders may resort to manipulation to make a quick profit.¹⁵³ Manipulation provides profits to major investors at the expense of small investors, but minor traders are liable for major losses from these operations. Continuous occurrence of losses may result in a lack of trust among traders in the stock exchange, which constitutes a part of the economy of a country. In fact, 66% of investors, 83.3% of portfolio managers and 82.7% of brokers believe that the trading system in the KSE permits market manipulation operations. Moreover, these

¹⁵² For more information, see the KSE website <<http://www.kuwaitse.com/KSE/Launch.aspx>> last accessed on 2 July 2013.

¹⁵³ See M. Al-Sehbani, 'Altala'eb fe alaswag almaliya (Market manipulation in financial market)' (Almotharaba watala'ob fe alaswaq almaliya: alab'ad alegtesadiya wlganonya washr'ya seminar (Speculation and market manipulation in financial markets: Economic and legal dimensions), Riyath, March 2008.

percentages increase among brokers and decrease among traders who are not aware of the technical trading system in the stock exchange. In contrast, the brokers—who are the essence of the trading system—believe that the trading system actually permits these operations, thereby suggesting that it must be upgraded, as shown in the table below.

-The trading system is the cause of market manipulation in the KSE	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	127	66%	46	23.8%	19	9.8%
<i>-Portfolios managers</i>	24	83.3%	5	16.6%	1	0%
<i>-Brokers</i>	24	82.7%	4	13.8%	1	0%

(Table 12) The questionnaire responses to the statement ‘Is the trading system the cause of market manipulation in the KSE?’

In this regard, KAMCO,¹⁵⁴ an investment company, conducted a separate analysis on share purchase and sale operations from the beginning of the financial crisis from September 2008 until January 2010. This was based on nationality and type of investors as a way of exploring the nature of trading at the KSE and the reaction of investors to all negative developments in the stock exchange resulting from the 2008 crisis. In fact, cash liquidity has decreased considerably in the KSE and the total value of trading operations was 21.85 billion KWD during 2009 compared to 35.37 billion KWD during 2008. Due to the lack of liquidity, and since much liquidity found its way into deposits and assets with lower risks, the percentage of reduction in trading operations was 38%. Furthermore, local banks refrained from granting loans for trading shares. Consequently, trading in the stock exchange involved high risks that probably resulted in the loss of a great portion of invested capital and led to the avoidance of more

¹⁵⁴ For more information of the KAMCO Company check <<http://www.kamconline.com>> last accessed on 10 Jan 2014.

provisions. In 2009, the quantity of circulated shares recorded a 32.7% increase and the number of traded-in shares reached 106.6 billion KWD, compared with 80.3 billion KWD during 2008.¹⁵⁵ This reflects a reduction of trading value. The increase in the number of traded shares reflects the actual falling prices of shares listed on the KSE along with the exit of many traders from the exchange.

Thus, manipulation may be one of the primary reasons for the crisis at the KSE. Moreover, manipulation may have affected the transparency of the KSE, which is considered one of the most important pillars of the market. Once transparency is achieved, both perceived and actual risks are minimised, while a lack of transparency increases both perceived and actual risks. In addition, the transparency principle is considered one of the most important demands by traders in the KSE. Al-Rafie defines transparency as providing the information and statements related to the business of the company and putting the same under the disposal of traders. He maintains that transparency is one of the rights of traders. When this principle is provided, the rights of the minority of shareholders will be protected.¹⁵⁶ Moreover, Al-Dabah maintains that traders need statements and information that will enable them to make appropriate decisions on their investments in the stock exchange.¹⁵⁷

In this regard, statements and information are the most important elements that assist in

¹⁵⁵ See KAMCO, *supra* no. 118.

¹⁵⁶ See M. Al-Rafie, *Segar almostathmren wa dawr hay'at soq almal fe hemayat'hom mogarana fe aswaq almal alajnabiya: comparative study (Small investors and the role of capital market authority with their protection in the global stock markets)*, (Dar alnahtha alarabiya, 2007) p. 497. See also A. B. Mostafa, *supra* no. 78. See also I. H. Mahmoud, *Eltzam alsharekat belshafafiya wa alefsah (Disclosure of interest and announcement)*, (Dar alnahtha alarabiya, 2006).

¹⁵⁷ See A. Al-Dabah, *Tasweyat Amaliyat alborsa, (Stock market transactions)*, (Dar alnahtha alarabiya 2007) p. 91.

the evaluation of shares and making appropriate decisions on trading.¹⁵⁸ Should the stock exchange be overwhelmed by rumours, false news, fictitious trades, last minute trades or other forms of manipulation, this will harm the market's transparency. Major manipulation will cause the stock exchange to lose its credibility and investors cannot analyse or make sound trading decisions. The Kuwaiti legislature was correct when they included a provision in Law No. 7 of 2010 stating that the Stock Market Authority must be committed to regulating the securities business in a manner characterised by transparency. Furthermore, the Stock Market Authority is committed to mitigating the typical risks that are expected to occur in securities and other objectives to guarantee justice and transparency.¹⁵⁹

Apart from the impact of manipulation on transparency, it damages the efficiency of the stock exchange. Barnes holds that share price is determined by what traders consider the evaluation and entitlement of the share.¹⁶⁰ Share price reflects the information and beliefs of traders regarding the share. Thus, the stock exchange will be efficient when the information in market is accurate and updated. Therefore, since manipulation results in loss sustained by traders in the short term, it negatively impacts the efficiency of the stock exchange. Traders then lose confidence in the market on a long-term basis, which results in financial crisis. Manipulation results in a severe fluctuation of the price of financial paper and converts trading in financial papers into haphazard gambling, where only a minority realise a profit while the majority sustain losses. Harawa states that market manipulation has a social impact that results in greed and a desire for quick

¹⁵⁸ See Ibid.

¹⁵⁹ See section 3 of Law No. 7 of 2010.

¹⁶⁰ See Paul Barnes, *Stock Market Efficiency, Insider Dealing and Market Abuse*, (Gower 2009) p. 3-5. See also how shares may be evaluated and traded, see *ibid*, p. 3.

profit, which leads to the pursuit of profits at the cost of harming others.¹⁶¹ Furthermore, manipulation results in a lack of transparency that will affect the efficiency of the stock exchange, which may result in the collapse of the stock exchange as well as severe rectification operations. This in turn may create financial crises that harm the economy of the state. Market manipulation also hurts the entire market index, as has been discussed previously. Further, market manipulation stimulates the market index, particularly after last minute trades and creates a fake index that could lead to the formation of a market bubble.

3.4. The collapse of the 2008 trust crisis

During the second half of 2008, a global crisis occurred that originated in the US and extended to the European Union and beyond.¹⁶² The crisis stemmed from certain developments in US real estate markets in the years leading to the crisis, as interest rates dropped to less than 1%. The reasons for the global financial crisis in 2008 may be summarised as lack of control over banks, investment companies and real estate mortgage companies that resulted in the real estate mortgage crisis and the global economic and financial crisis. As a result, many of these companies went bankrupt.¹⁶³

¹⁶¹ See Saeed Bo Harawa, 'Altala'ob fe alaswaq almaliya (Market manipulation in Financial markets)', (2010) Rabetat alalam alilami almojtma alfeghi alislami, Makka.

¹⁶² See Michel Chossudovsky and Andrew Gavin Marshall (editors), *The Great Depression of the XXI Century*, (Global Research Publisher, 2010). See also Robert Skidelsky and Christian Westerlind Wigstrom, *The Economic crisis and the state of economics*, (1st ed., 2010). See also Graham Turner, *The Credit Crunch: Housing Bubbles, Globalisation and worldwide Economic crisis*, (1st ed., 2008). See also R. Al-Sharrah, *Alazamat almaliya alalamiya, asbabha, atharha, en'akasa't'ha ala alestethmar bedawlat alkuwait (Financial crises and its causes, consequences on investments in the state of Kuwait)*, (Union of Investment Companies, Kuwait 2009).

¹⁶³ See M. Mostafa, *Alazma almalya asbabha wa atharha wa kayfyat mowajahat'ha (The financial crisis and its impacts and how it will be faced)*, (Arabian Renaissance House, Cairo) p. 9. See also R. Alsharah, *supra* no. 162, p. 4.

The global financial crisis of 2008 is beyond the purview of this thesis; however, it is important to discuss how it was related to the Kuwaiti Trust Crisis. Some believe that the global crisis had an impact on the KSE, particularly due to foreign investors exiting from the market.¹⁶⁴ However, others have claimed that the crisis did not have a direct impact on Kuwait, other than on the psychology of the traders. Either way, panic and tension became endemic.¹⁶⁵ This is because Kuwait did not have real estate mortgage crises or companies that invested heavily in the US real estate sector. In addition, the Kuwaiti banking system is solvent and no bank declared bankruptcy, primarily because banks are supported by the government and the Kuwaiti currency is linked to a basket of currencies, rather than just the US dollar. Thus, despite the KSE witnessing the crisis, the state budget recorded a surplus of \$30 billion.¹⁶⁶

To address the reasons of the 2008 Trust Crisis in Kuwait, it should be mentioned that the manipulations outlined above resulted in unjustified increases in the market index, which necessitated adjustments. In September 2008, the KSE index fell sharply as share prices experienced a setback.¹⁶⁷ The general index closed 488.3 points lower, but it stabilised by the end of trading at 12,360.2 points, although the circumstances that prompted hazardous sales persisted. The severe drop in the point average negatively affected both traders and members of the Kuwaiti Parliament, who requested that the

¹⁶⁴ See Global Investment House, 'Global and the International Financial Crisis 2008–2009' (Kuwait Global Investment House report) p. 2-3.

¹⁶⁵ See R. Al-Sharrah, *supra* no. 162, p. 21. See also *Financial Times*, 'The KSE crisis is a political and psychological rather it is related to the global one' *Al-Qabas* newspaper (Kuwait 25 November 2008) p. 46. See also Khaled Al-kharafi, 'Alborsa wa adrak ma alborsa! (What may consider stock exchange!)', *Al-Qabas* newspaper, (Kuwait 21 April 2010) p. 64. See also Al Joman Centre for Economic Consultancy, Kuwait Al Joman report of 29 September 2008. See also National Investment Company, *supra* no. 89, p. 3.

¹⁶⁶ See National Investment Company Report, *supra* no. 89.

¹⁶⁷ It is considered the most severe correction in five years.

government take practical steps in the right direction.¹⁶⁸ The reason for the sharp drop of the index, particularly during the global crisis, may be due to the feelings of traders regarding the failure and deception of their companies, apart from the indirect impact of the global crisis and its effect on traders' confidence on companies.

Such companies took pride in their liquidity and the safety of their investments. After the crisis, it was evident that they did not have actual surpluses, but only apparent surpluses due to manipulation with rumours. Thus, the crisis uncovered their real financial states.¹⁶⁹

During October 2008, setbacks in the KSE continued and the general index dropped 366.8 points, even closing at 10,114.3 on one occasion. Furthermore, the weight index dropped 3.80 points to close at 522.64 points. All of this occurred despite the proposal of a draft law by the Central Bank of Kuwait to guarantee bank deposits so that the panic in the KSE would not spread to the banking system.¹⁷⁰ This was the beginning of the 2008 Trust Crisis.

A series of events ultimately resulted in the collapse of the stock exchange. The most prominent was the increase in the share capital subscription ratio of listed companies. In 2008, the increase in the total capital for these companies was 2.7 billion KWD. Therefore, many investors sold shares to increase their liquidity and to take advantage of the capital increase.¹⁷¹ These liquidated funds were accompanied by hazardous sale

¹⁶⁸ See Kuwait National Assembly session, dated 17 September 2008.

¹⁶⁹ See E. Alanqely, 'Albonok wa alsharekat wa alsanaqeg ta'arat haqa'egha khelal azmat alborsa (Banks, Companies and Funds have been exposed during the crisis), *Al-Shahed* newspaper (Kuwait 20 November 2008) p. 14.

¹⁷⁰ See Alshall company, 'Kuwait Al-Shal Economic Report of 28 October 2008'.

¹⁷¹ In fact, 50% of the total was liquidated. See the National Investment Company report, *supra* no. 89.

operations by other investors, many of whom had been affected by the sales that were already completed.¹⁷² Another serious issue that had a great impact on the stock exchange setback was the sale of shares purchased using the futures market. Given the serious setback in share prices, the sale of shares purchased on credit was instigated to reduce potential losses. Therefore, conditions of chaos and hazardous selling were exacerbated.¹⁷³ Khaled Alkharafi, ex-chairman of the KSE, believes that this crisis occurred concomitantly with the global crisis because of market manipulators. Companies and manipulators used the global crisis to justify their losses, which in reality were caused by manipulation; this was possible because there was no monitoring of these companies to determine the reasons for their losses.¹⁷⁴ The severe declines in the stock market continued and traders believed that the Kuwaiti government mismanaged the crisis. In this regard, the procedures adopted by the government included the purchase of shares by the Investment Public Authority and the pumping of liquidity into local banks to restore stability to the Kuwaiti market.¹⁷⁵

To restrict stock exchange losses, some traders approached the administrative court and applied for summary judgments to halt trading on the stock exchange, until the government found a solution to existing problems and the restoration of stability. The

¹⁷² See Al Joman Centre for Economic Consultancy, Kuwait Al Joman report of 17 September 2008. See also Al Joman Centre for Economic Consultancy, report of July 30th, 2008, wherein the Al Joman Centre affirmed that it was not satisfied with the status of the KSE due to the liquidation process.

¹⁷³ See National Investment Company, *supra* no. 89.

¹⁷⁴ See Khaled Al-kharafi, *supra* no. 165, p. 64.

¹⁷⁵ The Investment Public Authority was established as per Law No. 47 in 1982. It acts independently to invest the state's reserve funds in the name and for the account of the government of Kuwait. Further, it invests next-generation funds and other funds vested to the Authority by the minister of finance. For more details on the Investment Public Authority, see S. Boughais, *Alhaya alama lelestethmar wa ragabat diwan almohasaba (The Authority of investments and the requirement of Kuwait Audit Bureau)*, (Kuwait, Moasasat dar alktob 2008) p. 22. See also Global Investment House, *supra* no. 164, p. 2-3.

issue was directed towards the government, but the Eftaa and Legislation Department¹⁷⁶ represented the defence and argued that the courts lacked the jurisdiction to consider this case. The argument was based on the fact that trading on the stock exchange is a sovereign act that the courts cannot deal with, since it pertains to the essential and basic interests of the state from an economic viewpoint.¹⁷⁷ However, the court rejected this argument and ordered the temporary suspension of trading on the KSE.¹⁷⁸ The management filed a challenge against the court order and this resulted in the resumption of trading on 17 November 2008. However, the crisis was not over and stock values deteriorated until the index reached 6,407 in February 2009, after having peaked in the middle of June 2008 at 15,654 points.¹⁷⁹ Unfortunately, the KSE subsequently endured a recession and there was no serious intervention from the government to solve the problem, except the issuance of Law No. 7 of 2010 that incorporated a stock exchange authority and regulated the business of finance. This law with its new, significant resolutions is discussed briefly in the next section.

Summary

This chapter discussed the availability of applying the general rules of Criminal and Civil Law on market manipulation in the Kuwaiti Law. It is concluded that there may be some difficulties in applying Civil Law and the principle of ‘Abuse of rights’ on market

¹⁷⁶ Efta and Legislation Department is a consulting legal department for the Council of Ministers in Kuwait.

¹⁷⁷ Against the Prime Minister in his capacity, the Minister of Commerce and Industry (and chairman of Kuwait Stock Exchange Committee) in his capacity and the General Manager of the Kuwait Stock Exchange in his capacity.

¹⁷⁸ See *Kuwait Court of First Instance*, (Verdict no. 1571 of 2008) Administrative.

¹⁷⁹ See the KSE website <<http://www.kuwaitse.com/A/History/MarketIndex.aspx>> Last accessed on 2 July 2013.

manipulation practises, as they cannot be applied on all forms of manipulation. On the other hand, the application of Criminal Law, particularly the crime of fraud, on manipulative practises is also doubtful. Hence, market manipulation will be considered legal as long as there is no regulation that defines it and no history of previous cases pertaining to it. In addition, the 1983 Decree and its code have not regulated manipulative practises. This lack of regulation has driven the KSE to be replete with abusive practises. As a result of these unregulated practises, the market index had artificially flourished and at the end it bubbled in 2008. This marked the beginning of the 2008 crisis that had driven the Kuwaiti legislature to issue Law No. 7 of 2010, which regulates market manipulation and established a special Financial Authority called the CMA; these aspects will be discussed in the next chapter.

Chapter Four: The Regulation of Market Manipulation under Law No. 7 of 2010

Introduction

As previously mentioned in Chapter 3, market manipulation was not directly regulated before the issuance of Law No. 7 of 2010, which is the first legal measure to regulate market manipulation in Kuwait. This chapter attempts to discover the regulation of market manipulation under Law No. 7 of 2010 and evaluate the new Kuwaiti approach to prohibiting market manipulation under this law. Hence, this chapter aims to address the third objective of the thesis. This evaluation would require a more qualified regulation to consider. The UK approach to market regulation provides good examples. In this sense, this chapter attempts to analyse the current regulation of market manipulation and its forms and evaluate this based on the FSMA 2000 for regulating market manipulation, as this would help to suggest amendments to enrich the protection of investors in the KSE.

This chapter is divided into three sections. The first section addresses the beginning of regulating market manipulation. The second section discusses market manipulation regulation in both regulations. The third section examines various forms of market manipulation.

1. Towards Regulating Market Manipulation

The history of financial markets is full of crashes and bubbles.¹ Although there has been no special attention paid to the history of market manipulation, particularly by commentators, market manipulation was widely blamed for previous financial failures or crashes such as ‘Tulip Mania’² in the 1630s and the so-called ‘South Sea Bubble’³ in

¹ See E. Avgouleas, *The Mechanics and Regulation of Market Abuse: a Legal and economic analysis*, (1st ed., Oxford 2005) p. 3. For more information regarding the history of financial crises, see Charles Kindleberger and Robert Z Aliber, *Manias, panics, and crashes: A history of financial crises*, (6th ed., Palgrave Macmillan 2011).

² Historical commentators cite the fact that market abuse appeared in Holland with regard to a national mania surrounding tulip. bulbs. The story began when the demand for tulip. bulbs peaked in the 17th century and the bulbs quickly became a valuable commodity. In 1635, a deal for 40 tulip. bulbs was recorded at 100,000 florins (Dutch guilders). By 1636, the trading of bulbs had entered financial markets, which pushed many people to enter the markets as well. Traders began speculation and entered into futures contracts. In 1637, the demand for the bulbs decreased and people began selling at lower prices. The bubble collapsed, as traders could not find buyers for the high speculation prices, thereby making the futures contracts valueless. Judges dealt with them as a gambling matter, which could not be protected by law. Therefore, in reality, this scenario of increasing the demand to increase the price with the intent of influencing others to buy at false high prices may be considered market manipulation. In this situation, manipulators indulged in heavy speculation to create an overvalued price for tulips, since tulip prices would not have soared without this behaviour. In other words, market manipulation appeared when people began speculating on the price of tulip bulbs to increase prices above the natural value of the bulbs. As has been shown previously, creating artificial prices and influencing other traders to trade are considered market manipulation. In this case, creating a false urgency for tulip bulbs to influence other people to buy them and thus benefit from increasing the price may translate to market abuse or, more specifically, market manipulation. This manipulation then led to a speculation bubble of artificially inflated prices, thereby leading to the collapse of the bubble. For more information on Tulip. Mania, see Doug French, ‘The Dutch Monetary Environment During Tulipmania’, (2006) 9 *The Quarterly Journal of Austrian Economics*, available at < http://mises.org/journals/qjae/pdf/qjae9_1_1.pdf > Last accessed on 30 June 2013. See also Anne Goldgar, *Tulipmania: Money, honor, and knowledge in the Dutch Golden Age*, (University of Chicago Press 2008).

³ The South Sea Bubble is another famous example of a financial crash. The South Sea Company was a British enterprise that was granted the exclusive right to trade in South America in Spanish colonies, while the company was under English debt. In reality, the shares of the company were heavily speculated, which led to an economic bubble in the 18th century, known as the South Sea Bubble. Speculation that

1720.⁴ Furthermore, according to many commentators, the Great Depression of the 1930s was initiated by the collapse in the processes followed in the stock exchange because of the heavy speculation in commodities exchange.⁵ Manipulation may have played a role here by creating false commodities prices to benefit from price changes, thereby leading to the collapse of the stock market.⁶ In response, a new regulatory

artificially raised share prices resulted in a financial crash. The case will not be elaborated upon further; however, this example indicates how commentators may believe that these speculations are a type of market abuse. In this case, the term speculation was used because there were no regulations for market abuse or market manipulation. In reality, this case is similar to the tulip bubble, since manipulators manipulate others by increasing the prices into overvalued or fake levels. The resulting inflation may have been a result of creating artificial prices and raising the price to influence others to buy, which may be considered market manipulation, as explained earlier. For more details on the South Sea Bubble, see Helen Julia Paul, *The South Sea Bubble: An economic history of its origins and consequences* (Routledge 2010). See also Virginia Cowles, *The great swindle: The story of the South Sea Bubble* (Harper 1960).

⁴ See Barry Rider et al., *Market abuse and insider dealing*, (2nd ed., Tottel Publishing Ltd 2009) p. 90. See also Edward Chancellor, *Devil take the hindmost: A history of financial speculation*, (Plume Books 2000) p. 3. See E. Avgouleas, *supra* no. 1, p. 3. For more details on the history of financial speculation and manipulation, See also E. Chancellor, *ibid*, p. 3. See also John Kenneth Galbraith, *A history of economics: The past as the present*, (Harmondsworth Penguin 1989).

⁵ See Benjamin E. Kozinn, 'The Great Copper Caper: Is market manipulation really a problem in the wake of the Sumitomo debacle?', (2000) 69 *Fordham Law Review*, p. 247. See also Steve Thel, 'The original conception of section 10(b) of the Securities Exchange Act', (1990) 42 *Stanford Law Review*, p. 409. In 1921, a U.S. senator described the Chicago Board of Trade as a 'gambling hell'. See also Carolyn H. Jackson, 'Have you hedged today? The inevitable advent of consumer derivatives', (1998-99) 67 *Fordham Law Review*, p. 3218.

⁶ In the nineteenth century, market abuse was evidenced in the futures markets that began appearing as US farmers began dealing in futures contracts. Specifically, they used these contracts to avoid losses from price fluctuations in agricultural commodities. However, the contracts were used without any formal basis. Organised exchanges were subsequently developed, such as the Chicago Board of Trade, which established a standardised contract on agricultural commodities. A futures contract is similar to a forward contract, in that the futures contract 'obligates its owner to purchase a specified asset at a specified exercise price on the contract's maturity'. Charles W. Smithson, *Managing financial risk: a guide to derivative products, financial engineering, and value maximization*, (McGraw-Hill) p. 30, available at: <http://www90.homepage.villanova.edu/michael.pagano/Smithson_Managing_Financial_Risk_Ch2and20.pdf> Last accessed on 30 June 2013. See also Carolyn H. Jackson, *supra* no. 5, p. 3218. See also Benjamin E. Kozinn, *supra* no. 5, p. 246.

system was established in the US by the Securities Act of 1933 and the Securities Exchange Act of 1934 to protect traders from abusive stock practises. Hence, market manipulation was regulated under Sections 9 and 10 of the Securities Exchange Act of 1934,⁷ as manipulation was one of the most important concerns of the US Congress.⁸ Unfortunately, the Act does not provide a definition of the term ‘manipulation’. In addition, history is not helpful in clarifying how the US Congress defines the term ‘manipulation’, so the term is still undefined, although it has been regulated and the regulation itself uses the term.⁹

Therefore, market abuse and market manipulation practises have a long history in parallel with the history of financial markets. This has led to financial crises, thereby underscoring that it is a serious offence that must be of special regulatory concern to help protect markets from crises and collapses. As a result, there is no doubt of the need to regulate market manipulation. Market manipulation as a type of market abuse is an offence that damages the efficiency and integrity of financial markets in addition to harming investor protection.¹⁰

⁷ See Steve Thel, *supra* no. 5, p. 361.

⁸ Section 3 under the Commodity Exchange Act states the purpose of the act in the following manner: ‘To serve the public interests... through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests...to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practises and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants’. See Section 3 of the Commodity Exchange Act. Available at: <<http://www.cftc.gov/files/ogc/comex060601.pdf>> Last accessed on 30 June 2013.

⁹ See Benjamin E. Kozinn, *supra* no. 5, p. 248.

¹⁰ It can be argued that investor protection may be one of the main objectives of financial market regulation. This implies that investors should be protected from abusive practises, such as misleading

In fact, the regulation of financial markets must include the rules that govern the operation of securities as well as those that prohibit market abuse. These regulations should ultimately protect investors in financial markets.¹¹ That is, the intent of financial market regulation should be to achieve a high level of protection for investors. Consequently, to achieve this protection, it is essential to provide accurate and updated information in the market,¹² which helps to ensure that markets are transparent and efficient, because efficiency in the markets will ensure that the prices in the market reflect available information.¹³ As a result, the financial market regulations' objective specified by the IOSCO should be taken into account in financial market regulation.

In this sense, both the UK and the US have regulated market manipulation as a response to financial failure or crisis. In the US, the first regulations were in 1934 as a response to the Great Depression. As a result of the Wall Street crisis in 1929, the US Congress adopted various legislative provisions with the intention of reducing fraud.¹⁴ This was known as the 'New Deal' legislation with its primary intention being to improve the flow of information so that investors would not be manipulated by the market.¹⁵ The New Deal legislation was intended to improve the flow of information so that investors could be protected against market manipulation. The Securities Act of 1933 (SA of

practises, insider dealing or rumours. See E. Avgouleas, *supra* no. 1, p. 167. In this field, for details on the comparison between common law and civil law countries with regard to the legal protection for investors see Rafael La Porta et al, 'Law and Finance', (1998) 106 *Journal of Political Economy*, p. 1113.

¹¹ See E. Avgouleas, *supra* no. 1, p. 167.

¹² See Bernard S. Black, 'The Legal and Institutional Preconditions for Strong Securities Markets', (2001) 48 *UCLA Law Review*, p. 781.

¹³ See section 2 of Chapter 2 of this thesis.

¹⁴ See Rebecca Soderstrom, 'Regulating Market Manipulation: An Approach to Designing Regulatory Principles', (2011) Uppsala Faculty of Law Working Paper, p. 11. See also 'Regulation of stock market manipulation', (1947) 56 *The Yale Law Journal* p. 509.

¹⁵ See Rebecca Soderstrom, *supra* no. 14, p. 11.

1933) and the Securities and Exchange Act of 1934 (SEA of 1934)¹⁶ were the two most important legislations that were introduced as they formed the basis of the US regulatory system.¹⁷

In the UK, market abuse was first regulated under the Companies Act of 1980, when for the first time, it was stated that insider dealing is an offence.¹⁸ It must be noted that market abuse practises were considered legitimate in the UK until the 1950s.¹⁹ The UK's history for financial regulation was related to a series of financial failures during the 1970's and 80's and this has proved that self-regulation presented some weaknesses.²⁰ Thereafter, market manipulation was first regulated under Section 47 of the Financial Services (FS) Act of 1986, which stated that creating a false or misleading

¹⁶ The full text of this Act is available at <<http://www.sec.gov/about/laws/sea34.pdf>> Last accessed on 3 March 2013.

¹⁷ See 'Regulation of stock market manipulation', supra no. 14, p. 509. Regulations that govern securities in the US are the Securities Exchange Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Jumpstart Our Business Startups Act of 2010 and Rules and Regulations for the Securities and Exchange Commission and Major Securities Laws. For more details of these acts, see <<http://www.sec.gov/about/laws.shtml>> Last accessed on 30 June 2013.

¹⁸ For more information on the UK market abuse regime, see Utpal Bhattacharya and Hazem Daouk, 'The world price of insider trading', (2002) 57 *The Journal of Finance*, p. 75–108. Market manipulation has a long history in financial markets since the previous decade. Speculations and market manipulation led to the market crash of 1929; consequently, the Securities Act of 1933 and the Securities Exchange Act of 1934 were issued and it was proved that the market crash was related to the depression of the 1930s. See 'Regulations of Stock Market Manipulation', supra no. 14, p. 509. See also Daniel R. Fischel and David J. Ross, 'Should the law prohibit 'Manipulation' in Financial Markets?', (1991) 105 *Harvard Law Review* p. 503.

¹⁹ See Karen Anderson, 'Focusing on criminal sanctions for market abuse? The UK experience, Features Focusing on Criminal Sanctions for market abuse', (2012) 7 *Journal of International Banking and Financial law* p. 430.

²⁰ See E. Avgouleas, supra no. 1, p. 308.

statement relating to the purchase or sale of a security is a criminal offence.²¹ Thus, market manipulation was first regulated in 1986. It must be noted that market abuse offences, insider dealing and market manipulation could result in criminal penalties, such as fines or prison time of up to seven years.²² However, as financial markets began to develop, the FS Act of 1986 was no longer sufficient. That led to the act being updated to re-regulate market abuse to protect the market more comprehensively. It was then that the FSMA of 2000 was passed for the regulation of market abuse in both criminal regime and civil penalties. The act was enforced on 1 December 2001²³ and emphasized the importance of confidence in financial markets and that trading in the market is not a right but rather a privilege for those who assume not to do so to the detriment of the interests of other traders or investments.²⁴ With regard to the enforcement, the ‘Authority’ in the United Kingdom is the Financial Services Authority (FSA), which was established and granted power by FSMA 2000 under Section 1 and was made responsible for the enforcement of regulations on market manipulation. It should be mentioned that the FSA has now been divided into two separate authorities, the Financial Conduct Authority²⁵ (FCA) and the Prudential Regulation Authority (PRA).²⁶ However, they will continue with the same FSA philosophy.²⁷

Subsequently, in July 2005, the UK adopted the EU Market Abuse Directive (MAD),

²¹ See Edward J Swan and John Virgo, *Market Abuse Regulation*, (2nd ed., Oxford University Press 2010) p. 6.

²² See *ibid*, p. 6.

²³ See Barry Rider et al, *Market abuse and insider dealing* (2nd ed., Tottel Publishing Ltd 2009) p. 471.

²⁴ See Swan and Virgo, *supra* no. 21, p. 6.

²⁵ See the official site of the FCA <www.fca.org.uk> Last accessed on 30 June 2013.

²⁶ See the official site of Bank of England <www.bankofengland.co.uk> Last accessed on 30 June 2013.

²⁷ As this thesis was completed before the establishment of the FCA, the FSA will be considered. For more information on the new regulatory reform see <http://www.fsa.gov.uk/pages/about/what/reg_reform/index.shtml> Last accessed on 7 April 2013.

which was issued in 2002 by the European Parliament.²⁸ Thus, the FSMA of 2000 implemented the directive in 2005. As a result, adopting this directive required some amendments to the FSMA of 2000 and these changes became effective in 2005.²⁹

It is important to emphasize that the regulations in both the UK and US have not defined the term market manipulation; however, the US has used the term manipulation under Section 9 (a). On the contrary, the term market manipulation has not been used in the UK and instead the term market abuse was used under Section 118 and the term misleading was under Section 397 of the FSMA 2000.

With regard to the case of Kuwait, it is evident from previous chapters that Law No. 7 of 2010 was implemented after two financial crises. In the Kuwaiti legislature, two financial crises are believed to be of significance in regulating market abuse and market manipulation. Law No. 7 of 2010 would be considered a complete securities regulation and a result of the severe financial failure in the 2008 Trust Crisis. As a consequence of this crisis, investors in the market suffered from a sharp drop of the market index, as mentioned in Chapter 3. Because of this severe failure, the need for a complete securities regulation was very high to benefit the public. The emergence of this law can be explained via public interest theory as it enhances the level of economic welfare and regulating market manipulation. Therefore, the Kuwaiti legislature has chosen the public interest economic theory, since Law No. 7 has considered the benefit for all the people involved in the market in addition to the welfare of the market by regulating market manipulation.

Hence, in Kuwait, market manipulation was first regulated under Law No. 7 of 2010,

²⁸ See Swan and Virgo, *supra* no. 21, p. 9.

²⁹ See Barry Rider et al, *supra* no. 23, p. 71-72.

which was enacted on 21 February 2010. In addition, this law stipulated the incorporation of an independent authority for stock market affairs—the ‘Capital Market Authority’ CMA, which is essential for the establishment of a healthy stock market, particularly in light of previous crises.³⁰ The law is aimed at regulating and legitimising the activity of the Kuwait Securities Market in an integrated manner. Hence, it stipulated the formation of a special authority for the securities market, established a court for the stock market and regulated the shortcomings in Kuwaiti law regarding general matters of the stock exchange under one law. This law was passed to protect the market and investors, specifically by providing transparency and adequate information to establish a healthy stock market. These measures may keep the market competitive with international stock exchanges and free of market manipulation.

Similar to the approaches of the UK and US, the Kuwaiti legislature has not defined the term market manipulation. In addition, the law does not use the term at all. This implies that the term market manipulation is still vague considering the problem of misunderstanding the term in the case of KSE and considering the lack of previous cases regarding market manipulation in Kuwait.

It can be said that the need for a definition of market manipulation in Law No. 7 of 2010 would help to a large extent in applying the rules of this law. With regard to judges, investors or anyone involved in the market, there is a strong need to have a clear concept of what is considered market manipulation—particularly in reference to previous crises—to warn people of what is considered abusive conduct. Instead, the legislature has merely depended on regulating the forms of manipulation even without using the term manipulation, as will be shown shortly in the third section of this chapter.

³⁰ See section 3 of Law No. 7 of 2010.

Unfortunately, this approach is not very helpful in the case of KSE.

Following this, it may be helpful to review the historical approach towards attempting to regulate market manipulation and establish a special stock market authority. The next section considers the history of Law No. 7 of 2010.

1.1. The History of Law No. 7 of 2010

The law began as a proposal by Senator A. Alharon in 2004 to incorporate the establishment of a Stock Market Authority and regulate the securities affairs in the market.³¹ Alharon stated the following as the three main reasons behind this proposal:

- Global developments witnessed by global stock markets, followed by the World Trade Organisation and international trade agreements.
- The local development of the KSE in previous years, particularly the government's sale of many of its shares to the private sector, which increased the number of traders investing in the KSE and the number of companies listed on the market.
- The shortcomings of legal regulation governing the KSE, specifically related to providing greater protection to investors in the KSE by the controlling department.

These issues all led to the proposal of an integrated law that would govern all stock market affairs.³² However, the government did not accept this proposal because of its belief that Alharon overlooked several very important issues and the 86 sections in the

³¹ See Kuwait National Assembly, session agendas from 1 November 2004.

³² See 'Egterah barlamani betanthen soq alawrag almaliya fe alKuwait wa ensha' Haya le edarat alborsa (Parliamentary proposal to regulate Kuwait's stock exchange and incorporate Financial Authority)', *Al-Sharq Al-Awsat* newspaper (Saudi Arabia and the UK 24 October 2004) available at <<http://aawsat.com/details.asp?section=6§ion=262007&issueno=9462>> Last accessed on 2 July 2013.

proposal were not sufficient. The council minister also simultaneously commissioned the Minister of Commerce to conduct a study for preparing a draft law establishing the Stock Market Authority. Hence, half a million Kuwaiti dinars were allocated to this study.

On 23 January 2007, the Minister of Commerce announced that the draft of the stock market authority law was in its final stages. It would be delivered to the council of the minister and then to the National Assembly for approval. Meanwhile, several senators mandated the committee of economic and financial affairs in The National Assembly to submit its report on the proposals of the stock market authority law by no later than 5 June 2007. The Chairman of the committee, A. Bager, objected to that request because he believed they should wait for the final draft of the Council of Ministers to be proposed to combine the proposal of the senators with the draft of the Council of Ministers. In the meantime, many senators deemed shameful the government's lack of urgency in submitting the draft of the stock market authority law.³³ They accused the government of failing and some of them emphasized the importance of the KSE in the Kuwaiti economy. They considered the law urgent because the KSE had witnessed up and down movements and transactions in billions, thereby exposing investors to heavy losses. For this reason, they believed that the law for the Stock Market Authority should be a priority on the government's agenda.³⁴

On 11 June 2007, the Chairperson of the Committee of Economic and Financial Affairs submitted a letter to the president of The National Assembly that stated that the draft law of the Stock Market Authority had been delivered to the Department of Legal Advice and Legislation and was still being studied; it would then be forwarded to The

³³ Senators name are N. Al-Sanea and H. Johar.

³⁴ See Kuwait National Assembly session agendas 30 April 2007.

National Assembly. The letter stated that it was better for the committee to postpone the task entrusted to it, namely a study of the proposals submitted, to the next legislative term.³⁵ However, many senators expressed disapproval of the government's delay in presenting the draft of the law—which took over two years, was costly and failed to produce any results. Until the Trust Crisis of 2008 and the collapse of the stock market, the government did not rush the submission of an integrated law providing these protections.³⁶ In fact, the government delayed action without a justifiable reason for over three years. The delay complicated the issue, particularly without the presence of a special stock market authority.

Subsequently, the economic and financial committee received the draft for the stock market authority law, which comprised 157 sections but was written by a team from the KSE.³⁷ The committee endured much criticism because this was a blatant conflict of interest. This draft was also illegal because a Minister proposed it, although it should have been proposed by the Council of Ministers, and specific procedures should have been followed. As a result, the committee stopped working on the draft.³⁸

A. Boresly appealed to the government not to pass the draft because of several issues that might lead to grave problems in the stock market.³⁹ For example, the draft contained many errors as well as technical and legal loopholes, which was rather different from the best international practises and standards. If it had been passed, it would have led to problems in the application of the law. Furthermore, another error

³⁵ See Kuwait National Assembly session agenda 11 June 2007.

³⁶ See Kuwait National Assembly session agenda 29 October 2008.

³⁷ In 30 December 2008.

³⁸ In 6 January 2009.

³⁹ See the appeal of Boresly available at <<http://www.indexsignal.com/forum/showthread.php?t=158350>>
Last accessed 2 July 2013.

was the authority given to the Minister of Commerce. This would have placed the process of selecting and appointing commissioners in the hands of the Minister alone and subject to prejudice, which goes against the second criterion of international standards. Thus, apart from omitting the most important goal of protecting investors, many other reasons drove Boresly to disapprove of the draft.⁴⁰ However, the committee on economic and financial affairs in The National Assembly ended its study on the draft with amendments, which took one year. The major amendments stated that directors of the authority should include five full-time members for five years, the Council of Ministers should appoint them and the authority would be subordinate to the Council of Ministers, unlike the government's draft.⁴¹

On 20 January 2010, the National Assembly approved the law unanimously during the first debate. With regard to the agreement and consensus on an important issue discussed in the National Assembly, this law is considered a unique case in which the senators' observations of the law's amendments were delivered to the Committee of Economic and Financial Affairs in preparation of the law's approval during the second debate after two weeks. One of the major amendments on which the government insisted was the subordination of the authority to the Ministry of Commerce. However, senators believed it should be subordinate to the Council of Ministers because of its sensitivity and importance to the Kuwaiti economy.⁴²

During the debate, the senators confirmed the importance of this law, with Senator K. Al-Adwa stating that the chaos in the stock market and fictitious companies seizing the

⁴⁰ See *ibid.*

⁴¹ Check the Alnawady website <<http://www.alnwady.com/stock/showthread.php?t=83509>> Last accessed on 21 April 2011.

⁴² See Kuwait National Assembly, session agenda 20 January 2010.

money of small investors had cost the country billions.⁴³ Senator D. Boramya wanted this law to protect small investors whose money had been stolen in the stock market, whereas Senator A. Alamer was surprised at the high number of penalties and sanctions provided by the law.⁴⁴ Most of the members emphasised the importance of the law and the need for the market mechanism to protect investors and the economy as a whole. Strangely, some members had thus far not considered the importance of criminal regulation and the application of penalties for market abuse in the stock exchange.

Finally, Law No. 7 of 2010 was passed, which is of great importance to the Kuwaiti market and the economy. In addition, all existing legislation governing the market was cancelled by this new law in addition to the decree that was passed to establish the current KSE.⁴⁵ The law established a specialised stock market court to achieve simplicity in solving the disputes that would arise because of the application of this law.

One may ask, as has been discussed earlier, what would make the National Assembly to issue this law after a delay of six years? In other words, why did the merchant class accept the issuance of this regulation? In fact, although there is a possible explanation of the delay in this law with regard to this class, after the 2008 crisis, it has definitely been proven that Kuwait and the KSE need more qualified security regulation in addition to a special authority for the market. It should not be forgotten that this class of society has participated in the establishment of modern Kuwait and were always at the helm of a developing Kuwait. Thus, in comparison to other gulf countries, Kuwait may be considered the last country to establish a special authority for financial affairs, whereas

⁴³ See 'Belejma' egrar hay'at soq almal (Capital Market Authority was approved unanimously)', *Al-Watan* newspaper (Kuwait 21 January 2010).

⁴⁴ See *ibid.*

⁴⁵ The KSE still exists because it is licenced according to section 154 of Law No. 7 of 2010.

it has one of the oldest markets in the region, as stated in Chapter 1. The CMA was established in 1998 in Oman,⁴⁶ in 2003 in Saudi Arabia,⁴⁷ 2000 in UAE⁴⁸ and 2005 in Qatar.⁴⁹ This may have indicated to the Kuwaiti legislature the need for a special authority. Moreover, the 2008 crisis had a negative impact on the entire Kuwaiti society; thus, the need for better regulation was very high as well. The next section discusses the regulation of market manipulation under Law No. 7 of 2010.

2. *Regulating (Prohibiting) Market Manipulation*

As has been shown in previous sections, after the 2008 crisis, the Kuwaiti legislature began to believe that a complete securities regulation was absolutely necessary. Hence, market manipulation was prohibited in 2010 in Kuwait under Law No. 7 of 2010. In this regard, the question that may arise in this situation is ‘To what extent is the Kuwaiti approach of prohibiting market manipulation sufficient?’ To answer this question, the UK approach of regulating market manipulation is considered.

In the UK, market manipulation is regulated under the FSMA 2000 under Sections 118 and 397. The UK regulation considers market manipulation as a criminal offence that is

⁴⁶ See Royal Decree no. 80 of 1998, issued on 9 November 1998. See the Capital Market Authority website

<http://www.oman.om/wps/portal/index!/ut/p/c5/04_SB8K8xLLM9MSSzPy8xBz9CP0os3hjA3cDA39LT1_vEF9HAYPjMDcvSx8zYxcXE6B8pFm8AQ7gaEBAd3Bqnn44yE68Zvh55Oem6hfkRIQEpCsqAgBzhGs1/dl3/d3/L0IHskovd0RNQUprQUVnQSEhL1ICZncvYXII/?lang=ar> Last accessed on 18 August 2013.

⁴⁷ See Royal Decree No. (M/30), issued on 2/6/1424 H (2003). See the Capital Market Authority website < <http://www.cma.org.sa/en/Pages/home.aspx>> Last accessed on 18 August 2013.

⁴⁸ See Federal Decree no. 4 of 2000, issued on 29 January 2000. See Securities and Commodities Authority website < <http://www.sca.gov.ae/arabic/sca/pages/establishment.aspx>> Last accessed on 18 August 2013.

⁴⁹ See Law No. 33 of 2005, See Qatar Financial Markets Authority website < <http://www.qfma.org.qa/English/aboutp.aspx?id=40#>> Last accessed on 18 August 2013.

punishable under civil and criminal law.⁵⁰ On the contrary, Law No. 7 of 2010 has regulated market manipulation under Chapter 11 entitled 'The Crimes and Remedies'. It should be mentioned that this chapter has combined all the crimes towards the market under one chapter. Thus, market manipulation and insider dealing are regulated together in addition to the crime of disclosure of interests and the crime of takeover. This approach of combining these sanctions together is different from the definition of market abuse that basically includes two forms only (market manipulation and insider dealing). In addition, the FSMA 2000 regulates market abuse under Section 118, which includes market manipulation and insider dealing; however it does not include disclosure of interest or takeover.

The objective of the Kuwaiti legislature was to highlight all the types of conduct that were considered criminal under a single section to make people involved in the market aware of these practises. This would give investors a previous warning or red line to avoid and consider while trading in the market. However, considering that the term market manipulation itself is unclear in the case of KSE, investors in the market mix manipulation with other abusive practises. Thus, it is imperative to regulate market manipulation under one section, otherwise the definition remains vague.⁵¹

Market manipulation has been regulated under Sections 122, 124 and 125 of Law No. 7 of 2010 and these sections stipulate criminal penalties. Conversely, the FSMA 2000 has established criminal and civil sanctions. With regard to the criminal sector, Section 397 creates two offences. The first is creating a misleading statement that may be done in three ways, as stated in Section 397 (1), and applies to a person who

⁵⁰ See also Michael Filby, 'Part VIII Financial Services and Markets Act: filling insider dealing's regulatory gaps', (2004) 25 Company Lawyer, p. 303.

⁵¹ See section 1 of the introduction chapter of this thesis.

- 1- Knowingly makes a statement that misleads others.
- 2- Conceals information with the goal of misleading others.
- 3- Recklessly or dishonestly makes a statement that misleads others.

Therefore, individuals involved in such manipulation are considered to be guilty when they stipulate statements that would induce others through a relevant investment.⁵² Thus, individuals and firms may be conducting offences if they give misleading impressions by making false statements with the intention of misleading others.⁵³ In fact, this section provides a very general rule to be applied on abusers. This general rule would possibly be applied on many different cases. The term 'recklessly' in this section expands the category of those who are considered manipulators. Determining recklessness involves addressing the question 'did the accused make the statement while recklessly disregarding the known risk?'⁵⁴ Unlike Law No. 7 of 2010, the term recklessly or dishonesty have no similarities under this law. In addition to this offence, Section 397 (3) includes another offence. The second criminal offence involves a conduct or engaging to any work that misleads or provides a false impression regarding the market or to the price of a share. In this case, an individual is considered guilty if he/she knowingly aims to create a false impression by trading.⁵⁵ In both cases, an assessment of guilt involves determining whether the accused recklessly disregarded known risks in making a statement.⁵⁶

In addition to these offences, Section 397 has regulated the defences for these two

⁵² See Section 397 (2).

⁵³ See Barry Rider et al, *supra* no. 23, p. 91.

⁵⁴ See Barry Rider et al, *supra* no. 23, p. 91.

⁵⁵ See Section 397 (3).

⁵⁶ See Barry Rider et al, *supra* no. 23, p. 91. See also Andrew Haynes, 'Market Abuse: an analysis of its nature and regulation', (2007) 28 *Company Lawyer*, p. 323.

sanctions. For the first sanction, Section 397 (4) has determined the cases that the accused can assert in defence. Accordingly, the defendant can show that the statement or promise is made according to (a) rules regarding price stabilisation, (b) rules regarding control of information and (c) buy-back exemptions and stabilisation of financial instruments.⁵⁷ In addition, Section 397 (5) regulates the defences for the section offence of Section 397 (3). It states that it is defence to show that (1) the person reasonably believed that his conduct would not create a false impression; (2) the person engaged in the conduct (a) for the purpose of price stabilisation and (b) in conformity with the price stabilisation rule; (3) he acted in conformity with the rule of control of information; (4) he acted in conformity with the rule for exemptions for buy-back programmes and stabilisation of financial instruments.⁵⁸

From the above discussion, it is evident that manipulative offences have been regulated through very general rules and the FSMA 2000 has determined the defences for these sanctions. On the contrary, Law No. 7 of 2010 stipulates criminal sanctions for market manipulation practises and this represents a big step towards protecting the market from abusive practises through deterrence, which is one of the important objectives of securities regulation for protecting investors. However, these sanctions are regulated with the forms of manipulation. In fact, the penalties differ according to such form. In addition, the legislature has missed the defence part at a time when the need for this type of regulation is very high. Regulating defence would help the abuser and judges as

⁵⁷ The relevant provisions of Commission Regulation (EC) no 2273/2003 of 22 Dec 2003 implementing Directive 2003/6/EC of the European Parliament of the Council as regards exemptions for buy-back programmes and stabilization of financial instrument. See Section 397 (4).

⁵⁸ These are the relevant provisions of the Commission Regulation (EC) no 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament of the Council as regards exemptions for buy-back programmes and stabilization of financial instruments. See Section 397 (5).

well, particularly when there are no previous cases that can be referred to. It will be shown in the next chapter how judges in Kuwait are hesitant in enforcing the criminal regime on manipulators. Having clear rules and a special section for defence would make enforcement of the law much easier.

The criminal sanctions under Law No. 7 vary between imprisonment and fines. The law stipulates imprisonment for a period not exceeding five years and a fine of no less than 10,000 KWD, which must not exceed 100,000 KWD. Either penalty can be imposed on cases involving Section 122, which includes artificial transactions, fictitious orders, or increasing and decreasing the security price. Furthermore, for manipulation that provides misleading advice under Section 124, the law has stipulated an imprisonment sentence for a period not exceeding five years and a fine of no less than 5,000 KWD, which must not exceed 50,000 KWD, or penalty. Finally, for the case of spreading rumours regarding CMA under Section 125, the penalty is a fine of no less than 5,000 KWD, which is not to exceed 50,000 KWD.

On the other hand, in addition to the criminal regime under the FSMA 2000, Section 118 stipulates civil penalties. This section is entitled ‘Market Abuse’ and regulates the forms of market manipulation and insider dealing as well. These forms of manipulation will be explored in the next section. In this regard, Section 123 of the FSMA 2000 gave the FSA the authority to impose penalties on people who are engaged in market abuse. It states that ‘..... it may impose on him a penalty of such amount as it considers appropriate’.⁵⁹ Hence, unlike the CMA, the FSA has the power to fine abusers. Another aspect that must be emphasized is that Section 119 of the FSMA 2000 gave the FSA the

⁵⁹ See section 123 (1) b of FSMA 2000.

authority to describe the conducts that amount to market abuse.⁶⁰ Accordingly, the FSA has issued the 'Code of Market Conduct', which is an essential guide for market participants. This code identifies the practises that amount to market abuse.⁶¹ On the other hand, the CMA has issued the code of Law No. 7 of 2010. However, the code of Law No. 7 of 2010 is repetitive with regard to the sections of market manipulation in Law No. 7 of 2010 and does not include any explanation or examples of the forms of market manipulation. In other words, sections on market manipulation in the code are copied from Law No. 7 of 2010 without any explanations or directions.⁶²

Furthermore, under Law No. 7 of 2010, the CMA has the authority to enforce civil penalties on abusers. Although, Section 146 of Law No. 7 gave the CMA the power to enforce some civil penalties, it does not include monetary fines. This is considered a lack of regulation, as is clearly explained in the next chapter.⁶³

On the civil liability side, Law No. 7 of 2010 has not regulated the civil regime. This

⁶⁰ In the case of the US, Section 9, which regulates manipulation in general, and Section 10 (b) SEA 1934 give the SEC the right to prohibit other practises that are not listed in Section 9. Section 10 (b) is employed more frequently and has been described as picking up, where Section 9 left off. This section does not make any practise unlawful unless the SEC adopts rules to prohibit and regulate it. Moreover, this section prohibits instruments, so it makes unlawful the use of any manipulative or deceptive device or contrivance in connection with the purchase or sale of any security under any manipulative device or contrivance that is prohibited under regulation of the SEC. See Paul A Fryer, 'Insider Dealing and Market Manipulation: A Comparative Analysis of Regulatory Enforcement in the United Kingdom and United States', (PhD thesis, 2000 University of Wolverhampton) p. 137.

⁶¹ See Barry Rider et al, *supra* no. 23, p. 81.

⁶² The issuance of a law by the Kuwaiti National Assembly is usually followed by the issuance of a regulation by the governmental body in charge of enforcing this law. These regulations are professionally known by the Arabic legal term (La'eha). Since the UK approach used the term code, the term code is being used to indicate the Kuwaiti regulation or bylaw.

⁶³ See section 2.3 of Chapter 5 of this thesis.

implies that the Kuwaiti legislature wanted to apply tort law in this case.⁶⁴ Although the general rule of civil liability can be applied in the case of market manipulation, particularly by regulating market manipulation, it would very helpful if the legislature has defined the damages. In other words, as has been previously mentioned, establishing civil liability requires three conditions: wrong conduct, error or damage to others and a causal relationship between the behaviour and the error.⁶⁵ Following this rule, the first condition which wrong conduct would easily be applied after the regulation of market manipulation forms. However, the error condition should be defined under Law No. 7 of 2010 in order to determine whether there is a civil liability or not. In other words, legislature should give a measurement to differentiate between error and regular losses that occur normally after the daily trading. This kind of classification would be very essential for a market with no previous experience of market manipulation cases. Furthermore, the CMA may do this job by defining the error condition; however, the CMA has not done so.

Following this issue, one of the important barriers that prevent the application of the civil liability is Sections 47–50 of the code of Law No. 7. It states that anyone can file a complaint to the ‘Complaints Committee’ in the CMA regarding any breaches of the law. However, the complaint should mention the name of the persons who breached the law and his address, which is apart from paying 100 KWD for lodging this complaint’. In reality, this can never happen since investors in the market who were manipulated technically do not know the abusers. This is the job of the ‘Surveillance Department’ or the CMA itself. Hence, this rule would definitely restrict the filing of complaints. In addition, paying 100 KWD would also limit the number of people complaining as well.

⁶⁴ The civil regime has been discussed in the previous chapter.

⁶⁵ See section 2.2 of Chapter 3 of this thesis.

These rules are contrary to the objectives of the CMA as provided in section (3) in which investor's protection, efficiency and transparency of the market are the priorities.⁶⁶

It is evident from the above discussion that the UK approach to defining market manipulation is flexible and gives the FSA the authority to define market abuse, unlike the Kuwaiti approach that has fixed forms regulated by Law No. 7. This flexibility might be very essential in the case of Kuwait considering that there are no previous cases for reference. Whatever the case was, these forms of market manipulation will be explored in parallel with the manipulative forms defined in the FSMA 2000.

3. *Forms of Market Manipulation under Law no. 7 of 2010*

As it has been concluded that no definition exist for the term market manipulation in both UK and Kuwaiti regulations, it is beneficial to examine the forms of market manipulation that have been determined by both regulations. Hence, this section illustrates the market manipulation forms under Law No. 7 of 2010 in comparison with the forms of manipulation under the FSMA 2000.

According to the guiding concept of market manipulation, discussed in Chapter 2 with the common forms of manipulation, the manipulative forms under Law No. 7 of 2010 are now explored. Market manipulation is regulated under Sections 122, 124 and 125. It might be helpful to discuss each section separately.

Section 122 states,

- 1) '..... conduct that would create a misleading impression regarding the real

⁶⁶ See Section (3) of Law No. 7 of 2010.

trading of a security or the stock market by

a) entering into a transaction that would not change the ownership of the security.

b) entering a demand or supply order for such security where he/she knows that a similar order of the quantity, price and the time for this security is present, or will be entered from the same person or other persons under an agreement with that person.

2) A transaction or more of such security that would

a) increase the security price for the same source in order to influence others to buy,

b) decrease the security price for the same source in order to influence others to sell,

c) creates a real or artificial transaction in order to influence others to buy or sell.’⁶⁷

Section 124 states,

‘....it is punishable for every person who had openly encouraged or described others to buy or sell a security where it has been proven that he/she had an advantage, where the advantage can be a commission, an interest, a gift from another trader or broker....’⁶⁸

Section 125 states, ‘..... it is punishable for anyone who announces that the CMA has done anything that is not real.’⁶⁹

As is evident, these three sections have not used the term market manipulation; however, manipulation is implied according to the definition of manipulation outlined

⁶⁷ Translated by the researcher.

⁶⁸ Translated by the researcher.

⁶⁹ Translated by the researcher.

in Chapter 2. Hence, these forms revolve around four categories which are (1) information based manipulation, (2) artificial transactions, (3) increasing and decreasing the security price and (4) fake orders. In this regard, it is important to note that the code of Law No. 7 has no other detailed description of these forms. Since this approach of regulating market manipulation is very new and based on no previous cases, the need for descriptive regulation and detailed explanation is very high.

On the other hand, the UK adopted and implemented the EU Market Abuse Directive in 2005 which regulates market manipulation forms.⁷⁰ The Market Abuse Directive expands the classification of market abuse into seven types of offences.⁷¹ Market abuse was divided into three categories under Section 118(2) (a)–(c) of the FSMA 2000 and included the misuse of information, creating false or misleading impressions and market distortion. These categories have been increased to seven under Section 118 (2)–(8) after the implementation of the Market Abuse Directive. These offences can be divided into two types of major abuses, which are insider dealing and market manipulation.⁷² There are four types that may be classified as market manipulation under Subsections (5)–(8) of Section 118 of FSMA 2000, since they all revolve around the elements of

⁷⁰ See Salem Sheikh, 'FSMA Market Abuse regime: a review of the sunset clause', (2008) 19 International Company and Commercial Law Review. See also Joe Coffey, 'The Market Abuse Directive – the first use of the Lamfalussy process', (2003) 18 Journal of International Banking law and Regulation, p. 370.

⁷¹ As explained in Chapter 2, market abuse is an offence towards the financial market and has been discussed and regulated under both FSMA 2000 and the EU Market Abuse Directive. See Slaughter and May, 'The EU/UK Market Abuse Regime- Overview', (2011) p. 30, available at < <http://www.slaughterandmay.com/what-we-do/publications-and-seminars/publications/client-publications-and-articles/t/the-euuk-market-abuse-regime---overview.aspx>> Last accessed on 12 May 2013.

⁷² See Barry Rider et al, *supra* no. 23, p. 71.

manipulation that were discussed in Chapter 2.⁷³ In addition, the code of market conduct describes and details these behaviours in MAR 1.6–1.9.⁷⁴ These manipulation behaviours under Section 118 revolve around three major categories, which are (1) information-based manipulation, (2) artificial transactions and (3) manipulation by fictitious devices.⁷⁵

Accordingly, the manipulative forms of market manipulation under Law No. 7 of 2010 will be discussed and evaluated through manipulative forms defined under UK Law.

3.1. *Manipulation based on misleading information*

Information-based manipulation can be considered as one of the most important forms of manipulation and may also be the first step of other manipulative practises.⁷⁶ Information-based manipulation revolves around the concept of disseminating false information that would mislead others in the market. In this regard, this form is regulated under Sections 124 and 125 of Law No. 7 of 2010. Section 124 regulates the recommendation from a person to purchase or sell a specific security to achieve a specific undeclared interest. Interest in this section implies any concealed commission,

⁷³ See Louise Gullifer and Jennifer Payne, *Corporate Finance Law Principles and Policy*, (2011 Hart Publishing Ltd.) p. 525. See also Swan and Virgo, *supra* no. 21, p. 59.

⁷⁴ The FSA includes several requirements related to the standard of market conduct that should be followed in the UK markets in the FSA handbook. For more details, check the FSA website <http://www.fsa.gov.uk/about/what/financial_crime/market_abuse/conduct> Last accessed on 16 February 2013.

⁷⁵ In the US, the prohibition of market manipulation is regulated under Sections 9 and 10 of the SEA 1934 but United States securities regulation has not defined the term market manipulation as well. This could be translated as legislators believing that there would not be a need to define the term market manipulation as long as there is a special section for detailed forms of market manipulation. Instead, SEA 1934 regulated several forms of market manipulation. See Steve Thel, *supra* no. 5, p. 361.

⁷⁶ See section 2.1 of Chapter 2 of this thesis.

material return, or a donation or gift from a source, broker, trader, advisor, or underwriting agent related to the security. Recommendations may be from an investment company; for example, advising the public to buy a share of a certain company based on a prior agreement with this company on a certain commission or gift if it executes based on such recommendation. This situation would be considered manipulation because it is dependent upon information related to a specific share that would lead to a higher price than the security price. Thus, this would be considered an artificial price in addition to the bad intention of the manipulator for providing false information. However, stating ‘an advantage’ would lead to the following questions— ‘What if this broker had no advantage? In this case would he be accused? Another question that may arise is ‘what if this person has confidentially announced or advised’? In the US, this form is clearly shown in the case of AbsoluteFuture.com.⁷⁷ In this case, the company was using a misleading and false press release to manipulate the security price, which led to an increase in the security price. Andrews, Durante and Detrano caused AbsoluteFuture.com to issue misleading and false news on their website, which led to an increase in the price of the security. This shows the extent to which information-based manipulation could be applicable and people would be involved by influencing others through the news and internet.

In addition to Section 124, Section 125 states a special form of information-related manipulation, which is related to the CMA. Thus, any other rumour regarding the KSE or other security would not be punishable under this section. For example, a violation of this section could be tantamount to claiming that the Authority has taken a measure or decision that it in fact has not taken. In this case, the rumours released by a person in

⁷⁷See the Litigation release available at <<http://www.sec.gov/litigation/litreleases/lr17180.htm>> Last accessed on 30 June 2013.

connection with the CMA may negatively or positively affect the trading of shares to achieve a personal benefit. It is strange that regulators only regulated rumours related to the CMA and remained silent on all other forms of disseminating or spreading false or misleading information, although Kuwait currently suffers from news credibility. Investors disseminate and follow rumours through Internet blogs, text messages and all other social media sources. In addition, newspapers provide news regarding companies and securities daily that are not very precise and would definitely provide a false impression to investors in the market.

Unlike Section 118, the FSMA 2000 has no special section for information regarding the FSA. Thus, information-based manipulation is regulated under Section 118 (7) of the FSMA 2000 with a broader approach.⁷⁸ This form of manipulation is dissemination of information that would give a false impression by a person who ‘knew or could reasonably be expected to have known that the information was false’.⁷⁹ Section 118 (7) states that

‘... the behaviour consists of the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to qualifying investment by a person who knew or could reasonably be expected to have known that the

⁷⁸ Information-based manipulation is regulated in Section 9 (a) 4 and 5 SEA. Section 9 (a) 4 deals with inducing others to buy or sell such security through false or misleading materials, which includes misleading information or rumours. Moreover, section 9 (a) 5 is specialised for brokers, dealers, security-based swap. dealers etc. This section prohibits the broker or dealer from giving advice to induce the trader to purchase. See Rebecca Soderstrom, *supra* no. 14, p. 19. In this regard, E. Avgouleas has determined broker misrepresentation as the first class of information-based manipulation, see E. Avgouleas, *supra* no. 1, p. 119.

⁷⁹ See Slaughter and May, *supra* no. 71. See also Andrew Henderson, ‘Misuse of information, Chinese walls and changes to the FSA’s Code of Market Conduct’, (2005) 20 *Journal of International Banking Law and Regulation*, p. 1-6.

information was false or misleading’.

It can be shown that this section is applicable to any person who misleads others by giving misleading information regarding any security. The information is not limited to the FSA like the case in Kuwait; however, it contains any kind of information that would affect the security price or mislead others. Further, the FSA has described dissemination in MAR 1.8 as

1. Disseminating rumours about a qualifying investment through the media.
2. Undertaking a course of conduct that gives a misleading impact about a qualifying investment.

In this regard, the FSA has indicated important factors relating to the dissemination of information, including that the person spreading the information should know that it was false and the organisation responsible for disseminating information should know that the information was false. The FSA has given an example of this kind of manipulation, whereby it could occur when a person posts false information on the Internet via chat rooms, which may give a misleading impression of a specific share.⁸⁰ In reality, this example would definitely help make investors aware of the depths of such forms of manipulation that can be undertaken through various media or similar methods. Furthermore, how the FSA is expanding the definition of the type of information that affects security prices is evident from the example of when the FSA fined Christopher Gower £ 50,000.⁸¹ Because he disclosed misleading and incorrect

⁸⁰ See MAR 1.8 available at <<http://fsahandbook.info/FSA/html/handbook/MAR/1/8>> Last accessed on 30 June 2013.

⁸¹ See the FSA library available at <<http://www.fsa.gov.uk/library/communication/pr/2011/004.shtml>> Last accessed on 7 April 2013.

information regarding Enterprise Inns plc (ETI) to clients in his research analyst position, it was translated as information-based manipulation. In this case, spreading false analytical recommendations was considered manipulation because it would ultimately increase the demand for and the price of the security.⁸²

3.2. *Manipulation based in artificial transactions*

The above section clarifies that artificial transactions are regulated under Section 122 (1) a and (2) c, which essentially detail the activities that are identified as artificial transactions, such as wash sales, matched orders and pools.⁸³ In this sense, Section 122 (1) a states that entering into a transaction to create a false or misleading impression in connection with the actual trading of a security or securities markets in a manner that does not lead to an actual change in the ownership of the security is considered an artificial transaction. For example, it may occur if the transaction is performed on a certain share that would give an indication to other traders that this share has witnessed large purchase volumes, thereby causing the price of the share to increase. It may also

⁸² An example of this form is the case of *Cattles plc*. In this case, the FSA fined James Corr—Cattles' finance director—£400,000 and Peter Miller—Welcome's finance director—£200,000 for disseminating misleading information regarding 'the credit quality of Welcome's loan book and acting without integrity in discharging their responsibilities'. In addition, they have been banned from performing functions in relation to any FSA-regulated activities. In addition, John Black was banned, fined 100,000 pounds and had his case referred to the Upper Tribunal. See the FSA library available at <<http://www.fsa.gov.uk/library/communication/pr/2012/034.shtml>> Last accessed on 7 April 2013.

⁸³ Section 9 (a) 1 and 2 of 1934 SEA essentially details those activities that can be identified as artificial transactions. It makes it illegal for anyone to create artificial transactions for the purpose of creating a misleading appearance for such transactions and securities. It must be noted that section 9 (a) 1 explains the wash sales and matched orders practises, and section 9 (a) 2 determines manipulative pools. It is unlawful for anyone to enter a series of transactions by creating, raising or reducing the price to induce others to buy or sell. See A. A. Berle and Jr., 'Stock Market Manipulation', (1938) 38 Columbia Law Review, p. 393. See also Paul A Fryer, *supra* no. 60, p. 134.

explain wash sales practises, since there is no change in the ownership of the share. In fact, this transaction may be conducted between the fund managers or between traders to give this false indication. In addition, Section 122 (2) c regulates creating fictitious trades by entering into a transaction or more than one transaction to create an actual or fake trade for the purpose of influencing others to buy or sell. However, the term ‘real and artificial’ has been used, which indicates that legislatures believe that artificial transactions are not real. However, these two terms have not been explained in the law or even in the code. Furthermore, as this section does not determine whether it would be beneficial for price changes or just influencing others, it would be translated as matched orders or pools.

On the contrary, artificial transactions are regulated in the FSMA 2000 under Section 118 (5), which states,

‘... the behaviour consists of effecting transactions or orders to trade... which:

- b. (a) gives or are likely to give a false or misleading impression as to the supply of or demand for, or as to the price of, one or more qualifying investments. Or
- c. (b) secure the price of one or more such investments at an abnormal or artificial level’.

This section defines or regulates market manipulation through artificial transactions in a wider form. It states that manipulating transactions is when transactions and orders to trade are affected by a false or misleading impression regarding the supply of, demand for, or the price of an investment or securing the price of such an investment at an unreal or artificial level. In addition, it states ‘give or likely to give’, which implies that it is not essential to actually engage in the conduct as it includes even people who were likely to create these artificial transactions. On the contrary, Kuwait has just limited the

application to the conduct only. People who were planning to manipulate are not breaching the law.

In addition, the UK approach has regulated the form of securing the price to an abnormal or artificial level.⁸⁴ This practise is unlawful since the manipulator creates a false price for such a security. The individual stabilises the price of the security according to his/her plan or interest by pegging it.⁸⁵ There is no similar form in Kuwaiti regulation.

The FSA has described the first situation and provided some examples for it. The code of market conduct under Section 1.6 describes false or misleading impressions as last-minute trades, wash trades or fictitious trades, painting the tape and artificial supply or demand.⁸⁶ The FSA has also given examples of securing price manipulation, such as buying and selling orders simultaneously and at the same price or increasing and decreasing the price of a qualifying investment.⁸⁷ However, this form requires evidence of intent to induce others to trade. In this regard, the FSA has imposed one of the largest fines on a Dubai-based investor of approximately six million pounds for manipulation at the closing price.⁸⁸ In this case of artificial transaction, on Goenka had placed orders at

⁸⁴ Section 9 (a) 6 of SEA regulates stabilizing the security price.

⁸⁵ See Diane, U. Mage Roberts, 'A kinder, Gentler Approach to the Regulation of Market Manipulation Under the Securities Exchange Act of 1934: Extension of the Approach Taken with Respect to Distributions of Certain German Securities to Distributions of Certain U.S. Securities', (1994-1995) 20 N. C. J. Int'l L. & Com. Reg., p. 9.

⁸⁶ See MAR 1.6. available at <<http://fsahandbook.info/FSA/html/handbook/MAR/1/6>> Last accessed on 3 March 2013.

⁸⁷ For more examples and details, see MAR 1.6.4. MAR also mentions some factors for describing legitimate reasons, giving false or misleading impression, abnormal price levels and abusive squeezes. For more details, see MAR 1.6.

⁸⁸ See the FSA library available at <<http://www.fsa.gov.uk/library/communication/pr/2011/094.shtml>> Last accessed on 7 April 2013.

the end of the trading day to increase the closing price and thereby influence other traders on the London stock exchange. His conduct was translated as manipulation in the form of artificial transaction and the huge fine was imposed on him.⁸⁹ Another fine by the FSA for a case of artificial transaction was imposed on Swift Trades, Inc., which had made some price movements on some shares on the London Stock Exchange. As a result of these artificial practises, Swift Trades made profits amounting to approximately 1.75 million pounds. The manipulation in this case constitutes many transactions that led to a false impression of artificial share price that had influenced other traders in the market. The FSA fined Swift Trade approximately £8,000,000 and stated that this practise would destroy market confidence, which is one of the main objectives of the FSA.⁹⁰

3.3. Manipulation by increasing or decreasing the security price

Section 122 (2) a and b regulates the type of manipulation that increases or decreases the security price. It defines this situation as entering into one or more transactions on a security to raise the price of the security from the same source for the purpose of influencing others to purchase it. It can also represent a transaction on a security to reduce its price from the same source for the purpose of urging others to sell it. These

⁸⁹ For more details, check the International law office website <<http://www.internationallawoffice.com/newsletters/Detail.aspx?g=f87aae5b-a965-4ae3-96fb-eebac49e577e>> Last accessed on 7 May 2013.

⁹⁰ The objectives of the FSA, including the market's confidence, will be explained in the next chapter. See also the FSA library available at <<http://www.fsa.gov.uk/library/communication/pr/2011/075.shtml>> Last accessed on 7 April 2013. For the Upper tribunal decision check <http://www.tribunals.gov.uk/financeandtax/Documents/Canada_Inc_Swift_Trade_Inc_and_Peter_Beck_v_FSA.pdf> Last accessed 30 June 2013. See also Edward Black and Tim Aron, 'UK Appeal Tribunal Confirms 8 million pounds Market Manipulation Fine', available at <<http://www.natlawreview.com/article/uk-appeal-tribunal-confirms-8-million-market-manipulation-fine>> Last accessed on 30 June 2013.

two forms are unlawful and would be considered market manipulation. In the first case, the manipulator should have the intent of selling at a higher price apart from increasing the security price. In contrast, in the case of decreasing the security price, the manipulator should have the intention of collecting the security at lower prices. It should be mentioned that this form has no similarity to the provisions under Section 118 of the FSMA 2000. That does not imply that increasing/decreasing the prices of securities are not regulated under Section 118. However, the possible application of Section 118 (6) is discussed in the below account.⁹¹

The form of increasing the share price is exemplified through the case of *United States v Mulhern*.⁹² In this case, John Mulhern was charged with manipulating the share price of Gulf & Western in NYSE by increasing the share price after purchasing 75,000 shares. His operation resulted in an increase in the share price. However, he tried to prove that he did not intend to influence others, since he had not misrepresented any fact that would help increase the share price.

3.4. Manipulation based on fictitious devices

Market manipulation based on fictitious devices is regulated under Section 118 (6) of the FSMA 2000. It states that, ‘... The behaviour consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance’. This type of manipulation occurs with the use of fictitious devices or any

⁹¹ On the contrary, section 9 (a) 3 of SEA regulates manipulation in terms of increasing or decreasing the security price. See A. A. Berle and Jr., *supra* no. 83, p. 398. See also Rebecca Soderstrom, *supra* no. 14, p. 16.

⁹² See *US vs. Mulheren* (1991) 938 F.2d 364. Available at < http://www.leagle.com/xmlResult.aspx?page=1&xmldoc=19911302938F2d364_11221.xml&docbase=CSLWAR2-1986-2006&SizeDisp=7 > Last accessed on 30 June 2013.

other ‘form of deception or contrivance’. The FSA has given examples of what it considers as manipulating devices in MAR 1.7:⁹³

1. When someone already owns a specific share and gives a positive opinion in the media or in another device of the security, which may affect the price of the security. In this case, he did not disclose the conflict of interest between the ownership of the security and the positive opinion announced.
2. ‘Pump and dump’, which is buying a specific security (long position) and spreading positive rumours about this security to increase its price.
3. ‘Trash and cash’, which is holding a short position in a qualifying investment and then spreading negative false rumours about it in order to decrease its price.

In the case of Law No. 7 of 2010, Section 122 (1) has merely regulated the device of fictitious orders. Section 122 (1) b states entering a supply or demand order to create a misleading appearance in connection with the actual trading of a security or securities market, while being aware that there is an order that has already been issued similar to the price, quantity and time. This can also occur in a case where an order of such security was implemented or will be issued by the same person who has an agreement with another person(s). In this regard, the law punishes manipulators for placing the orders themselves regardless of the transactions. It should be clear that this section has not clarified whether the responsible person is the investor or the broker who places the order; however, it is more likely to be applied to both, as the section is very general and may be applied to both investors and brokers. It is unlawful if the orders were under a previous agreement between two people to place similar orders for the same quantity

⁹³ MAR 1.7. For more examples and more details of the factors that should be taken into account, see the FSA handbook available at <<http://fsahandbook.info/FSA/html/handbook/MAR/1/7>> Last accessed on 30 June 2013.

and time. It is not required for the transaction to have been placed; rather, it is only required that the order was intended to be fake or fictitious and under a previous plan with another manipulation. An example of this form is the case of Barnett Michael.⁹⁴ This individual practised manipulation on the London Stock Exchange by entering multiple orders to buy and sell shares. The FSA fined him £700,000 for his market manipulation practises and asked him to pay £322,818 in restitution to firms that suffered from losses due to his conduct. He manipulated the price of CFDs and spread bets that created false prices. These manipulative practises resulted in a profit of £629,130.

In addition, Section 118 (8) states that,

‘... the behaviour...

- (a) is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for a price or value of, qualifying investments, or
- (b) would be, or would be likely to be, regarded by a regular user of the market as a behaviour that would distort, or would be likely to distort, the market in such investments, and the behaviour is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market’.

This section stated a method to examine whether the conduct is manipulation. Misleading behaviour would be considered market manipulation when a regular person gives a misleading impression through manipulation of the supply of, demand for or price of a specific share. In addition, manipulation occurs when it is considered

⁹⁴ See the FSA library <<http://www.fsa.gov.uk/library/communication/pr/2011/053.shtml>> Last accessed on 7 April 2013.

distortion by a regular person. In both cases, misleading behaviour and distortion should be regarded as a failure by a regular person in a market so as to be considered market manipulation.⁹⁵ Unfortunately, the Kuwaiti approach has no equivalent approach in the case of determining this or defining a method to help prove the case of market manipulation.

3.5. Evaluating the forms of market manipulation and its shortcomings

In fact, there is no doubt that the step of the Kuwaiti legislature to regulate market manipulation was essential to establish greater protection for investors in the market. Thus, this approach of regulating market manipulation can be examined through two ways. Firstly, to what extent is the regulation of market manipulation good and how far does it encompass all the manipulative practises in comparison to the UK. Secondly, have Sections 122, 124 and 125 covered the common practises discussed in the applied study and previous chapter on the 2008 crisis.

Based on the above discussion, the regulation of market manipulation under Law No. 7 of 2010 revolves around four forms. There are significant similarities between the Kuwaiti approach of regulating market manipulation and the UK approach, such as the use of similar phrases including ‘influencing and creating artificial transactions’. Furthermore, the Kuwaiti approach encompasses wide forms of manipulation and uses more general sentences to encompass different practises of manipulation that may surface in the future. In fact, the regulation of these forms could be considered as a high standard of regulation compared to the approaches adopted in the UK and US to regulate market manipulation. However, certain forms of manipulation have not been

⁹⁵ For more details, check MAR 1.9 <<http://fsahandbook.info/FSA/html/handbook/MAR/1/9>> Last accessed on 30 June 2013.

included in Law No. 7 of 2010 in comparison with the FSMA 2000, such as stabilisation of the price of securities and controlling the spread of rumours. Stabilising or securing the price of securities is regulated directly in the UK Act.⁹⁶ Unfortunately, the legislature did not include this form in the Kuwaiti law, which does not fall under the other regulated forms. Furthermore, disseminating rumours or misleading information, which constitutes a considerable part of market manipulation in the Kuwaiti market, has not been regulated. Although the law states under Section 125 that rumours related to the CMA are manipulation, the scope of rumours in Kuwait are wider and may include the stock exchange, listed companies, securities etc. In addition to Section 124 that regulates the encouragement, these two sections do not encompass all behaviour related to disseminating rumours. For example, releasing a rumour that a certain company share will increase because the company will make large profits may either be carried directly at *diwaniyas* or on forums on the Internet.⁹⁷ It can also occur indirectly through periodic reports of investment companies or consulting companies, analyses or news in the daily press. These cases are not directly regulated, although they are assumed to be manipulation in other developed markets.⁹⁸

This oversight of regulating market manipulation could be due to the lack of case laws regarding manipulation before the issuance of Law No. 7 of 2010. It is also possible that the legislature did not have a clear objective for regulating these practises. As mentioned above, the primary aim of securities regulation is to protect investors.⁹⁹

⁹⁶ See Section 118 (5) b of the FSMA 2000. See also, in US law, Section 9 (a) 6 of SEA which regulates stabilizing the security price as well.

⁹⁷ See Section 118 (5) b of the FSMA 2000. See also, in US law, Section 9 (a) 6 of SEA which regulates stabilizing the security price as well.

⁹⁸ See Section 9 (a) 4 and 5 of SEA and Section 118 (7) of the FSMA 2000.

⁹⁹ See section 1 of Chapter 3 of this thesis. See also IOSCO, *supra* no. 44.

Accordingly, it is unclear in Section 125 if the objective is to protect investors; therefore, the regulators have not aimed for a high level of efficiency in the KSE based on available information. The only objective that is clear in Section 125 is protecting CMA from any false information. Another possible explanation is that the legislature has taken into account the social life in Kuwait and how people are very social and talkative and part of the *diwanis*. These factors would make it rather difficult to apply the sanction on disseminating rumours.

On the other hand, securing or stabilizing security prices was also omitted, which may be because the Kuwaiti legislature did not believe that this form had an effect on the market and other investors, or simply because it was erroneously omitted. In addition, the code of Law No. 7 of 2010, and specifically the section in Chapter 11, does not include any examples or explanation for the forms of market manipulation. In the case of KSE, such a description becomes even more necessary due to the lack of previous cases of manipulation. It was just a kind of repetition of the law. Because this regulation is considered to be the first in Kuwaiti law to deal with market manipulation, it was assumed that the code would at least provide a better explanation of the various forms and should have given examples of manipulation cases in a market that does not have any applied or legal background in this regard.

A comparison of the forms of manipulation in Law No. 7 of 2010 with the investors experience regarding market manipulation would be valuable. In this regard, investors, brokers and portfolio managers were questioned with regard to their beliefs regarding the forms of market manipulation that the KSE suffers from, as shown in the tables

below.¹⁰⁰

-Do you believe that rumours are a form market manipulation that the KSE suffers from?	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	178	89.9%	15	7.5%	5	2.5%
<i>-Portfolios managers</i>	30	100%	0	0%	0	0%
<i>-Brokers</i>	26	89.7%	2	6.8%	1	3.4%

(Table 13) The questionnaire responses to the statement ‘The KSE suffers from
rumour’

-Do you believe that fictitious orders are a form of market manipulation that the KSE suffers from?	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	174	88.2%	17	8.5%	6	3%
<i>-Portfolios managers</i>	27	90%	3	10%	0	0%
<i>-Brokers</i>	23	76.7%	6	20%	0	0%

(Table 14) The questionnaire responses to the statement ‘The KSE suffers from
fictitious orders’

-Do you believe that decreasing the security price is a form of market manipulation that the KSE suffers from?	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	176	88.8%	19	9.5%	3	1.5%
<i>-Portfolios managers</i>	23	76.6%	7	23.3%	0	0%
<i>-Brokers</i>	22	73.3%	8	26.7%	0	0%

(Table 15) The questionnaire responses to the statement ‘KSE suffers from
decreasing the security price’

¹⁰⁰ Regarding the questionnaire, see the introduction chapter section 4.

-Do you believe that increasing the security price is a form of market manipulation that the KSE suffers from?	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	187	93%	12	6%	1	0.5%
<i>-Portfolios managers</i>	23	76.6%	7	23.3%	0	0%
<i>-Brokers</i>	19	63.3%	10	33.4%	1	3.3%

(Table 16) The questionnaire responses to the statement ‘The KSE suffers from increasing the security price’

-Do you believe that fictitious trades are a form of market manipulation that the KSE suffers from?	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	186	93.3%	9	4.5%	4	2%
<i>-Portfolios managers</i>	25	86.2%	3	10.3%	1	3.4%
<i>-Brokers</i>	26	86.7%	4	13.4%	0	0%

(Table 17) The questionnaire responses to the statement ‘The KSE suffers from fictitious trades’

-Do you believe that last minutes trades are a form of market manipulation that the KSE suffers from?	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	174	88.3%	19	9.5%	4	2%
<i>-Portfolios managers</i>	21	70%	8	26.7%	1	3.3%
<i>-Brokers</i>	26	86.7%	4	13.4%	0	0%

(Table 18) The questionnaire responses to the statement ‘The KSE suffers from last-minute trades’

In fact, as shown from the above tables, a high proportion of investors, portfolio managers and brokers believe that rumours, fictitious orders, decreasing and increasing security prices, fictitious trades and last-minute trades are found in the KSE. Based on

this empirical evidence, the law has mostly regulated what investors believe to be the common forms of manipulation in the KSE, with the exception of rumours. This suggests that the regulation of market manipulation is suitable for the KSE and is comparable to the regulations of the UK. However, there is always a chance to develop this regulation further through a new amendment that includes the missing forms as well as a detailed and more useful code.

Summary

This chapter addressed the regulation of market manipulation under Law No. 7 of 2010. This approach was compared and evaluated with the UK approach and some major similarities were found. Firstly, both regulations have not defined the term market manipulation or used the term directly. However, it can be shown that both the EC Market Abuse Directive and 1934 SEA have used the term manipulation. Secondly, both Law No. 7 of 2010 and the FSMA 2000 have provisions for criminal and civil penalties. However, the CMA in Kuwait has no right to fine abusers and this will be discussed in the next chapter. Third, both governments have regulated the same forms of manipulation to a large extent. However, the UK approach is better as it gives the FSA the authority to define market manipulation under Market Conduct and this approach would enable the term manipulation to be flexible and regularly updated. In contrast, in Kuwait, the code of Law No. 7 of 2010 has no explanations or examples of manipulative practises. In conclusion, the Kuwaiti approach of regulating market manipulation under Law No. 7 of 2010 is sufficient to a certain extent; however, there is a need for some amendments. Therefore, the next chapter will discuss the enforcement of this regulation.

Chapter Five: Market Manipulation Enforcement and Implementation in the Kuwait Stock Exchange

Introduction

Through critical evaluation, the previous chapter found that there are some deficiencies in Law No. 7 of 2010 in the way it covers the forms of market manipulation practises in comparison with the UK approach. This chapter will attempt to address the enforcement of market manipulation regulations. It is often assumed that achieving financial regulation implies a need for strong regulatory enforcement.¹ Hence, Law No. 7 of 2010 has stipulated the establishment of a special entity for enforcement: the Capital Market Authority (CMA). Therefore, this chapter aims to determine how Law No. 7 of 2010 has been regulated the CMA enforcement through comparison with the power of the FSA under the FSMA 2000. In addition, this chapter, through legal cases, has addressed the implementation of Law No. 7 of 2010 regarding market manipulation in the Financial Market Court. A number of legal cases have been reviewed to assess how the law has been implemented.

Therefore, this chapter consists of three sections. The first section covers market manipulation enforcement, the second is about the Capital Market Authority (CMA) and the third deals with the Financial Market Court.

1. Market Manipulation Enforcement

Law enforcement means that the law is applied to people involved in such regulations.

¹ See Bronwen Morgan and Karen Yeung, *An Introduction to Law and Regulation: Text and Materials*, (1st ed., Cambridge 2007) p. 153.

Regulatory enforcement strategies may differ according to the rules being enforced.² The enforcement of securities market regulations can be enforced through civil remedies and criminal sanctions, and market abuse enforcement varies between civil and criminal penalties. Civil penalties include the imposition of monetary fines, and criminal law sanctions involve imprisonment or monetary fines.³ In this sense, it is argued that criminal enforcement for market manipulation would be difficult, since the crime of market manipulation is not clearly defined; as shown in chapter two of the thesis, this lack of definition would make prosecution very difficult.⁴ However, the penalties for market abuse ranging between civil and criminal remedies vary according to the potential for deterring market manipulation or insider dealing. Criminal offences have a greater impact in terms of protecting securities markets from abusive practise. That is to say, criminal law provides greater protection for society by reducing the number of criminals and it could have the same impact on the securities market. In this sense, abusive practise penalised through an intensive criminalisation regime⁵ would indicate that market abuse is regarded as morally wrong in society.

In addition, law enforcement is a mechanism that refers to specific members of society applying the law. The term enforcement is applied to those who have the power to apply the law. Concerning market abuse enforcement, this is implemented either by public or private enforcement. It is often argued that public enforcement has a greater impact in

² See R. Baldwin et al, *Understanding Regulation: Theory, Strategy, and Practise*, (2nd ed., Oxford University Press 2012) p. 230.

³ See E. Avgouleas, *The Mechanics and Regulation of Market Abuse: a Legal and economic analysis*, (1st ed., Oxford 2005) p. 452.

⁴ See *ibid*, p. 453. See also Jerry W Markham, 'Manipulation of Commodity Futures Prices – The Unprosecutable Crime', (1991) 8 *Yale Journal on Regulation*, p. 281.

⁵ See Anthony I Ogus, *Regulation: Legal Form and Economic Theory*, (1st ed., Hart Publishing 2004) p. 79.

terms of market abuse enforcement because it can be run by policymakers who can set deterrents in the form of severe criminal and financial penalties. However, since public enforcement agents have a poor knowledge of the markets and companies, they have less information, which makes their job difficult. On the other hand, private enforcement has a greater impact since collective actions are more qualified and the actions are brought by 'well-informed actors'.⁶ In addition, private enforcement has less of an impact regarding budgets and required human resources compared to public enforcement. A higher budget and more qualified staff makes public enforcement more powerful. This enables more effective market surveillance and punishment for aberrant behaviour through public enforcement.⁷ However, private enforcement helps markets to develop. As previously mentioned, private enforcers are more involved in securities matters and are therefore more qualified to reveal abusive practises and to set new rules for the improvement of the market.⁸

In this regard, Law No. 7 of 2010 follows a new method of enforcement since the past financial crises in Kuwait have illustrated the need for a special authority to enforce regulations in Kuwait.⁹ Therefore, the legislature has chosen public enforcement,¹⁰

⁶ See Howell E. Jackson and Mark J. Roe, 'Public and Private Enforcement of Securities Laws: Resource-based Evidence', (2009) 93 Journal of Financial Economics, p. 207.

⁷ See Stuart Bazley, *Market Abuse Enforcement: Practise and Procedure*, (Bloomsbury 2013) p. 23 and 67.

⁸ See Jackson and Roe, *supra* no. 6, p. 207. See also John Armour et al., 'Private enforcement of corporate law: An empirical comparison of the United Kingdom and United States', (2009) 6 Journal of Empirical Legal Studies, p. 687.

⁹ The legislature of Law No. 7 of 2010 has affirmed that this new law is a comprehensive law that takes into consideration all the legislative defects in connection with the incorporation of the authority and amends all the current laws controlling the market. It replaces the numerous current laws and acts as one law regulating the activity of the securities market. See the explanatory memorandum of Law No. 7 of 2010.

hence Law No. 7 of 2010 stipulated the establishment of the CMA for the first time in the history of the KSE.¹¹ In addition to the establishment of the CMA, Law No. 7 of 2010 regulates market manipulation and stipulates criminal and civil penalties as previously discussed in chapter four. Hence, the next section addresses the enforcement of the CMA in Kuwait under Law No. 7 of 2010. It also evaluates the Kuwaiti approach of enforcement in comparison with the UK approach to view the sufficiency of Law No. 7 of 2010.

2. *Capital Market Authority*

In fact, the Kuwaiti legislature states in its explanatory memorandum of Law No. 7 of 2010 that the international developments witnessed by the global stock markets in general and the development witnessed by the Kuwaiti market in particular regarding the increase in the number of companies listed on the market and the increase in the number of investors emphasise the need to create an integrated legal system to correct the shortcomings in the legal system governing the Kuwaiti market.¹² As a result, the legislature paved the way for the incorporation of the CMA,¹³ which should be the most

¹⁰ For more information on enforcement see Jackson and Roe, *supra* no. 6, p. 207.

¹¹ This law comprises 167 sections in 13 chapters. The first chapter provides definitions of the expressions in the provisions of the law that are circulated in the KSE. Stock exchanges, clearing companies, take-overs, disclosure of interests, punishments, and crimes are each regulated in a special chapter by the Capital Market Authority. The last two chapters address general and transitional provisions.

¹² See the explanatory memorandum of Law No. 7 of 2010.

¹³ The other goals that have been stated in the explanatory memorandum of Law No. 7 of 2010 include developing trade, providing a larger control authority, and offering flexibility in procedures while giving legal protection to the investors to establish a healthy market and sound trading free of market manipulation and illegitimate profit. In addition, it has been stated that this law is a radical amendment to the legislative framework controlling the market and was inspired by applicable laws in other Arab and foreign countries. The incorporation of the CMA in the state of Kuwait is considered a major element of

important step towards developing the KSE. The establishment of the CMA protects the market from abusive practises, especially by considering the objectives and duties of the CMA. This authority is essential for law enforcement regarding issues related to the stock market and for remaining up-to-date as far as global financial markets are concerned. The next section illustrates the establishment of the CMA through the FSA as a basis for comparison.

2.1. The establishment of Capital Market Authority

With regard to the enforcement in the UK, the Financial Services Authority (FSA) was established and granted power by FSMA 2000 under section 1 and was charged with market manipulation enforcement.¹⁴ Similarly in Kuwait, Law No. 7 of 2010 incorporates the establishment of the CMA under section 2 of Law No. 7 of 2010.¹⁵ This step is the most important step in the history of the KSE,¹⁶ although, it was established very late in comparison with the UK and other Gulf countries, as stated in chapter four.¹⁷ In addition, the FSMA 2000 provides for the establishment of the FSA and grants it the power to deal with financial matters. Therefore, the FSA is a special legal entity that features several noteworthy characteristics. It is a private company

the stock market, which is seen in the many studies that addressed the reform and development of the Kuwait Securities Market and recommended the incorporation of the authority. See the explanatory memorandum of Law No. 7 of 2010.

¹⁴ It has been declared earlier in chapter four that the FSA was divided into two separate authorities, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). However, they will continue with the same FSA philosophy.

¹⁵ The second chapter of Law No. 7 of 2010 stipulates the incorporation of an independent authority with a public artificial personality that is appended to the Ministry of Commerce and Industry called the Capital Market Authority.

¹⁶ For the Capital Market Authority website see <<http://www.kuwaitcma.org>> Last accessed 23 April 2013.

¹⁷ See section 1.1 of Chapter 4 of the study.

limited by the guarantee that it is an ‘independent non-governmental body’.¹⁸ As a result, it does not receive money from the government. Rather, it is funded by its fees from firms and other bodies that regulate their activities. Finally, the FSA is governed by a board appointed by the Treasury, and this board sets its policy.¹⁹

In this matter, the Kuwaiti approach is similar to that of the UK because the Kuwaiti legislature expressly states that the CMA is an independent entity with a corporal personality that is affiliated with the Ministry of Commerce and Industry and is subject to the supervision of the Minister of Commerce and Industry.²⁰ This means the government has its own tool to control the stock exchange in the form of the CMA, particularly considering that the CMA is affiliated with the ministry concerned. The CMA has a budget that is independent of the government, and it is subject to subsequent, but not prior, control by the Kuwait State Audit Bureau.²¹ In addition, any funds held by the CMA are considered public funds and are subject to the stipulations related to public funds.²² The authority has a budget independent of the state. Its resources come from fees determined by Law No. 7 of 2010 and its code, such as the revenues of an investment’s surplus of money carried forward to the authority.²³ In contrast, the Kuwaiti legislature has not stated that the CMA is a private company like

¹⁸ See Edward J Swan and John Virgo, *Market Abuse Regulation*, (2nd ed., Oxford University Press 2010) p. 120.

¹⁹ See the FSA website <<http://www.fsa.gov.uk/Pages/About/Who/Accountability/index.shtml>> Last accessed on 7 April 2013.

²⁰ The affiliation of the CMA has created chaos. Some hold that it must be directly affiliated with the Council of Ministers. However, the legislator states that it is affiliated with the Ministry of Commerce and Industry.

²¹ See section 31 of the code of Law No. 7 of 2010.

²² See section 32 of the code of Law No. 7 of 2010.

²³ See section 19 of Law No. 7 of 2010: The financial year starts on April 1st every year, except the first year will start with the application of the law and end on March 31st, 2012. See Section 24 of the code.

the FSMA. However, it is a self-funded authority. This difference would be translated as the difference between the two legal systems. In Kuwaiti law, there are two types of government bodies which are either funded by the government or self-funded. However, there is no place for private companies to conduct enforcement and regulating.

2.2. *Capital Market Authority Objectives*

Under Section 3 of Law No. 7 of 2010, the objectives of the CMA are:

- ‘1) To regulate securities activities in a manner that is characterised by justice, equity and transparency.
- 2) To make the public aware of the securities activities and the benefits, risks and obligations related to investment in the securities and the benefits, risks and obligations related to investment in the securities and to encourage development of the same.
- 3) To provide protection to those dealing with securities activities.
- 4) To reduce typical risks that are expected to occur in the securities business.
- 5) To apply a complete disclosure policy in a manner that achieves justice and transparency and prevents conflicts of interest and the use of internal information.
- 6) To guarantee the observance of laws and regulations related to the securities business.’²⁴

Based on this section, the CMA has six objectives. It can be shown that these objectives consist of general recommendations or principles that the CMA should follow. These objectives are related to the general objectives that financial regulations should consider

²⁴ Section 3 of the code has been copied from Section 3 of Law No. 7 of 2010. Therefore, the code did not add any interpretation or details regarding the objectives. This is translated by the researcher.

and which the IOSCO has adopted.²⁵ The six objectives of the CMA revolve around investor protection, market efficiency, and transparency and systemic strength. Adopting these objectives by the Kuwaiti legislature is a very promising step, as the legislator started to believe in the importance of having a complete securities regulation that seeks to achieve the aforementioned goals. In addition to these objectives, the question that may arise is what regulatory tools have been chosen to achieve these goals.

It was recognised in the previous chapter that there would be three regulatory instruments: statutory standards, administrative rules and licencing. In reality, there are some doubts about the tools that have been followed by Law No. 7 of 2010.

In terms of the statutory standards, it can be shown that sections 122, 124 and 125 have regulated the forms of market manipulation and set sanctions for breaches, such as imprisonment or a monetary criminal fine.²⁶ This tool would help command and control such behavior. However, the civil penalties that can be applied to manipulators by the CMA are limited, as will be shown shortly. Most important, the CMA lacks the authority to impose monetary fines. This would reduce the CMA's control and reduces the command of such practises—this will be shown shortly with respect to the manipulative practises in the KSE case.

Regarding the administrative rules and principles which would help with education and deterrence, in principle, the CMA is supposed to set these rules according to the code of Law No. 7 of 2010. Or, a separate booklet should briefly explain Law No. 7 sections and give examples that would help educate investors and make them aware of the

²⁵ See previously section 1 of Chapter 3 of this thesis.

²⁶ See previously section 2 of Chapter 4 of this thesis.

prohibited practises. Unfortunately, as it has been shown previously in Chapter 4, the code of Law No. 7 repeats Law No. 7. In addition, the CMA has not produced any conducts such as MAR, which is produced by the FSA, or any other booklets. This regulatory tool is absent in the Kuwaiti regulation for the case of Law No. 7 and specifically for market manipulation.

Finally, chapter 5 of Law No. 7, however, has regulated licencing. Section 63 of Law No. 7 has determined the people who should obtain licences, as stated below.

‘A person shall obtain a licence from the CMA in order to practise any of these activities:

- 1 - Securities broker or his delegate.
- 2 - Investment Advisor or his delegate.
- 3 - Investment portfolio manager.
- 4 - Director of collective investment system.
- 5 - Custodian.
- 6 - Any person who participates in another activity which the CMA considers it as securities activating that require obtaining a licence ...’.²⁷

Accordingly, to practise any of these activities, a person should obtain a licence from the CMA. In addition, Section 133 of the code of Law No. 7 states: ‘The CMA may require passing an introductory exam to obtain the licence ...’.²⁸ Therefore, these sections could be good regulatory tools for licencing; however, they may need detailed requirements. As long as there are no detailed with high-qualified requirements to obtain approval from the CMA, the licencing system may not be efficient. Based on the

²⁷ See Section 63 of Law No. 7 of 2010, translated by the author.

²⁸ Translated by the author.

aforementioned points, the regulatory instruments are not very effective and the legislature might need to reconsider them.

Returning to the objectives, to enforce these general rules, the CMA translates these principles into detailed rules in the code of Law No. 7 of 2010. However, Section 3 of the code of Law No. 7 is a repeat of the aforementioned section. It has not included any specifications or prescriptions. For instance, what does justice, equity or transparency mean? What are the tools that make the public aware? Or what kind of protection should the law consider? All these questions are raised from reading this section and no answers are provided even after the issuance of the code of Law No. 7.

In contrast, the UK approach is totally different. Section 2 of the FSMA 2000 regulates the general FSA objectives. Section 2 states very clearly four objectives: (1) market confidence; (2) public awareness; (3) the protection of consumers; and (4) the reduction of financial crimes. These four general rules are further explained in the FSA website,²⁹ and each of these sections are defined in other separate sections under the FSMA 2000 itself.³⁰

One important objective is achieving market confidence in the UK. In reality, the term *confidence* is usually connected to the stock markets.³¹ Accordingly, the FSA objective is based on achieving this confidence by securing stock trading far away from market manipulation or insider dealing. That would maintain stock prices at their real prices

²⁹ For more details on the FSA's enforcement power see Swan and Virgo, *supra* no. 18, p. 120. See also the FSA website <<http://www.fsa.gov.uk/Pages/About/Who/index.shtml>> Last accessed on 3 March 2013.

³⁰ See Sections 2, 3, 4, 5 and 6 of the FSMA 2000. See also Carlos Conceicao, 'The FSA's approach to taking action against market abuse', (2007) 28 *Company Lawyer*, p. 43.

³¹ See Michael Blair QC, *Blackstone's Guide to the Financial Services and Markets Act 2000*, (2nd ed., Oxford University press 2009) p. 22

and achieve transparency at the highest level, which at the end leads to market confidence.³² In this field, the FSA banned a stockbroker from working in financial services (Graham Betton) because of market abuse practises.³³ Betton was a director of the stockbroker agency SP Bell and he ordered his staff to encourage clients to purchase FEI shares. That was done after Simon Eagle purchased 85% of FEI for SP Bell. SP Bell started to sell the shares after increasing its price; their clients bought shares and they did not know they had been manipulated. The tribunal said in this case it would ‘be wrong, damaging to market confidence and indeed unthinkable if Betton were allowed to continue operating in the financial services sector’.³⁴

The second objective of the FSA is the stabilization of the financial and economic system. This objective refers to the confidence of the financial and economic system. In fact, the Treasury and the FSA are involved in the financial stabilization objective.³⁵ Hence, the FSA states in its document titled ‘A new regulator for the new millennium’ that achieving confidence requires stability in the financial system.³⁶ On the other hand, consumer protection is one of the main objectives that would help to achieve the financial regulations objectives. Consumers receive a great deal of attention in the FSA

³² See *ibid*, p. 22. See section 3 of the FSMA. See also the official website of the FSA <http://www.fsa.gov.uk/pages/about/aims/statutory/index.shtml> > Last accessed on 7 April 2013.

³³ See *Tax and Chancery Chamber* [2010] Upper tribunal FS/2008/0011. Available at <http://www.tribunals.gov.uk/financeandtax/documents/decisions/0011_grahambetton_v_fsa.pdf> last accessed on 30 June 2013.

³⁴ See the FSA library available at <<http://www.fsa.gov.uk/library/communication/pr/2010/171.shtml>> last accessed on 2 July 2013.

³⁵ See Michael Blair QC, *supra* no. 31, p. 23.

³⁶ See Michael Blair QC, *supra* no. 31, p. 23. See also the FSA website <http://www.fsa.gov.uk/Pages/About/Who/Accountability/fsact_2010/index.shtml> Last accessed on 2 July 2013.

objectives, as the FSA aims to provide consumers with protection and awareness.³⁷ Consumer awareness means informing the public of the financial system and its risks and benefits. That would include all kinds of investments and financial dealing in financial markets. Thus, consumer protection means securing a level of protection for consumers who use financial services.³⁸ The last objective is the reduction of the financial crime rate. Financial crimes include money laundering, fraud and market abuse.³⁹ Market abuse includes market manipulation and insider dealing. The purpose of this objective is to provide legal support to market integrity. In addition, this objective aims to protect consumers of financial services from fraud and market abuse. It is the consumer's right to have a suitable environment for financial services far from suspicious operations and financial crimes.⁴⁰ Financial crimes such as money laundering can threaten economies, which is why the FSA aims to reduce them.⁴¹ By initiating important objectives regarding market manipulation, the FSA attempts to protect consumers by securing considerable levels of protection for those using financial services.⁴² Furthermore, the FSA aims to reduce the financial crime rate, which

³⁷ See Andromarchi Georgosouli, 'The FSA's 'Treating Customers Fairly' (TCF) Initiative: What is So Good About It and Why It May Not Work', (2011) 38 Journal of Law and Society, p. 405.

³⁸ See Sections 4 and 5 of the FSMA 2000. See Michael Blair QC, *supra* no. 31, p. 25. See the FSA website <<http://www.fsa.gov.uk/pages/about/aims/statutory/index.shtml>> Last accessed on 2 July 2013. See also the accountability of the FSA available at: <http://www.fsa.gov.uk/Pages/About/Who/Accountability/fsact_2010/index.shtml> Last accessed on 2 July 2013.

³⁹ See Section 6 (3) a of the FSMA 2000.

⁴⁰ For information on the rate of insider dealing in the UK, see Utpal Bhattacharya and Hazem Daouk, 'The world price of insider trading', (2002) 57 The Journal of Finance, p. 75.

⁴¹ See Section 5 of the FSMA 2000. See also Michael Blair, *supra* no. 31, p. 30. See the FSA objectives available at <<http://www.fsa.gov.uk/pages/About/Aims/Statutory/index.shtml>> Last accessed on 2 July 2013.

⁴² See Sections 4 and 5 of the FSMA 2000. See also Stuart Bazley, 'Market cleanliness, systems and controls and future regulatory enforcement', (2007) 28 Company Lawyer. See also, Michael Blair QC,

includes market abuse practises.⁴³

The next section will address one of the important authorities that the FSMA 2000 gave to the FSA; however, it has no place in the CMA.

2.3. Civil Penalties

In reality, the FSA's main focus is on market abuse, such as insider dealing and market manipulation, and imposing penalties on the abusers.⁴⁴ In addition, the FSA enforcement of the market abuse regime actually focuses on civil penalties.⁴⁵ These offences of market manipulation can create 'civil liability that can take the form of unlimited fines or public censure by the Financial Services Authority or a court order.'⁴⁶ Furthermore, as mentioned above, market manipulation is unlawful and, according to Section 397 of the FSMA 2000, a criminal offence may be applied to the manipulator.

supra no. 31, p. 25. See also the FSA objectives available at <<http://www.fsa.gov.uk/pages/about/aims/statutory/index.shtml>> last accessed on 2 July 2013. See also the accountability of the FSA available at <http://www.fsa.gov.uk/Pages/About/Who/Accountability/fsact_2010/index.shtml> last accessed on 2 July 2013.

⁴³ See FSMA Section 6 (3) (a). See also Section 5 of the FSMA 2000. See also Michael Blair QC, supra no. 31, p. 30. See also the FSA objectives available at <<http://www.fsa.gov.uk/pages/About/Aims/Statutory/index.shtml>> last accessed on 2 July 2013.

⁴⁴ Speech by Tracy McDermott, Acting Director of Enforcement and Financial crime division of the FSA, on 23 February 2012, Available at <<http://www.fsa.gov.uk/library/communication/speeches/2012/0223-ofm.shtml>> last accessed on 2 July 2013. See also a table of fines published by the FSA during 2013 available at <<http://www.fca.org.uk/firms/being-regulated/enforcement/fines>> Last accessed on 30 June 2013.

⁴⁵ See Barry Rider et al, *Market abuse and insider dealing*, (2nd ed., Tottel Publishing Ltd 2009) p. 205. For more details on the rate of enforcement of Market manipulation in the UK, see Paul Barnes, 'Insider Dealing and Market Abuse: The UK's record of enforcement', 'Insider Dealing and Market Abuse: The UK's record on enforcement', (2011) 39 International Journal of Law, Crime and Justice, p. 185.

⁴⁶ See Barry Rider et al, supra no. 45, p. 71. See also Paul Barnes, *Stock Market Efficiency, Insider Dealing and Market Abuse*, (Gower 2009) p. 166.

However, criminal sanctions for market abuse are difficult to apply because they are difficult to prove.⁴⁷ Thus, the level of proof needed to enforce Section 397 of the FSMA 2000, which is the criminal regime, is very high. As a result, there are few criminal prosecutions compared to convictions.⁴⁸ That is why the FSMA gave the FSA the power and authority to fine people who breach Section 118 in order to enforce penalties on the abusers regardless of not applying to the criminal penalties and deterrence.⁴⁹

On the other hand, the level of enforcement of the market abuse provision under Section 118 is much higher than the criminal provision under Section 397.⁵⁰ In fact, a number of issues of market abuse and fines have been applied by the FSA to firms and individuals since 2001 when the FSMA 2000 was first implemented.⁵¹ It can be said that the FSA is being strict to a large extent with manipulation practises similar to the London Stock Exchange, and the FSA is applying large fines on manipulators. The FSA enforces these rules and monitors the abusive practises in order to achieve its objectives, which stress the protection of investors. In fact, the number of insider dealing cases is higher than those of market manipulation. In addition, market manipulation forms usually revolve around disseminating rumours or false information and artificial transactions.⁵² Thus, a

⁴⁷ For more details on the difficulty of prosecuting market manipulation under criminal law see Alastair Hudson, 'Law of financial crime, Section B: Fraud and Market manipulation', (2011) University of London, p. 20. For successful criminal prosecution for market abuse since 1986 when it was illegal, see Paul Barnes, *supra* no. 46, p. 161.

⁴⁸ See European market abuse news (Spring 2012) FreshField Bruckhaus Deringer, p. 12.

⁴⁹ See section 3 of Chapter 4 of the thesis.

⁵⁰ See Louise Gullifer and Jennifer Payne, *Corporate Finance Law Principles and Policy*, (2011 Hart Publishing Ltd.) p. 528.

⁵¹ See *ibid*, p. 528.

⁵² See the table of cases of market abuse since 2000 in Paul Barnes, *supra* no. 46, p. 164.

number of fines are applied by the FSA with regard to market abuse practises.⁵³ These fines will definitely help deter participants in the market from these practises.

Conversely, Law No. 7 of 2010 has fallen short of giving the CMA the authority to fine people who breach Law No. 7 of 2010, including market manipulation practises. Although this law stipulates civil penalties under Section 146 of Law No. 7, no monetary penalties exist. In this matter, Section 139 states that ‘Every conduct that comes on the contrary to Law No. 7 of 2010 or its code or CMA rules or orders is considered to be a violation’.⁵⁴ In other words, breaching Sections 122, 124 and 125 regarding market manipulation would create civil liability and the CMA would state civil penalties on manipulators. Section 140 of Law No. 7 states the issuance of a ‘Disciplinary Council’ that shall be created by the authority chaired by a judge and seconded by the higher Judiciary Council, and two expert members in financial and economic affairs should be present for the purpose of deciding civil penalties of a violation against the provisions of the law.

In fact, Section 139, which creates the civil liability, is very general and does not specify what crimes are considered. In addition, Section 421 of the code of Law No. 7 is repeated in this section from the Law No. 7. It does not offer any explanations. It would be very helpful for investors or any person involved in the market to know what exactly is considered breaches, such as insider dealing, market manipulation, disclosure etc. In contrast, Section 123 of FSMA 2000 states clearly the power of the FSA to impose

⁵³ See Ian Mason and Laura Cooke, ‘GLG and Jabre – The FSA’s Attitude to Market Abuse’, (2006) 11 *Journal of International Banking and Financial Law*, p. 509. For more details on the FSA’s policy of rule use see Andromarchi Georgosouli, ‘The nature of the FSA policy of rule use: a critical overview’, (2008) 28 *Legal Studies*, p. 119.

⁵⁴ Translated by the researcher.

penalties on market abuses, which include market manipulation and insider dealing. This kind of clear statement shows investors what are considered breaches and what would result in penalties for breaching the law. This is unlike the Kuwaiti approach, which is very general and does not help investors to consider what might create civil liability.

In terms of civil penalties, Section 146 of Law No. 7 and Section 436 of the code determines 17 penalties that do not include fines. Surprisingly, these penalties vary and include warnings, notices, working ban, suspended licence, revoked licence and security trading ban.⁵⁵ In addition, there are no rules for applying these penalties, which will lead to another issue. These penalties might be subject to the interpretation of the ‘Disciplinary Council’ since there are no clear controlling guidelines to follow and there is no specified gradation in its application.

One important matter to stress is the absence of regulatory monetary penalties. It is often argued that civil penalties for market abuse have less impact on deterrence,⁵⁶ however, monetary fines might help with tackling such practises. In fact, this approach would survive the case of the KSE. The need for fines and monetary penalties applied by the CMA would greatly aid deterrence in the KSE and give the law higher effectiveness. The enforcement of criminal sanctions under the court orders would take a longer time than applying civil remedies. In addition, judges might find applying criminal sanctions on abusers a very heavy step, especially in the case of abusers with

⁵⁵ See a warning penalty from the Disciplinary Council on April 11th, 2013 towards the ‘Rimal Alkuwait’ company for breaching Section 395 of the code, which is in regard to the disclosure of interest, available at <http://www.kuwaitcma.org/templates/pdf/decisions/decisions_14_4_2013.pdf> last accessed on 4 July 2013.

⁵⁶ See A. C. Pritchard, ‘Markets as Monitors: A Proposal to Replace Class Actions with Exchanges as Securities Fraud Enforcers’, (1999) 85 Virginia Law Review, p. 925.

no previous violations. Besides, fining abusers through the CMA would help in enforcing Law No. 7 by a qualified authority that would easily tackle manipulative practises. In addition, giving the CMA the authority to follow abusers and fine them would give the CMA a greater impact on deterrence and achieve high levels of investor protection in the end.

The debate on enforcing the CMA power and its civil penalties would lead to the case of Rajab a famous investor in the KSE. He is one of the most well-known investors in the KSE and his name is usually brought up in relation to market manipulation. In reality, he has been charged with manipulative practises and fictitious trades in newspapers together with other investors.⁵⁷ In fact, the surveillance department was willing to monitor his practises because he was a significant manipulator of the KSE. The surveillance department claimed they could not detect any misconduct because he was using different accounts monitored by him as he directed different accounts under different names that were not related to others and he used artificial transactions to influence other traders in the market to buy or sell.⁵⁸ In addition, he increased the securities prices by spreading rumours in order to influence other traders to buy while at the same time he was selling his securities at higher prices. He also decreased the

⁵⁷ For more details regarding reviews about Rajab by investors available at <<http://www.indexsignal.com/community/threads/314054/>> last accessed on 4 July 2013, Check also stocks expert network website <<http://stocksexperts.net/showthread.php?t=83821>> last accessed on 4 July 2013.

⁵⁸ It can be said that he is accused of this practise in everyday news, for example, check E. Mohamad, 'Almothareb Rajab Yo'eth fe altadawol fasan bela haseb aw raqeb (The trader 'Rajab' spreads corruption without any judgments or impunity), *Al-Qabas* newspaper (Kuwait 18 December 2012) available at <<http://www.alqabas.com.kw/node/84390>> last accessed 13 March 2013. Check also 'saham betro gulf gatrast almothareb Rajab (Petrogulf's share The trader Rajab), *Al-Qabas* newspaper (Kuwait 14 February 2013) available at <<http://www.alqabas-kw.com/Article.aspx?id=856936&date=14022013>> last accessed on 13 March 2013.

securities prices in the market using negative false information to influence other investors to sell at lower prices, while at the same time he bought the securities at lower prices.⁵⁹ As a result of his manipulative practises, the ‘Disciplinary Council’ stipulated civil penalties on him on July 18th, 2013, that amounted to ‘stopping him from trading for 6 months’.⁶⁰ This kind of penalty would definitely not achieve protection in the market, which is one of the main objectives of the CMA. It might be one of the hardest penalties allowed by Section 146, but it is not a sufficient penalty for negatively impacting the market. In addition, it will not create deterrence and protection.⁶¹

One of the primary steps towards the enforcement of Law No. 7 of 2010 is giving the CMA policy power,⁶² which would allow the authority to monitor abusive practises. Under the current law, CMA employees can investigate and analyse any documents or papers from any company listed on the KSE.⁶³

2.4. Capital Market Authority Duties

Section 6 of Law No. 7 of 2010 stipulates that the management of the authority shall be undertaken by a board known as the ‘Capital Market Authority Commissioners’, which will consist of five, full-time commissioners named by a decree pursuant to the

⁵⁹ See Mazon Badran, ‘Aajz Efsa’e mozri fe Soq alKuwait (Extreme lack of disclosure in the KSE)’ *Al-Qabas newspaper* (Kuwait 17 February 2013).

⁶⁰ See the official website of the CMA <http://www.kuwaitcma.org/templates/pdf/decisions/decisions_18_7_2013.pdf> last accessed on 30 Aug. 2013.

⁶¹ For more examples of the civil penalties by the CMA see the official website of the CMA <http://www.kuwaitcma.org/Ar_Decisions.cms> Last accessed on 30 Aug. 2013

⁶² See Section 30 of Law No. 7 of 2010.

⁶³ The policy power was proposed by N. Al-Sane in his article in 2005. See N. Al-Sane, ‘*Tatwer Soq Alkuwait Lelawraq Almaliya (Kuwait Stock Exchange Development)*’, Kuwait Stock Exchange Market Conference, 2005, p. 18.

nomination of the minister concerned.⁶⁴ The decree shall determine the chairman and deputy chairman from among the members.⁶⁵ The CMA board duties are determined under Sections 4 and 5 of Law No. 7 of 2010.⁶⁶ This section will illustrate the fact that some of these duties would help to tackle market manipulation.

1) Producing the code

The first function of the CMA is to issue the necessary regulations and codes to implement the law. As a result, the code of Law No. 7 was published in March, 2011.⁶⁷

⁶⁴ Substantial prohibitions are stated in the law, including the prohibition of the commissioner from undertaking any commercial business for him or herself or in his or her capacity as a proxy, administrator, or guardian during his or her tenure in the authority. Furthermore, the commissioner may neither hold any other job, profession, or work in the public or private sector, nor offer any services or advice directly or indirectly or participate in the membership of the board of directors of any authority subject to the control of the authority or any sector related to the same. It should be mentioned that this section is among the basic foundations that may help establish the credibility of the chairman of the authority, thus leading to reform in the market's operation. See Section 27 of Law No. 7 of 2010.

⁶⁵ See Section 6 of Law No. 7 of 2010. Despite the relaxed criteria for a commissioner, the title of CMA chairperson was offered to 18 persons, all of whom rejected it. See M. Al-Hajri stated that the most significant reasons for rejecting this title were as follows:

- 1) Section 27 of the law, which prohibits authority personnel from undertaking any commercial business for him or herself or as an agent, administrator, or guardian;
- 2) The unclear criteria for selecting the candidate and other commissioners and the lack of entitlement for the commissioner to participate in the selection of those who will work with him or her, let alone propose the criteria for the candidate;
- 3) Legislative shortcomings, which created fear among many candidates; and
- 4) 'The rotten market' according to the declaration of the Minister of Commerce and Industry, which led to candidate fear of accepting the position. See M. Al Hajri, 'Stock Market Authority commissioners' apology', (2010) 48 AJ, p. 1.

⁶⁶ In this regard, the legislature uses the expression 'the CMA is concerned with' under Section 4. However, it also uses the words '[The] CMA will carry out'. There is no clear justification for this distinction and the use of both terms under both sections. It would have been better for the legislature to merge both sections under one title 'The Powers of the CMA' rather than address its functions.

⁶⁷ Check the code in the official site of the KSE, available at <http://www.kuwaitse.com/Report/CMARegulations.pdf> Last accessed on 4 July 2013.

However, much of this code was repetitive, which caused it to be less effective. In addition, one of the most important duties of the CMA is producing the Market Conduct guidance to determine what the CMA believes is market abuse. However, the CMA has not issued such conduct. On the other hand, the CMA also endeavours to issue recommendations and studies to develop laws to achieve its objectives. It must also create professional observance, efficiency and integrity rules for licenced persons and approve the same for intermediaries and other licences.⁶⁸ It should also provide appropriate systems to protect traders in addition to a special system for listing on the stock exchange, and rules and conditions must be available to the auditors that are entered in the special register already maintained by the CMA.⁶⁹

2) Issuing licences:

In order to achieve the CMA's objectives, Law No. 7 of 2010 gave the CMA the authority to issue licences to those who work on the stock exchange and their staff as well as those involved in the management of securities, including asset management, the management of mutual funds and financial brokerage companies, securities maintenance companies, investment trustees, and consultative services establishments. This power the CMA was granted over so many stock exchange workers means it can extend its control of all stock exchange staff and follow up on the implementation of the law for granting licences. This helps the authority to gain greater control over trading and the market as a whole, thereby limiting market manipulation. First, the stock exchange may not be established until a licence is obtained. This licence may only be

⁶⁸ See section 4 (9) of Law No. 7 of 2010 and sections 43 and 44 of the code of Law No. 7 of 2010.

⁶⁹ See section 4 of Law No. 7 of 2010 and sections 39–41 of the code.

issued to a shareholding company.⁷⁰ In this regard, the KSE is licenced according to Sections 154 of Law No. 7 of 2010. Second, no person may work as a professional unless he or she has obtained a licence from the authority indicating licenced activities. This includes professions such as securities brokers or representatives, investment portfolio managers, group investment system managers, or investment trustees.⁷¹ The law permits the authority to licence a company to undertake two or more of the licenced activities.⁷² These licences keep these people under the control of the CMA and govern any abusive practises.

3) The CMA role in disclosure.

The CMA should regulate, supervise and control acquisition and merger operations. It should also provide transparency to KSE traders to enable them to make sound decisions on investment resolutions to purchase, sell or maintain any securities. Therefore, traders should have the information that may affect the market value of these securities, since the CMA is obliged to regulate acquisition and merger operations and supervise and control the same to provide the greatest amount of transparency and to apply the law and regulations concerning acquisition and mergers.⁷³

Law No. 7 of 2010 regulates disclosure under Chapter Ten of the law under two cases or forms and stipulates that interest in both cases should be disclosed. The first case requires a person who have an interest representing 5% or more of the capital of the company listed on the stock exchange, whether directly, indirectly or in alliance with

⁷⁰ See Sections 32 and 33 of Law No. 7 of 2010.

⁷¹ See Section 63 of Law No. 7 of 2010.

⁷² See Section 63 of Law No. 7 of 2010.

⁷³ For more details about disclosure, see Chapter 7 of the code of Law No. 7 of 2010.

others, to disclose it, whenever this percentage is reached, within five business days of being reached.⁷⁴ The disclosure must be sent as an approved statement signed by the person to the stock exchange. The stock exchange should also be informed of any increase or decrease in the interest. The companies themselves should disclose the names of shareholders whose shares represent 5% or more of their interest as well as each change in such a percentage.⁷⁵

The second case requires each manager of a shareholding company listed on the stock market to disclose to the authority any private interest he has regarding his shares of the company where he works. The securities of the company for which he is working, or any other subsidiary or affiliate company, should be disclosed. He should also disclose any change in his interest. This obligation also applies to each existing interest of his relatives of the first degree and his spouse and is in addition to his obligation to disclose any practise of his subscription right, whether from his company, subsidiary, affiliate company, or any other company.⁷⁶

In this regard, controlling the disclosing of interest by the CMA would help to achieve an efficient market, far from abusive practises such as false or misleading information.

In addition to above mentioned, the CMA is restricted from carrying out any

⁷⁴ See a warning from the CMA to the ‘Sharq’ company for not following the disclosure rules of section 385 of the code, available at http://www.kuwaitcma.org/templates/pdf/announcements/Annoucaments_25_3_2013_2.pdf > last accessed on 4 July 2013.

⁷⁵ See Sections 100, 101 and 102 of Law No. 7 of 2010.

⁷⁶ See Sections 103 and 194 of Law No. 7 of 2010.

commercial actions.⁷⁷ Section 24 of Law No. 7 of 2010 prohibits the authority from carrying out any commercial action, such as lending money or issuing and investing in securities. The prohibition extends to the commissioners and employees while working at the authority, which prevents them from undertaking any business for themselves or as agents, administrators, or guardians. This prohibition provides the authority with an impartiality and neutrality in terms of controlling and regulating the activity of securities, which is to be characterised by justice and competitiveness. This gives traders more confidence in the market and trading, and assists in controlling market manipulation. In terms of market manipulation, the above restriction helps guarantee the CMA carries out its duties by following any misleading practises or applying disclosure rules and announcements without trading in the KSE or engaging in conflicts of interest.

2.5. Market Manipulation Implementation

By addressing the implementation of Law No. 7 of 2010, it is worth mentioning the case of Zain.⁷⁸ In this case, Al Khurafi wanted to sell more than 51% of the shares of Zain to Etisalat.⁷⁹ In fact, this deal breached Chapter Seven of Law No. 7 of 2010, which regulates company take overs.⁸⁰ This deal was struck after the issuance of Law No. 7 of 2010 but before the CMA could regulate the code of Law No. 7. This gave Al Khurafi the excuse to declare that Law No. 7 was not active as long as the code had not been

⁷⁷ See Section 24 of Law No. 7 of 2010. See also Christa Band, 'Conflicts of Interest in financial services and markets. The regulatory aspect: Part 2', (2007) 22 Journal of International Banking law Regulation, p. 80.

⁷⁸ See the official website of Zain < <https://www.kw.zain.com/kw/af/home.do?lang=en> > Last accessed on 30 Aug. 2013.

⁷⁹ The official website of Etisalat < <http://www.etisalat.ae/en/index.jsp> > Last accessed on 30 Aug. 2013.

⁸⁰ Chapter 7 of Law No. 7 regulates take overs and states that anyone who wants to take over a company should put in a demand order to buy all the shares of such company.

issued yet.⁸¹ Regardless, the fact that this deal has nothing to do with market manipulation illustrates the impact of the merchants even after the issuance of Law No. 7 and how they decide when to apply the law. Eventually, this deal was cancelled and the law was applied.⁸² The next sections will discuss the implementation of the Law No. 7 regarding market manipulation.

As it has been stated earlier in the introduction chapter, the common statement widely known by investors in the KSE is that the market suffers from market manipulation. In this matter, this statement has been questioned in the questionnaire in the field research of the KSE. The table below shows the results.

-The KSE suffers from market manipulation	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	187	93.5%	10	5%	3	1.5%
<i>-Portfolios managers</i>	29	96.6%	1	3.3%	0	0%
<i>-Brokers</i>	28	93.3%	1	3.3%	1	3.3%

(Table 19) The questionnaire responses to the statement ‘The KSE suffers from market manipulation’

In fact, in terms of the questionnaire respondents, 93.5% of investors, 93.3% of brokers and 96.6% of portfolio managers believe that the KSE suffers from market manipulation. It should be noted that this question was applied after the issuance of Law

⁸¹ See the official website of Al Arabiya < <http://www.alarabiya.net/articles/2010/11/29/127855.html> > Last accessed on 30 Aug. 2013.

⁸² See ‘Naser Al-Khurafi nohane’e man afshal safgat Zain (Naser Al-Khurafi: we congrats who cancelled the deal of Zain), *Al-Shahed* newspaper (Kuwait 3 March 2011) available at <http://www.alshahedkw.com/?option=com_content&view=article&id=23420&catid=1:02> Last accessed on 27 March 2014.

No. 7 of 2010 and at the early stages of its implementation. Even if the respondents were influenced by the 2008 crisis, this high percentage indicate there is a problem. These findings indicate that people involved in the KSE have the impression that market manipulation is common in the market. That is why it is worth asking the questions again in a few years when the law is fully enforced.

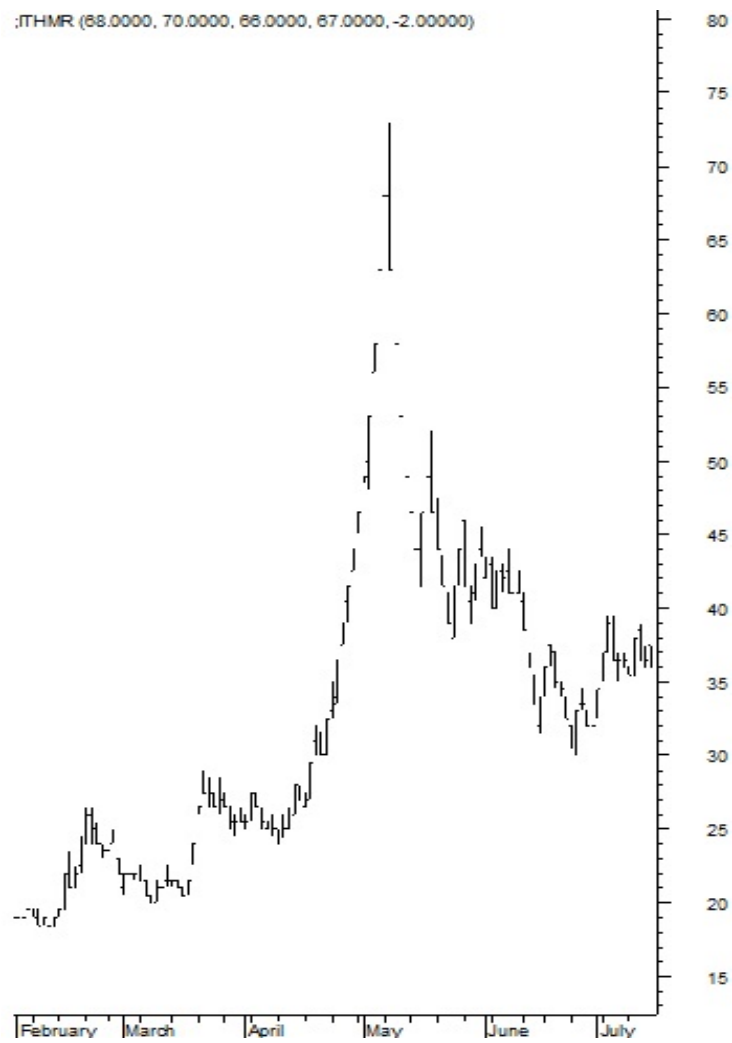
On the other hand, there are some common phenomenon in the KSE and might be translated as market manipulation. Some examples exist of securities price movements that are not associated with company profits, losses or information, and thus are merely manipulative practises. In these examples, it will be shown that the increase in the demand of the securities prices is associated with company losses or very low profit compared to its capital. As an example of this, the security price of Ithmar Bank increased dramatically from the price of 24 to 73 fils within one month between April and May, 2012, as shown in the charts below. This represents a 200% increase within a very short amount of time, keeping in mind the upper limit of the KSE trading system.⁸³ This sharp increase suggests this company was earning profits or benefitted from positive news that would translate into this large demand and increase. However, in reality, this company was accumulating losses. Even though the net losses were reduced by 2011, the company's position still revolves around losses, as shown in its financials below.

⁸³ For more details on the trading system and information at KSE see the KSE website <<http://www.kuwaitse.com/KSE/Trading.aspx>> last accessed on 4 July 2013.



(Figure 8) Chart of Ithmar Bank security movement ⁸⁴

⁸⁴ The chart is from Thomson Reuters MetaStock analysis software.



(Figure 9) A magnification of the chart⁸⁵

⁸⁵ See *ibid.*

Balance sheet data	31-12-2010	31-12-2011
Income statement date	KWD '000	KWD '000
<i>Income from financing and commodity placement</i>	-6.648	-3.915
<i>Total income from investment accounts</i>	1.297	782
<i>Investment income</i>	36.942	38.351
<i>Unrealized gain (loss) on investment pro</i>	0	0
<i>Other income</i>	31.770	13.381
<i>Operating income</i>	63.362	48.598
<i>Operating profit</i>	-41.102	-16.620
<i>Net profit / loss after overseas taxation</i>	-39.321	-17.204
<i>Net profit / loss attributed to equity shareholders</i>	-42.242	-17.476
<i>Profits available for appr / accu. loss</i>	-74.999	-91.830

(Table 20) Balance sheet data for Ithmar Bank⁸⁶

A similar example of a dramatic increase was in the case of Hits Telecom, where the security price increased from 53 to 136 fils during January and February, 2012, as shown in the charts below. This increase is approximately 150%, which is also very high compared to other companies in this sector. However, the company was not earning enough profits based on the sharp increase in stock price. The capital of the company was 72 million KD and its profits were approximately 200,000 KD, which is too low based on the capital.

⁸⁶ See ITHMAR financial data available at the KSE website < <http://www.kuwaitse.com/Stock/StkFI.aspx?stk=820&V=4%u200f> > last accessed on 4 July 2013.



(Figure 10) Chart of Hits Telecom security movement⁸⁷

⁸⁷ This chart is from Thomson Reuters MetaStock analysis software.



(Figure 11) A magnification of the chart⁸⁸

⁸⁸ See *ibid.*

Yearly financial data	31-12-2010	31-12-2011
Income statement data	KWD '000	KWD '000
<i>Operations revenue</i>	73.392	73.386
<i>Gross operations profits</i>	5.495	8.269
<i>Income from investments</i>	1.775	496
<i>Unrealized gain (loss) on investments</i>	0	0
<i>Other income</i>	1.935	1.888
<i>Total income</i>	77.102	75.770
<i>Net profit (LOSS)</i>	203	219
<i>Profit available for appropriation accu. loss</i>	-2.081	-2.091

(Table 21) Balance sheet data for Hits Telecom⁸⁹

Another example of the same phenomenon is the Al-Madina investment company. Its share price increased from 38 to 102 fils within one month from January to February, 2012, as shown in the charts below. This company's share price increased by approximately 170% in a short period. Although the company's net losses were reduced by 2011, the company was still accumulating losses, as shown in its financials below.

⁸⁹ See HITS financial data available at the KSE website <<http://www.kuwaitse.com/Stock/StkFI.aspx?stk=621&V=4>> last accessed on 4 July 2013.



(Figure 12) Chart of Al-Madina security movement⁹⁰

⁹⁰ This chart is from Thomson Reuters MetaStock analysis software.



(Figure 13) A magnification of the chart⁹¹

⁹¹ See Ibid.

Balance sheet data	31-12-2010	31-12-2011
Income statement data	KWD '000	KWD '000
<i>Interest income</i>	0	0
<i>Investments income</i>	1.518	465
<i>Unrealized gain (loss) on investments</i>	6.580	-3.068
<i>Management and replacement fees</i>	653	197
<i>Gross profit from trading activities</i>	947	1.519
<i>Other income</i>	292	839
<i>Total income</i>	9.990	-48
<i>Net profit (loss)</i>	-8.243	-2.552
<i>Profit available for appropriation accu. loss</i>	-9.020	-11.593

(Table 22) Balance sheet data for Al-Madina⁹²

Based on these examples, it can be concluded that the KSE suffers to some extent from weak efficiency, as the prices of the securities do not reflect the available information in the market. In other words, the supply and demand orders of such securities are not associated with the available information on them. These practises can be translated as manipulation as the form of increasing or decreasing the security price. Thus, the surveillance department should take a proactive step towards investigating the information in the market that is associated with these sharp increases or decreases.

Regarding last-minute trades, it is worth mentioning that Law No. 7 has not determined this form by its common name or even mentioned it as an example; however, Section 122 can be applied here. According to the questionnaire, it has been shown that this form is very common in the KSE, as shown previously in chapter three.⁹³ In this regard, it should be noted that last-minute trades in the KSE are not related to the share prices

⁹² See Al-Madina Financial data available at the KSE website <<http://www.kuwaitse.com/Stock/StkFI.aspx?stk=240&V=4%u200f>> last accessed on 4 July 2013.

⁹³ See previously (Table 18) in Chapter 3.

only; however, they may be associated with the market index as a whole. This is because the market index in the KSE is concluded by the last trades, rather than the average of the trading day.⁹⁴ Unfortunately, although a new system has been implemented in the KSE (X-stream) that cancelled the minimum purchase limit, the market index calculation has not been changed. In fact, it has become worse than before. In other words, the market index is still based on the last trades rather than being based on the average costing of the day.⁹⁵ Although Law No. 7 of 2010 intends to develop the market and a new trading system is being followed to develop the trading, the market index calculation has not been improved and is still based on the last trades in the market. For instance, as the market index closes at the last price of the trading, investors can buy only one share and this share will influence the market index.⁹⁶ A new calculation of the market index is definitely required so as to tackle last-minute trades.

One of the problems related to market manipulation that has remained in the KSE even after the application of Law No. 7 of 2010 is the delay of disclosure. Unfortunately, companies listed on the KSE are still not updating their financial details timely, especially at the end of the financial year.⁹⁷ For example, by the end of March, 2013, approximately 35 companies had still not published their financial details, although their financial year ended on December 31st 2012 and it is permitted for them to disclose within 90 days.⁹⁸ Thus, the KSE threatened to suspend their shares from trading if they

⁹⁴ For more details on the market index of the KSE see the KSE website <<http://www.kuwaitse.com/A/KSE/Trading.aspx>> last accessed on 4 July 2013.

⁹⁵ The index meant in this field is the price index.

⁹⁶ For the new trading system, see the KSE website <<http://www.kuwaitse.com/KSE/Trading.aspx>> last accessed on 4 July 2013.

⁹⁷ The financial year in Kuwait starts on January 1st and ends on December 31st.

⁹⁸ For more details on these companies name, please see the KSE website <http://www.kuwaitse.com/A/Market/ShowNews.aspx?ID=6231> > last accessed on 4 July 2013.

did not disclose their financial information by April 1st.⁹⁹ This delay of disclosure created an atmosphere of rumours and false information in the KSE.¹⁰⁰ Investors in the KSE began to complain that the matters of the KSE had not changed despite the enactment of Law No. 7 in 2010.¹⁰¹ In other words, companies listed on the KSE are not serious about creating a high standard of transparency or efficiency, and investor protection is not their priority. Disclosure of interest may thus still be a problem for the KSE unless great efforts are made to adopt this policy.

Finally, it has been asked in the questionnaire whether people involved in the market are familiar with Law No. 7 of 2010 to illustrate whether these people are interested in the latest regulations and how much they are educated about the KSE rules. Surprisingly, only 45.8% of investors and 48.1% of brokers were familiar with the law, which is less than 50%. This finding means that half of the investors or brokers are not familiar with market manipulation provisions and, as a result, the people who are involved in the KSE may not believe in the rules or regulations or the importance of regulating the market through comprehensive and efficient laws. In addition, they are not very concerned about abusive practises, which may be because they are not educated enough about trading and market matters or they are not sure that provisions should be applied to manipulators.

⁹⁹ See *ibid.*

¹⁰⁰ See B. Rashad, 'Alamaliyat almotharabeya alsare'a wara' ertefa' gemat alsyola: alsoq yamr ben'edam wazn ma'a ta'akhor ale'lanat (Heavily speculation is the cause of the High prices)' *Al-Nahar* newspaper (Kuwait 4 Mrach 2013) available at <<http://www.annaharkw.com/annahar/Article.aspx?id=377074&date=04032013>> last accessed on 4 July 2013.

¹⁰¹ See Mazon Badran, 'Aajz Efsa'e mozri fe Soq alKuwait (Extreme lack of disclosure in the KSE)', *Al-Qabas* newspaper (Kuwait 17 February 2013).

In contrast, the percentage of portfolio managers who were familiar with the law is higher, whereby 72.4% of these managers are aware of the importance of looking at the new regulations and rules. Thus, these managers are more involved in trading matters in the market and are aware of the importance of determining what is considered to be abusive practises. This is shown in the table below.

-Are you familiar with Law No. 7 of 2010?	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	88	45.8%	80	41.6%	24	12.5%
<i>-Portfolios managers</i>	21	72.4%	4	13.8%	4	13.8%
<i>-Brokers</i>	13	48.1%	7	25.9%	7	25.9%

(Table 23) The questionnaire responses to the statement ‘Are you familiar with Law No. 7 of 2010?’

In conclusion, there are some doubts that the KSE is still suffering from some manipulative practises. Although market manipulation is regulated by Law No. 7 and this law is enforced by the CMA, an applied study should be conducted in a couple of years to find out if the KSE is still suffering from market manipulation. Consequently, the next section addresses the implementation of Law No. 7 by the Financial Market Courts and includes some examples of legal cases.

3. *Financial Market Court*

Among the significant matters stated by Law No. 7 of 2010 is the incorporation of a court to have jurisdiction over the stock market cases.¹⁰² Section 108 states that a court,

¹⁰² This matter has not been regulated in a special chapter. Rather, it is included in the punishments and disciplinary penalties chapter under the title ‘Jurisdiction and Procedure’. See Section 108 of Law No. 7 of 2010.

called the ‘Financial Market Court’, shall be established at the Supreme Court. This financial market court shall consist of penal chambers concerned with cases related to the crimes set forth under this law and non-penal chambers concerned with hearing cases related to commercial, civil and administrative disputes arising from the implementation of the provisions of this law and the rules and regulations of the stock market.¹⁰³

Furthermore, Law No. 7 of 2010 necessitates the establishment of a penal chamber and another non-penal chamber in the Court of Appeals that specialise in examining the appeals of verdicts issued by the Financial Markets Court, provided their decision is conclusive and not subject to an objection.¹⁰⁴ In addition, Section 114 calls for the incorporation of a special public prosecution, called Financial Market Public Prosecution, which is exclusive to investigation, action and prosecution in crimes over which the stock market court has jurisdiction. As a result, ministerial decree no. 111 of 2010 was passed for the incorporation of the Financial Market Court dated in April 6th 2010. In addition, ministerial decree no. 2 of 2010 calls for the establishment of the Financial Market Public Prosecution dated April 18th, 2010. It can be shown how the court and the public prosecution were established after only one month of the issuance of Law No. 7 of 2010. This gives a good indication of the willingness to apply the law in a qualified court.

Regarding the competency of judges, when the legislature required the incorporation of a stock market court, it was because of the conviction that capital market cases have

¹⁰³ See Section 108 of Law No. 7 of 2010. In the UK, check the Upper Tribunal (Tax and Chancery). See Stuart Bazley, *supra* no. 7, p. 167. See also Swan and Virgo, *supra* no. 18, p. 183.

¹⁰⁴ See Section 112 of Law No. 7 of 2010. Law No. 7 of 2010 has regulated many provisions as an exemption from the civil and commercial proceeding law under Section 113.

unique privacy circumstances and are distinguishable from other cases. Stock market cases are characterised by economic, technical and financial aspects, which an ordinary judge holding a bachelor's degree from a faculty of law does not comprehend. It was assumed that law would stipulate enrolment in certain technical courses or the possession of financial certificates in addition to a law certificate to enable judges to accommodate stock market cases. In this matter, the researcher questioned whether judges should go through a specialized course such as intensive financial or technical courses regarding the financial markets. In reality, Therar AL Asoosi¹⁰⁵ states that judges attend courses at the Kuwait Institute for Judicial and Legal Studies regarding Law No. 7 of 2010; however this course addresses the criminal sector only.¹⁰⁶ That is to say, they are not about to go through specialised financial securities courses, but they do attend a course for the application of Law No. 7 of 2010. In fact, by reviewing this course at the Institute of for Judicial and Legal Studies, it can be shown that it is mostly repetition with some explanation of Law No. 7 of 2010.¹⁰⁷ In the end, judges will not have the qualified skills to tackle market abuse practises in the KSE.

In this regard, one of the important aspects to consider is the rate of the manipulative or market abuse cases in the Kuwaiti court. In fact, the Annual Statistical Book of the Ministry of Justice of Kuwait shows a special sector for 'financial market cases', which means all the cases in regard to Law No. 7 of 2010 that include all the abusive practises

¹⁰⁵ Therar Alasoosi is a public prosecutor at the Palace of Justice. For more details see the official website of the Public Prosecution <http://pp.moj.gov.kw/ar/pageViewer.aspx?Page_ID=55&Lang_ID=1> Last accessed on 26 Aug. 2013.

¹⁰⁶ The official website of Kuwait Institute for Judicial and Legal Studies check <<http://www.kijs.gov.kw/ar/default.aspx>> Last acceded on 26 Aug. 2013.

¹⁰⁷ For more details about this course check the official site of Kuwait Institute for Judicial and Legal Studies <http://www.kijs.gov.kw/ar/ItemGroupDetails.aspx?item_ID=254&Lang_ID=1> last accessed on 26 Aug. 2013.

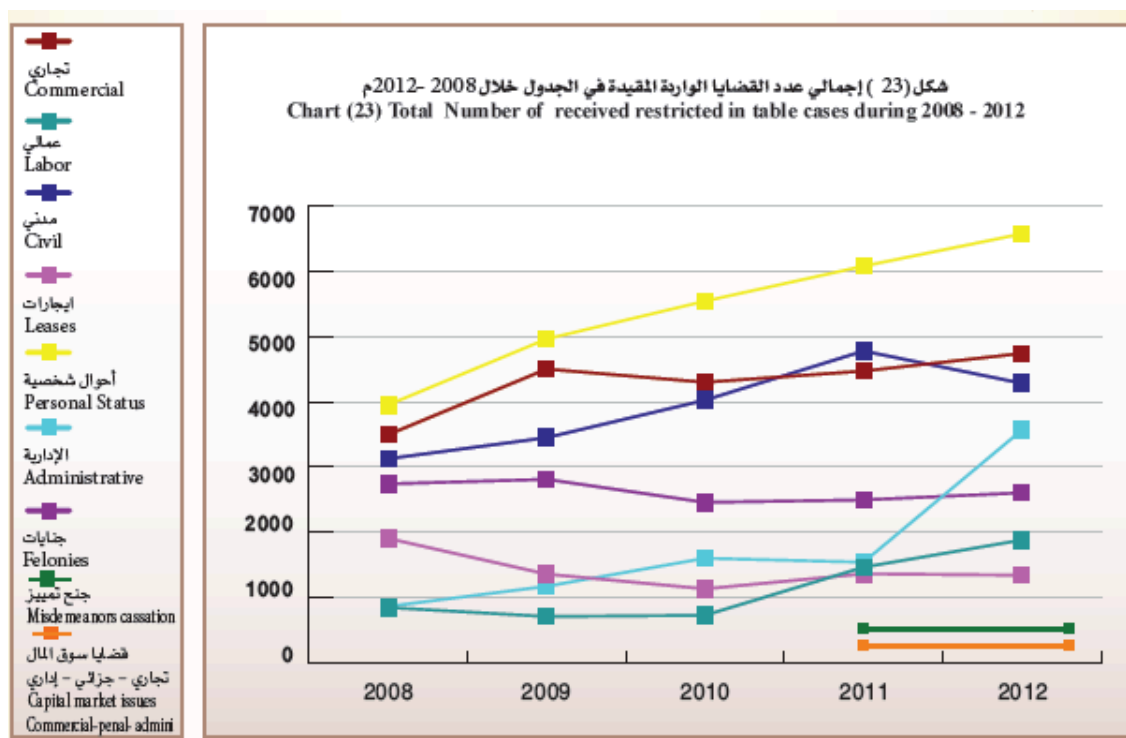
and market manipulation as well. The tables below illustrates the rate of cases in the financial markets court.

<i>Type of case</i>	Received cases during the year	New cases during the year	Adjourned cases	Considered cases	Decided cases	Decided judgements (Absolute)	Decided judgements (provisional)	Adjourned cases out of the year	Completion ratio
<i>Commercial</i>	4714	5168	10555	15723	5765	4803	962	12296	36.7%
<i>Civil</i>	4406	4587	7384	11971	5119	4501	618	8946	42.8%
<i>Personal status</i>	6536	6381	8955	15336	6911	6118	793	11148	45.1%
<i>Labor</i>	1818	1881	3768	5649	2153	1770	383	5155	38.1%
<i>Leases</i>	1353	1341	1927	3268	1278	1234	44	2457	39.1%
<i>Administrative</i>	3465	4221	4000	8221	2461	2204	257	6689	29.9%
<i>Misdemeanors cassation</i>	424	349	304	653	402	390	12	451	61.6%
<i>Money market issues (commercial-penal-administrative)</i>	59	64	99	163	43	37	6	153	26.4%
<i>Penal (Felonies)</i>	2618	2603	1288	3891	2561	2461	100	2036	65.8%
Total	25393	26595	38280	64875	26693	23518	3175	49331	41.1%

(Table 24) Number of cases in the Court of Appeal by type of case during 2012¹⁰⁸

This table shows there was a time for a special sector or line for financial market cases or ‘money market issues’ as it is declared in the table above. The number of the cases is small in comparison to other courts; however, it is a very good hint for the start of a special court with new laws.

¹⁰⁸ Ministry of Justice, *Annual Statistical Book 2012*, (Kuwait 2012) p. 88.



(Figure 14) Total number of cases during 2008-2012¹⁰⁹

This figure illustrates the situation at the start of the financial markets from 2011 after one year of the issuance of Law No. 7 of 2010. In addition, it shows that the rate has not fluctuated as other cases in the table. It might prove that 2011 was the year market abuse cases began in the Kuwaiti courts.

<i>Financial Market Cases</i>	<i>Received cases restricted in table</i>	<i>Adjoined cases during the year</i>	<i>Total of considered cases</i>	<i>Decided cases</i>	<i>Ratio of decided cases to considered cases</i>
2011	33	61	94	20	21.3%
2012	59	99	163	43	26.4%

(Table 25) The rate of cases of Financial Market in Kuwait¹¹⁰

This table identifies the number of financial market cases. Although there is no specification of the type of crime or the breaches, this would illustrate how the

¹⁰⁹ Ministry of Justice, *Annual Statistical Book 2012*, (Kuwait 2012) p. 93.

¹¹⁰ Ministry of Justice, *Annual Statistical Book 2012*, (Kuwait 2012) p. 92.

percentage is increasing regarding the KSE cases. It might be that there was a need for legal grounds to apply sanctions on abusers of the market in the case of KSE. The total considered cases in 2011 and 2012 after implementing Law No. 7 of 2010 is very promising.

In this regard, people involved in the KSE were asked about their view of the rate of manipulation practises after the issuance of Law No. 7 of 2010. It can be shown that only 41% of investors, 37.9% of portfolio managers and 44.4% of brokers believe that the rate of market manipulation has decreased after Law No. 7. However, this answer might change after a couple of years as this answer might not be associated with the rate of cases in the Financial Market Court.

-Market Manipulation percentage has decreased after the issuance of Law No. 7 of 2010?	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	81	41%	83	42%	33	16.7%
<i>-Portfolios managers</i>	11	37.9%	13	44.8%	5	17.2%
<i>-Brokers</i>	12	44.4%	11	40.7%	4	14.8%

(Table 26) The questionnaire responses to the statement ‘Market Manipulation percentage has decreased after Law No. 7?’

As market manipulation has been regulated and enforced by criminal sanctions that would help deter such behaviour, the next section reviews some legal cases of implementation and deterrence of market manipulation in the KSE after the issuance of Law No. 7 of 2010.

3.1. *Market Manipulation Cases*

In fact, the researcher made many trips to the ‘Palace of Justice’¹¹¹ to visit the Financial Markets Court and ask for legal cases regarding market manipulation. In reality, there are a number of cases in this regard and they basically revolve around Section 122 of Law No. 7 of 2010 and specifically take the form of artificial transactions, fictitious orders and increasing security prices. This illustrates the questionnaire results that have been discussed previously in chapter three.¹¹² That is to say, a large number of the respondents believe that the KSE suffers from these three types of manipulation.

In other words, a number of cases regarding market manipulation are currently in the Financial Market Court,¹¹³ which indicates the effectiveness of the implementation or the effective rule by the CMA. Since the law was only issued in March 2010, these cases indicate that this has been a good approach for applying the law, especially in the situation of a new market with no previous case law. This suggests that the KSE was suffering from manipulative practises before the implementation of Law No. 7 of 2010, but there were no rules or regulations in place to punish manipulation. This can also explain the legal department’s opinion about market manipulation sanctions, since it felt that these manipulations should be considered as a crime but it lacked regulations to criminalize them in the KSE.¹¹⁴

¹¹¹ See the official site of the Kuwaiti Ministry of Justice < http://www.moj.gov.kw/index_en.asp > Last accessed on 30 Aug. 2013.

¹¹² See Chapter 3 of the study.

¹¹³ For instance, see *Kuwaiti Criminal Court* (Verdict no. 10 of 2011) Financial market, Dated December 22nd, 2011. Not published. See also *Kuwaiti Criminal Court* (Verdict no. 257 of 2010) Financial market, dated April 28th, 2011. Not published.

¹¹⁴ The legal department of the KSE claimed during a conversation in April, 2012, that the lack of regulations had prevented manipulators from being followed and punished.

In this context, artificial transactions are an example of the manipulative practises found to occur in the KSE after implementation of Law No. 7 of 2010, which created a misleading impression to other traders through fictitious trades. An example of manipulation is where two investors in the KSE conducted fictitious transactions for shares of three different companies.¹¹⁵ The first investor entered a buy order and knew that a similar order with regard to price and quantity was going to be set at the same time by another investor under their agreement. They performed many transactions in a similar manner and increased the security price to influence other traders to buy or sell during the time between April 14th, 2010 and April 26th, 2010. These transactions were performed between the first investor and a broker who was a son of the second investor. Thus, all three parties were observed by surveillance and the legal department in the KSE. In the end, each was fined 10,000 KD.

A similar case of artificial transactions in the KSE was a case of fictitious trades. In this case, the manipulator was a member of the board of directors in X company and, at the same time, he was a representative in Y company.¹¹⁶ Based on his position, he bought 260,000 shares of Y company on behalf of X company on March 31st, 2010. The security price was increased from 162 to 166 in just five operations at the last minute of the trading day. Then, 160,000 of these shares were sold at 172 fills on April 11th, 2010. The KSE legal department found that several transactions had occurred and, as a result, the price was increased from 162 to 166 in one day. These manipulative transactions resulted in 1280 KD profit for X company. Furthermore, the surveillance department

¹¹⁵ See *Kuwaiti Criminal Court* (Verdict no. 10 of 2010) Financial market. Dated January 27th, 2011. Not published.

¹¹⁶ See *Kuwaiti Criminal Court* (Verdict no. 14 of 2010) Financial market. Dated January 27th, 2011. Not published.

and the broker approved and agreed to this accusation. At the same time, another investor was accused who was involved in participating in the conduct and incitement. In the end, judges accepted the evidence and fined them 10,000 KD. They also were required to refund the 1280 KD profit.

In fact, these are the only cases available to researchers. Judges in both cases imposed a criminal fine of 10,000 KD, which is considered the minimum fine for such behaviour. In other words, defendants in both cases were not sentenced to imprisonment. This suggests that even after judges begin to believe in criminalizing market manipulation, they find it difficult to apply imprisonment sanctions or higher fines is difficult.

On the other hand, many cases of market manipulation exist in which acquittals were the end result. By reviewing these cases, it can clearly be shown that judges still find applying criminal sanctions on manipulators is a very hard step. This might be because the law is still new or judges do not find manipulative practises to be morally wrong behaviour. For example, fake orders and artificial transactions that increase the security price can be shown in case no. 5/2013.¹¹⁷ In this case, the accused increased the security price of X company and bought the security at a higher price to influence others to buy with him. Then he made a fake order with a high number and at the same time started to sell his shares to other traders. However, a judge found him not guilty and he claimed he was not sure of his manipulative practises. Another example of artificial transactions is in case no. 16/2010.¹¹⁸ In this case, the accused created a fake impression to other traders in the market by creating fictitious trades and at the same time increasing the

¹¹⁷ See *Kuwaiti Criminal Court* (Verdict no. 5 of 2013) Financial market. Dated June 27th, 2013. Not published.

¹¹⁸ See *Kuwaiti Criminal Court* (Verdict no. 16 of 2010) Financial market. Dated April 14th, 2011. Not published.

security price. It has been shown that he benefited from his practises to the tune of 120 dinars. However, the judge acquitted him.¹¹⁹

In addition, it should be illustrated that false information had no place in these cases. Although rumours and false information are essential to some extent to support the manipulative practises and increase manipulators' chances of influencing other traders, the researcher could find no legal cases of these. This lack of evidence might be because Sections 124 and 125 are not sufficient to tackle this form of manipulation, information is difficult to follow, or KSE does not face this form of manipulation. This suggests that the regulation in its current form should be reconsidered as the FSMA 2000 is not limited by the form recommendations based on CMA news.

People involved in the KSE, including investors, portfolio managers and brokers, were asked if they believed in the application of Law No. 7 of 2010, as shown in the tables below. It was discovered that 43.2% of investors and 41.1% of portfolio managers believe that manipulation practises will follow. However, 75% of brokers also believed that such practises will follow. In addition to this question, they were asked if they agreed that manipulators will be punished under Law No. 7 of 2010. Based on the responses, 39.1% of investors, 36.6% of portfolio managers and 58.6% of brokers believed that manipulators will be punished under the law. From both sets of answers, it is clear that there is variability in the beliefs of key people involved with the KSE with regard to Law No. 7 of 2010, indicating that there is no substantial confidence in the law

¹¹⁹ See other cases with acquittal *Kuwaiti Criminal Court* (Verdict no. 23 of 2012) Financial market. Dated June 27th, 2013. Not published. See also *Kuwaiti Criminal Court* (Verdict no. 3 of 2011) Financial market. Dated Jan. 12th, 2012. Not published. See also *Kuwaiti Criminal Court* (Verdict no. 10 of 2011) Financial market. Dated Dec. 22nd, 2011. Not published. See also *Kuwaiti Criminal Court* (Verdict no. 257 of 2010) Financial market. Dated April 28th, 2011. Not published.

or the enforcement of the law. In reality, this is not a good sign, as it suggests that only a small percentage of the people involved with the KSE are deterred from manipulative practises or regulations. In addition, these people do not believe in applying the law in cases involving the KSE. However, the percentage of brokers who believe in this law is increasing because they may be more involved with the KSE and Capital Market Authority. These results suggest that the future of market manipulation in the KSE is not very promising, and investors in the market should have complete assurance in the application of the law. However, the answers to these survey questions might be influenced by the 2008 crisis and the lack of previous cases, so these questions should be asked again.

-The Law No. 7 will be applied and manipulative practises would be followed	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	85	43.2%	83	42.3%	28	14.2%
<i>-Portfolios managers</i>	12	41.4%	13	44.8%	4	13.8%
<i>-Brokers</i>	21	75%	6	21.4%	1	3.6%

(Table 27) The questionnaire responses to the statement ‘The Law No. 7 will be applied and manipulative practises would be followed?’

-Manipulators will be punished after law no 7 of 2010	Agree		Disagree		Do not Know	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
<i>-Investors</i>	76	39.1%	90	46.3%	28	14.4%
<i>-Portfolios managers</i>	11	36.6%	15	49.9%	4	13.3%
<i>-Brokers</i>	17	58.6%	9	31%	3	10.3%

(Table 28) The questionnaire responses to the statement ‘Manipulators will be punished after Law No. 7?’

Summary

This chapter began by describing and evaluating the Kuwaiti approach to enforcing Law No. 7 of 2010 and the incorporation of a special entity called the CMA. Through comparison with the approach of the FSA in the United Kingdom, it has been found that the Kuwaiti legislature failed to stipulate monetary penalties for abusers of Law No. 7. This lack of regulation affects the efficiency of the CMA and the deterrence for abusive and manipulative practises. This illustrates the need for this type of penalty in the case of the CMA in Kuwait. On the other hand, by reviewing the available cases of market manipulation in the Financial Market courts, it can be shown that judges in Kuwait are not educated enough and find it difficult to apply sanctions on manipulators. Judges with no previous experience and no specialized courses are reluctant to assign sanctions and even when sanctions are assigned, the penalties are the minimum allowed, which is a fine without prison. This law was only written two and half years prior to the completion of this study and perhaps it is too early to truly assess the effectiveness of the law.

Conclusion

Market manipulation is a form of market abuse that can take place in any financial market, and can harm the integrity of the market and damage the investors' protection and confidence.¹ This thesis attempted to investigate the regulation of market manipulation in the case of the Kuwait Stock Exchange (KSE). Although market manipulation has arguably been an issue in the KSE, this research was not attempting to prove this problem of market manipulation. However, the regulation of market manipulation has been discovered and evaluated. In addition, the issue of market manipulation in the KSE has been discussed in this thesis using the available data regarding it in addition to an applied study by the researcher to support the argument of the problem of market manipulation in the case of KSE.

This thesis was aiming to achieve four main objectives. The first objective was to attempt to determine the meaning of the term market manipulation in order to have a broad definition of this term when the term is vaguely used in the KSE. The second objective to address the general rules of the Criminal and Civil Kuwaiti Law and their effectiveness in tackling market manipulative practises before the issuance of Law No. 7 of 2010. The third objective involved Law No. 7 of 2010 and its regulation towards market manipulation, in order to discover how well this law covered the common forms of market manipulation outlined from the first objective and in comparison with the UK's approach of regulating market manipulation under the FSMA 2000. The fourth objective was related to the enforcement and implementation of Law No. 7 of 2010,

¹ See previously Chapter 2. See also Paul Barnes, *Stock Market Efficiency, Insider Dealing and Market Abuse*, (Gower 2009).

evaluating the Capital Market Authority (CMA) and its authority with civil penalties using the FSMA 2000 as a basis for evaluation.

In order to achieve these objectives, this thesis was divided into five chapters. This section summarises these chapters against the previous four main objectives of the thesis.

Chapter one had a descriptive method, it started with an introduction to the Stock Exchange system in Kuwait by reviewing the early emergence of the KSE. It illustrated that from the earliest days of Kuwait's trading system, manipulative practises existed, such as in the unofficial 'Soq Al Manakh' that collapsed in 1982. As a result of the Manakh crisis of 1982, the 1983 Decree was passed to establish the current official KSE. Finally, this chapter gave an overview of the KSE trading system, which has been shown that there were no market manipulation rules in existence.

Chapter two has initially explored the term market manipulation and reconsidered the common practises of market manipulation as recognised by the extant literature by an explanatory tool. It has been found that the term is difficult to define, as it has been described 'a term of art' by the US Supreme Court.² Therefore, it is essential to regulate market manipulation practises and determine its forms so as to conclude with the legal definition of market manipulation collecting its forms.

Chapter three has reviewed the general rules of the Kuwaiti Civil and Criminal Laws to address whether they might be applied to manipulative practises before the issuance of Law No. 7 of 2010. By the explanatory method, it has been shown that there were no

² See *Santa Fe Industries, Inc v Green* (1977) 430 US 462, 477.

solid or direct rules in the KSE to protect the market from manipulative practises. Thus, this objective answers the question of why there were no previous legal cases existing concerning market manipulation. Since there was a lack of a clear definition under a direct section that regulates market manipulation, this would keep applying the crime of fraud is difficult on it. Thus, there should be a clear section in the regulations that defines and regulates market manipulation and its forms. Furthermore, the 2008 Trust Crisis was focused on its relation to manipulative practises as a result of the absence of special regulation of market manipulation, which was not necessarily regarded as so at that time. This crisis made it clear to the legislature the necessity to issue a complete securities regulation, and Law No. 7 of 2010 was issued to regulate the establishment of the CMA as there was no specialized authority that supervises or enforces any regulations on the KSE, as long as regulating market manipulation for the first time in the history of the KSE.

Chapter four has evaluated Law No. 7 of 2010 and its coverage with the common forms of manipulative practises as deduced from chapter two and especially the forms that the KSE suffers from that has been shown in chapter 3. The evaluation was carried out by using a more established and mature law of the UK as a norm. It illustrated the deficiencies of the Law No. 7 using the UK law as a basis for evaluation and suggested area of improvements by normative method.

Chapter five had an explanatory method, it discussed the enforcement of Law No. 7 of 2010 by the CMA and how effective its authorities, given by Law No. 7, were in comparison with the FSA authorities. In addition, the implementation of the law by the Financial Markets court was discovered and how effective judges are being by applying the criminal sanctions.

1. Research Findings

One of the important findings was that it was a long time before the Kuwaiti legislature believed the necessity of issuing a complete security regulation; however, 27 years after the incorporation of the official KSE, Law No. 7 of 2010 was issued and has established a special financial entity for the supervision of financial affairs. It should be mentioned that this approach is efficient to a large extent as the legislature has attempted to regulate all the shortcomings in a qualified complete approach.³ Hence, this law has regulated the incorporation of a special entity for the financial affairs of the CMA,⁴ in addition to the establishment of a licenced Stock Exchange to be governed by the CMA.⁵ Moreover, the CMA has the authority to issue licences to a number of participants in the market, and this would keep its power and control on them.⁶ Furthermore, the CMA has authority in regulating and criminalizing market abuse practises and market manipulation as well,⁷ and in addition, in the incorporation of the Financial Market Court.⁸

In fact, this thesis was not aiming to evaluate all of Law No. 7's sections; however, it has been shown that the Kuwaiti legislature made a good version of a complete

³ See the explanatory memorandum of Law No. 7 of 2010.

⁴ See Chapter two of Law No. 7 of 2010.

⁵ See Chapter three of Law No. 7 of 2010.

⁶ See Chapter five of Law No. 7 of 2010.

⁷ For instance it has criminalized market abuse practises such as insider dealing and market manipulation in addition to disclosure of interests. See chapter eleven of Law No. 7 of 2010. In addition, this law has stipulated a separate chapter for all the important aspects that revolves around the financial trading such as take over, disclosure and licencing.

⁸ See sections 108 of Law No. 7 of 2010.

securities regulation.⁹ This, in reality, achieves Law No. 7's objectives,¹⁰ as long as supporting the Amir's well, Sheikh Sabah into developing Kuwait and turning it to a commercial and financial hub.¹¹

Despite that fact that this approach is very useful, it has some weaknesses regarding regulating and tackling market manipulation practises; hence, the next sections illustrate these weaknesses.

The law has neglected to define market manipulation or even using the term 'manipulation' while addressing its forms. Because of this neglect, the meaning is still vague in the case of the KSE. Although it has been concluded from chapter two that the term 'market manipulation' is controversial and is hard to define, the need of using the term at least under the regulation of market manipulation in the Kuwaiti is very essential, while no previous studies or legal cases are there. As has been stated in the introduction chapter, the term 'market manipulation' is vague, especially during the period before the issuance of Law No. 7 of 2010. Thus, the need for a clear section that describes manipulative practises by using the term would help determine the state of market manipulation in the KSE and not mix it with other abusive practises.

Market manipulation forms have been regulated under sections 122, 124 and 125. Although these sections have not used the term 'manipulation', they have been concluded based on the definition of manipulation outlined by chapter two. The forms of market manipulation under Law No. 7 of 2010 can be divided into four categories:

⁹ See B. Al-Mulla, *Alnetham Alganony le aswag almal (Legal System for Stock Markets)*, (1st ed., 2011 Kuwait).

¹⁰ See the explanatory memorandum of Law No. 7 of 2010.

¹¹ See previously section 3 of the Introduction Chapter.

information based manipulation, artificial transactions, fictitious orders, and increasing or decreasing the security price. These forms have been evaluated based on the UK forms of market manipulation as defined under the FSMA 2000, and in addition, they have been covered in comparison to the manipulative forms that the KSE suffers from as outlined by the questionnaire in chapter three.¹²

It has been found that the Kuwaiti approach to regulating market manipulation forms has sufficiently covered most of the famous forms that the KSE suffers from regarding the applied study results. Through evaluating the UK forms, it can be found that the Kuwaiti approach has missed regulating the forms of stabilising security price and information-based manipulation. Although sections 124 and 125 of Law No. 7 are basically related to information, they are limited to the rumourss relating to the CMA or to false information related to recommendations and advice. It can be shown that section 124 has limited the application of this form, in the case of encouragement, to buying or selling a security and, at the same time, having an advantage. Hence, this section can't be applied to disseminating rumourss of the status of such a company, or to spreading false news regarding the profits of such a security. Although 89.9% of the investors' respondents believe that spreading rumourss is a form that the KSE suffers from, Law No. 7 of 2010 has missed regulating it.¹³ The legislature might have considered the case of the Kuwaiti society and how people are sociable and talkative and how rumourss can be controlled or tackled.

On the other hand, conversely to the UK forms, the Kuwaiti legislature has missed regulating the form of stabilizing the security price as a form of manipulation. This

¹² See previously section 3.2 of Chapter 3 of the thesis.

¹³ See (Table 13) in Chapter 4 of the thesis.

would be translated as the legislature does not believe in this form, it might not be something that the KSE suffers from or these forms might be something difficult to tackle. Whatever the reason is, these two forms are important to be regulated in order to have a broader definition of market manipulation and wider forms.

In terms of having examples of market manipulation, it can be shown from chapter four that the FSA has issued the code of Market Conduct, which gives explanation and examples of market manipulation in addition to what the FSA considers to be manipulation.¹⁴ This would give flexibility in terms of the definition of market manipulation under the UK regulation. This flexibility would keep these forms regularly updated and developed according to, for example, changes of the trading system or in the market. Conversely, the Kuwaiti definition of market manipulation is limited to sections 122, 124 and 125, and unfortunately, the code of Law No. 7 is mostly repetitive of the law and has not included any examples, definitions or clarifications.

After regulating the forms of market manipulation under Law No. 7 of 2010 and concluding a legal definition of what is considered market manipulation in the Kuwaiti market, this would definitely survive the problem of tackling market manipulation, following its practises and enforcing criminal or civil remedies. However, in the previous case, before the issuance of Law No. 7, sanctioning abusers in the market was very difficult as long as there was no clear determination of manipulative practises.

The UK approach of regulating market manipulation can be divided into two regimes or sanctions. Section 118 has regulated the forms of market manipulation with detailed, well-explained sections. On the other hand, section 397 has stipulated criminal penalties

¹⁴ See Stuart Bazley, *Market Abuse Enforcement: Practise and Procedure*, (Bloomsbury 2013) p. 59.

on market-manipulative sanctions.¹⁵ These two sections have not been mixed. That is to say, the civil penalties of the FSA can be applied to breaches of section 118, while section 397, with its general rules, is specialized for criminal sanctions. In addition, the defense of these sanctions has been regulated as well. This division of regulation would keep the application of civil penalties to wider practises or forms of market manipulation; however, the criminal regime will be very limited, and this has been shown in the statistics.¹⁶

The Kuwaiti legislature has mixed the regulation of criminal penalties and the determination of the forms of market manipulation. It should be mentioned that these penalties differ according to the determined form. This might mean that the legislature has found that each form has a different impact on the market. For instance, the penalty for section 122, which regulates artificial transactions, fake orders and increasing or decreasing the security price is imprisonment not to exceed 5 years or a criminal fine no less than ten thousand Kuwaiti dinars and not to exceed one hundred thousand dinars. This criminal fine is less for sanctions under section 124 and 125, which address information-based manipulation.¹⁷ The criminal fine in this case is no less than five thousands dinars and not to exceed fifty thousand dinars. The reason for this division between manipulative forms might be that the Kuwaiti legislature believes that information has less impact on the market integrity or efficiency.

In addition, Law No. 7 has missed regulating the defense of the criminal liability of market manipulation practises similar to the UK approach under section 397 (4) and (5)

¹⁵ For more details see section 2 of Chapter 4 of this thesis.

¹⁶ See Paul Barnes, *supra* no. 1, p. 164. See also Stuart Bazley, *supra* no. 17 p. 276.

¹⁷ See previously section 2 of Chapter 4 of this thesis.

of the FSMA 2000. This lack of regulation of offenses might keep judges always hesitating to sanction manipulators.

In terms of civil penalties, it can be clearly shown that the civil penalties determined by section 146 of Law No. 7 are very lenient and would not help with deterrence. On the contrary, the FSA can impose fines on abusers in the market; however, the CMA cannot impose monetary penalties. This would keep the CMA less effective and they would not achieve a high level of deterrence.

Regarding legal cases that are available for the researcher, it clearly can be shown that judges are being very cautious while applying criminal sanctions. While there are a promising number of the cases under the Financial Market Court and a reasonable number of cases regarding market manipulation, most of these cases are acquitted. That would mean there is an issue with judges, as they find applying criminal sanctions on manipulators a very hard step. They are attempting to protect one investor by not sanctioning him and at the same time, this might ruin the entirety of and confidence in the market.

Regarding the applied study, the questionnaire was distributed on Feb. 2011. This questionnaire aimed to assess the views of the different parties involved in the KSE (investors, portfolio managers, brokers) of whether or not they regarded the prevailing practise at the KSE as manipulative and wrongful. The main indication of this questionnaire was that people involved in the KSE are suffering from manipulative practises of different forms. However, it should be noted that this questionnaire was after the issuance of Law No. 7 of 2010 and at its early implementation. Hence, this might influence the questionnaire results. It is recommended to apply another questionnaire after a couple of years.

2. *Research Recommendations*

Based on the findings of this research, the following recommendations are made:

1. Expand the civil sanctions regulated under section 146 of Law No. 7 of 2010 and give the CMA the authority to stipulate monetary penalties on people who breach Law No. 7 of 2010. Besides, it will be more useful to determine under a special section exactly what constitutes a breach in order to establish the civil liability.

In addition to this point, it is essential to announce openly in the KSE about the civil penalties stipulated by the CMA with a brief explanation of their breaches. This would help with deterrence and allow the CMA to have a good impact on investors in the market.

2. Issue a code of conduct or enrich the current code of Law No. 7 of 2010 and give more examples of the manipulative practises. Besides, it might be useful to use the common Kuwaiti slang language in determining these manipulative practises. This would help investors to be aware of what is considered abuse to the market.

3. Regulate recommendations. It is essential to regulate recommendations or analyst advice and require special certification for analysts. In addition, analysts should obtain licences from the CMA so that they can give their advice. This would keep them under the control of the CMA, and anyone who gives his own analysis while not having this licence is considered to be breaching the law. In addition, this would help tackle information-based manipulation and ensure that any recommendations regarding securities in KSE are qualified, and at the same time not to forget that their obligation in giving recommendations or advice is due care not due diligence.

4. Implement a separate section in Law No. 7 of 2010 for regulating manipulation that should be entitled ‘Market Manipulation’. This will help determine this term and

expand the regulation of market manipulation to include extra forms of manipulation, such as manipulation by false or misleading information or rumours and stabilization of security prices. The KSE is a virgin market with no previous cases of market manipulation, and therefore there is a greater need for broader sections that regulate market manipulation. The more the law defines and explains manipulative practises, the more the market will be aware of these practises and avoid them.

5. Regulation of two manipulative forms from the UK regulation, which are the stabilising of the security price and the dissemination of false information.

6. Issuing of a booklet or brochure by the CMA that includes all of the abusive practises in the market, including market manipulation. It has been shown that many investors are not aware of Law No. 7 of 2010, and therefore, this idea would be more practical. In addition, the website of the KSE and Capital Market Authority should have a separate section for the general title 'market abuse' that includes the various market manipulation forms. This would definitely help people avoid these practises in the market.

7. Educate judges in the field of market abuse through seminars, lectures, or courses to make them aware of the consequences of abusive practises and the negative impact on investor protection as well as the market as a whole. The only course available to them by the 'Kuwait Institute for Judicial and Legal Studies' is not sufficient, as it does not include any technical or financial sector. Since judges in Kuwait have graduated from a School of Law, there is no relationship with financial or technical matters in the stock market. In addition, it is important to explain the various manipulative practises and how they occur in different forms. This would also help them apply the provisions and the sanctions to manipulators.

8. An applied study should take place after two or three years from now. This would give Law No. 7 of 2010 the chance to be fully implemented. This study would help to identify the people involved in the market and reassess their view and opinion towards the KSE as well as manipulative practises. This will help determine whether Law No. 7 of 2010 has been successful in its aim to reduce crime in the market.

In the case of Kuwait, it can be concluded that law is essential to financial markets. Self-regulated markets might not be efficient, especially in the case of Kuwait with its small population and low level of education. Additionally, it can be concluded that regulation by itself is not sufficient to tackle market manipulation, because good enforcement and a high-quality judiciary are equally as essential. As well, increasing the level of financial literacy of investors and judges would improve the level of efficiency in the market and the enforcement of regulation.

Furthermore, prohibiting market manipulation might challenge the interests of certain groups because it would serve the interests of the public and prevent benefits from few groups. This scenario might be one of the greatest difficulties of regulating market manipulation. Whatever the challenges, though, market manipulation should be regulated.

In brief, this research may be useful and original as no previous studies have addressed market abuse, and more specifically market manipulation, in the case of the KSE and its relationship to the 2008 crisis and the 2010 issuance of Law No. 7. This thesis is one of the few which focus on underdeveloped and emerging markets. Its results may be useful in determining how regulations develop in such markets, and how delays in regulation can result in severe financial crises such as those of 1982 and 2008. That is to say,

complete securities regulation is likely essential in such markets, as self-regulation may not be sufficient, if even possible.

Law No. 7 of 2010 is a good first step towards preventing further market manipulation, however, it would not be effective to tackle manipulative practises without efficient enforcement. In the case of the KSE, as long as Kuwait's CMA does not have the authority to impose monetary fines, and the financial market court remains hesitant in setting criminal penalties, it is appropriate to say that market manipulation practises are not tackled very well. Securities regulations are simply not sufficient unless there are authorities with the power to enforce them. In order to protect the market from market manipulation practises, enforcement should be at a high level, with monetary penalties in place to deter potential manipulators. In addition to that, the judicial body should be financially literate in order to set effective penalties on manipulators as well. All of the above mentioned solutions would help protect the market from potential manipulators.

Appendix (1)

Investors

-Gender:		
<input type="checkbox"/> Male	<input type="checkbox"/> Female	
-Age:		
<input type="checkbox"/> less than 30 years	<input type="checkbox"/> 30-50 years	<input type="checkbox"/> over 50
- Occupation:		
<input type="checkbox"/> Government employee	<input type="checkbox"/> Private sector employee	<input type="checkbox"/> Free business
- Qualification:		
<input type="checkbox"/> Non-degree holder	<input type="checkbox"/> Bachelor's degree	<input type="checkbox"/> Postgraduate degree
- Stock exchange dealer through:		
<input type="checkbox"/> Portfolio	<input type="checkbox"/> Fund	<input type="checkbox"/> Individually
- Traded amount:		
<input type="checkbox"/> Less than 10.000 K.D	<input type="checkbox"/> 10.000 to 50.000	<input type="checkbox"/> 50.000 +

<i>1-Prove the problem:</i>	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
The Kuwait Stock Exchange suffers from market manipulation					
I have been manipulated during my daily trading					
The causes of the 2008 crisis are related to market manipulation					
Market manipulation caused significant losses for many investors					
I have been misled by fake orders of supply and demand that has resulted in a loss					
I have been influenced by rumours or misleading reports that led to a loss					
I have been manipulated by fictitious trades					

<i>2-Types of market manipulation:</i> <i>Do you agree that the following are types of manipulation that the Kuwait Stock Exchange suffers from?</i>	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
Rumours					
Fake supply and demand					

Decreasing the security price					
Increasing the stock price to sell it at a higher price					
Fictitious trades					
Last minute trades					

3-The reality of the problem: <i>Are the following important aspects that you consider when buying securities?</i>	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
Positive corporate news					
Increased demand for shares					
Assurance of company's management					
Earnings per share					
Technical analysis of the shares					
Financial analysis of the company					
Private information					

4-Causes of market manipulation:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
The lack of sufficient regulation					
The non-application of market manipulation regulation					
The surveillance department in the Kuwait Stock Exchange					
The trading system					
Traders in the Kuwait Stock Exchange believe that market manipulation is legal					
There is no real will to prevent it					

5-Consequences of market manipulation:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
I have suffered a loss from market manipulation					
Investors in the KSE lack financial literacy and their rights.					
I have been compensated for my loss					
Market manipulations affect transparency, which leads to a decline in the market's performance					
Market manipulation affects negatively the country's economy.					

6-Solutions to market manipulation:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
Regulate market manipulation in the Kuwait Stock Exchange					

Issue a law that criminalises market manipulation					
Stock market authorities regulate market manipulation					
Spread awareness among investors about market manipulation					
Follow a new trading system that will help to detect these operations					
The law should be applicable.					
The Authority should enforce the law and detect these operations.					
There is no solution for market manipulation in the Kuwait Stock Exchange					

7-Law No. 7 of 2010:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
I am familiar with law no. 7 of 2010.					
The percentage of market manipulation decreased after the issuance of the new law by the Stock Market Authority					
The Law No. 7 will be applied and manipulative practises will be followed					
Manipulators will be punished, especially after the new law is applied					
Law No. 7 has regulated market manipulation in a perfect way					

Appendix (2)

Portfolio managers

-Gender:		
<input type="checkbox"/> Male	<input type="checkbox"/> Female	
-Age:		
<input type="checkbox"/> less than 30 years	<input type="checkbox"/> 30-50 years	<input type="checkbox"/> over 50
- Qualification:		
<input type="checkbox"/> Non-degree holder	<input type="checkbox"/> Bachelor's degree	<input type="checkbox"/> Postgraduate degree

1-Prove the problem:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
The Kuwait Stock Exchange suffers from market manipulation					
I have been manipulated during my daily trading					
The causes of the 2008 crisis are related to market manipulation					
Market manipulation caused significant losses for many investors					

2-Types of market manipulation: <i>Do you agree that the following are types of manipulation that the Kuwait Stock Exchange suffers from?</i>	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
Rumours					
Fake supply and demand					
Decreasing the security price					
Increasing the stock price to sell it at a higher price					
Fictitious trades					
Last minute trades					

-Are there any other forms of manipulation in the Kuwait Stock Exchange?

-What is the most common form of manipulation in the Kuwait Stock Exchange?

3-The reality of the problem: <i>Are the following important aspects that you consider when buying stocks?</i>	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
Positive corporate news					
Increased demand for shares					
Assurance of company's management					
Earnings per share					
Technical analysis of the shares					
Financial analysis of the company					
Private information					

4-Causes of market manipulation:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
The lack of sufficient regulation					
The non-application of the market manipulation laws					
The surveillance department in the Kuwait Stock Exchange					
The trading system					
Traders in the Kuwait Stock Exchange believe that market manipulation is legal					
There is no real will to prevent it					

-In your opinion, what is the main reason behind market manipulation in the Kuwait Stock Exchange?

5-Consequences of market manipulation:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
I have suffered a loss from market manipulation					
Investors in the KSE lack financial literacy and their rights.					
Market manipulations affect transparency, which leads to a decline in the market's performance					
Market manipulation affects negatively the country's economy.					

-What is the procedure followed by the stock market management against the manipulation?

6-Solutions to market manipulation:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
Regulate market manipulation in the Kuwait Stock Exchange					
Issue a law that criminalises market manipulation					
Stock market authorities regulate market manipulation					
Spread awareness among investors about market manipulation					
Follow a new trading system that will help to detect these operations					
The law should be applicable.					
The Authority should enforce the law and detect these operations.					
There is no solution for market manipulation in the Kuwait Stock Exchange					

7-Law No. 7 of 2010:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
I am familiar with law no. 7 of 2010.					
The percentage of market manipulation decreased after the issuance of the new law by the Stock Market Authority					
The Law No. 7 will be applied and manipulative practises will be followed					
Manipulators will be punished, especially after the new law is applied					
Law No. 7 has regulated market manipulation in a perfect way					

-Do you have any recommendations for the new law, in order for it to detect market manipulation?

Appendix (3)

Brokers

-Gender:		
<input type="checkbox"/> Male	<input type="checkbox"/> Female	
-Age:		
<input type="checkbox"/> less than 30 years	<input type="checkbox"/> 30-50 years	<input type="checkbox"/> over 50
- Qualification:		
<input type="checkbox"/> Non-degree holder	<input type="checkbox"/> Bachelor's degree	<input type="checkbox"/> Postgraduate degree

<i>1-Prove the problem:</i>	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
The Kuwait Stock Exchange suffers from market manipulation					
I have been manipulated during my daily trading					
The causes of the 2008 crisis are related to market manipulation					
Market manipulation caused significant losses for many investors					

<i>2-Types of market manipulation:</i> <i>Do you agree that the following are types of manipulation that the Kuwait Stock Exchange suffers from?</i>	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
Rumours					
Fake supply and demand					
Decreasing the security price					
Increasing the stock price to sell it at a higher price					
Fictitious trades					
Last minute trades					

-Are there any other forms of manipulation in the Kuwait Stock Exchange?

-What is the most common form of manipulation in the Kuwait Stock Exchange?

3-The reality of the problem: <i>Are the following important aspects that you consider when buying stocks?</i>	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
Positive corporate news					
Increased demand for shares					
Assurance of company's management					
Earnings per share					
Technical analysis of the shares					
Financial analysis of the company					
Private information					

4-Causes of market manipulation:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
The lack of sufficient regulation					
The non-application of the market manipulation laws					
The surveillance department in the Kuwait Stock Exchange					
The trading system					
Traders in the Kuwait Stock Exchange believe that market manipulation is legal					
There is no real will to prevent it					

-In your opinion, what is the main reason behind market manipulation in the Kuwait Stock Exchange?

5-Consequences of market manipulation:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
I have suffered a loss from market manipulation					
Investors in the KSE lack financial literacy and their rights.					
Market manipulations affect transparency, which leads to a decline in the market's performance					
Market manipulation affects negatively the country's economy.					

-What is the procedure followed by the stock market management against the manipulation?

6-Solutions to market manipulation:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
Regulate market manipulation in the Kuwait Stock Exchange					
Issue a law that criminalises market manipulation					
Stock market authorities regulate market manipulation					
Spread awareness among investors about market manipulation					
Follow a new trading system that will help to detect these operations					
The law should be applicable.					
The Authority should enforce the law and detect these operations.					
There is no solution for market manipulation in the Kuwait Stock Exchange					

7-Law No. 7 of 2010:	<i>Totally agree</i>	<i>Agree</i>	<i>Disagree</i>	<i>Totally disagree</i>	<i>Don't know</i>
I am familiar with law no. 7 of 2010.					
The percentage of market manipulation decreased after the issuance of the new law by the Stock Market Authority					
The Law No. 7 will be applied and manipulative practises will be followed					
Manipulators will be punished, especially after the new law					
Law No. 7 has regulated market manipulation in a perfect way					

-Do you have any recommendations for the new law, in order for it to detect market manipulation?

Appendix (4)

Investors questionnaire in Arabic

-الجنس:	<input type="checkbox"/> ذكر	<input type="checkbox"/> انثى	
-العمر:	اصغر من 30 عام <input type="checkbox"/>	من 30 50 عام <input type="checkbox"/>	اكبر من 50 عام <input type="checkbox"/>
-الوظيفة:	موظف حكومي <input type="checkbox"/>	موظف قطاع خاص <input type="checkbox"/>	عمل حر <input type="checkbox"/>
-المؤهل:	غير جامعي <input type="checkbox"/>	جامعي <input type="checkbox"/>	دراسات عليا <input type="checkbox"/>
-التداول من خلال:	محفظة <input type="checkbox"/>	صندوق <input type="checkbox"/>	ادارتي الشخصية <input type="checkbox"/>
-المبلغ المتداول به:	اقل من 10,000 دينار <input type="checkbox"/>	ما بين 10,000 الى 50,000 دينار <input type="checkbox"/>	اكثر من 50,000 دينار <input type="checkbox"/>

1- المحور الاول: اثبات المشكلة					
لا اظن	لا اوافق تماما	لا اوافق	وافقي	اوافق تماما	
					يجاني سوق الكويت للاوراق المالية من عمليات تلاعب.
					سبق وان تعرضت لعمليات تلاعب اثناء تداولي في سوق الكويت.
					ارى ان اسباب ازمة 2008 في سوق الكويت مرتبطة بعمليات تلاعب كبيرة.
					ادت عمليات التلاعب الي خسارة الكثير من المتداولين في سوق الكويت للاوراق المالية.
					تعرضت لعمليات تضليل من خلال أوامر بيع او طلبات شراء وهمية أدت الى خسارتي.
					خدعت من اشاعات مغلوطة او تقارير مضللة أدت الى خسارتي.
					تأثرت بمضاربات شديدة اتضح بعد ذلك أنها وهمية.

2- المحور الثاني: اوجه عمليات التلاعب:					لا اعلم
اوافق تماما	اوافق	لا اوافق	لا اوافق تماما		
					- اوافق على اعتبار <u>الإشاعات</u> عمليات تلاعب يعاني منها السوق الكويتي.
					- اوافق على اعتبار <u>عروض البيع</u> او طلبات الشراء غير الحقيقية عمليات تلاعب يعاني منها السوق الكويتي.
					- اوافق على اعتبار عمليات الضغط على السهم لتجميعه بأسعار متدنية عمليات تلاعب يعاني منها السوق الكويتي.
					- اوافق على اعتبار عمليات رفع سعر السهم لبيعه بأسعار مرتفعة عمليات تلاعب يعاني منها السوق الكويتي.
					- اوافق على اعتبار <u>التداولات الوهمية</u> عمليات تلاعب يعاني منها السوق الكويتي.
					- اوافق على اعتبار <u>الأقفالات الأخيرة</u> عمليات تلاعب يعاني منها السوق الكويتي.

3- المحور الثالث: العوامل المؤثرة على المشكلة:					لا اعلم
اوافق تماما	اوافق	لا اوافق	لا اوافق تماما		
					- اوافق على أهمية <u>الأخبار الإيجابية</u> عن الشركة عند شرائي او بيعي سهم معين.
					- اوافق على أهمية <u>الطلب المتزايد</u> على السهم عند شرائي او بيعي سهم معين.
					- اوافق على أهمية <u>الاطمئنان الى مجلس ادارة الشركة</u> عند شرائي او بيعي سهم معين.
					- اوافق على أهمية <u>ارباح الشركة</u> عند شرائي او بيعي سهم معين.
					- اوافق على أهمية <u>التحليل الفني</u> للسهم عند شرائي او بيعي سهم معين.
					- اوافق على أهمية <u>التحليل المالي</u> للشركة عند شرائي او بيعي سهم معين.
					- اوافق على أهمية <u>الأخبار الخاصة</u> عند شرائي او بيعي سهم معين.

4- المحور الرابع: اسباب المشكلة:					لا اعلم
اوافق تماما	اوافق	لا اوافق	لا اوافق تماما		
					- اعتقد ان نقص التشريعات المنظمة لعمليات التلاعب هي السبب وراء انتشار هذه العمليات.
					- اعتقد ان هناك تشريع يمنع هذه العمليات لكن عدم تطبيق هذا التشريع هو السبب في انتشارها.
					- أرى ان تقاعس ادارة الرقابة في البورصة في ملاحقة عمليات التلاعب هو السبب في انتشارها.
					- ارى ان أنظمة التداول system تسمح بمثل هذه العمليات التلاعبية.
					- اعتقد ان شعور المتداولين في البورصة بشرعية مثل هذه العمليات هو السبب في انتشارها.
					- لا توجد رغبة حقيقية لمنع عمليات التلاعب في سوق الكويت للأوراق المالية.

5- المحور الخامس: اضرار المشكلة:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					- تعرضت لأكثر من مرة لخسارة مالية بسبب التلاعب.
					-المتداولين في السوق الكويتي يعانون من الجهل بالقوانين المنظمة لحقوقهم.
					-حصلت على تعويض ما عن خسارة كانت بسبب عمليات تلاعب.
					-تؤثر عمليات التلاعب على تحقيق الشفافية ومن ثم انخفاض اداء سوق الكويت للاوراق المالية.
					-تؤثر عمليات التلاعب سلبا عل الاقتصاد الكويتي على المدى البعيد.

6 - المحور السادس: الحلول للمشكلة:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					-أؤكد ان هناك حاجة ماسة لتنظيم عمليات التلاعب في سوق الكويت للاوراق المالية.
					-أؤيد صدور قانون يجرم وينظم عمليات التلاعب في سوق الكويت.
					-أؤيد ضرورة انشاء هيئة سوق المال لما يساعد على القضاء على عمليات التلاعب.
					-أؤمن باهمية نشر الوعي بين المستثمرين بمخالفة هذه العمليات وخطورتها.
					-أؤيد اتباع انظمة تداول حديثة تساعد على الكشف عن عمليات التلاعب.
					-يجب ان يكون القانون واللائحة التنفيذية المنظم للتلاعب واضحين وقابلين للتطبيق.
					-أعتقد باهمية السعي الجدي من قبل ادارة البورصة للحد من هذه العمليات.
					-أعتقد ان عمليات التلاعب لا حل لها في سوق الكويت للاوراق المالية.

7- المحور السابع: قانون انشاء هيئة سوق المال:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					-اطلعت على القانون الجديد الخاص بانشاء هيئة سوق المال.
					-أوافق ان نسبة عمليات التلاعب في سوق الكويت للاوراق المالية قلت بعد صدور قانون هيئة سوق المال لسنة 2010.
					-أعتقد ان القانون الجديد سيتم تطبيقه وستتم ملاحقة المتلاعبين في السوق.
					-أعتقد انه سيتم سجن وتغريم المتلاعبين في السوق وخصوصا بعد صدور القانون الجديد.
					-أؤيد ان قانون انشاء هيئة سوق المال نظم عمليات التلاعب بشكل متكامل.

Appendix (5)

Portfolios managers questionnaire in Arabic

الجنس -	ذكر <input type="checkbox"/>	انثى <input type="checkbox"/>	
العمر -	اصغر من 30 عام <input type="checkbox"/>	من 30 50 عام <input type="checkbox"/>	اكبر من 50 عام <input type="checkbox"/>
المؤهل -	غير جامعي <input type="checkbox"/>	جامعي <input type="checkbox"/>	دراسات عليا <input type="checkbox"/>

1 - المحور الاول: اثبات المشكلة				
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما

2 - المحور الثاني: اوجه عمليات التلاعب:				
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما

هل توجد عمليات اخرى يعاني منها السوق الكويتي للاوراق المالية؟ ماهي؟

ما هي اهم واشهر عمليات التلاعب التي يعاني منها السوق الكويتي للاوراق المالية؟

3-المحور الثالث: العوامل المؤثرة على المشكلة:					لا اعلم	لا اوافق تماما	لا اوافق	وافق	وافق تماما
					-وافق على اهمية الاخبار الايجابية عن الشركة عند شرائي او بيعي سهم معين.				
					-وافق على اهمية الطلب المتزايد على السهم عند شرائي او بيعي سهم معين.				
					-وافق على اهمية الاطمئنان الى مجلس ادارة الشركة عند شرائي او بيعي سهم معين.				
					-وافق على اهمية ارباح الشركة عند شرائي او بيعي سهم معين.				
					-وافق على اهمية التحليل الفني للسهم عند شرائي او بيعي سهم معين.				
					-وافق على اهمية التحليل المالي للشركة عند شرائي او بيعي سهم معين.				
					-وافق على اهمية الاخبار الخاصة عند شرائي او بيعي سهم معين.				

4- المحور الرابع: اسباب المشكلة:					او اوافق تماماً	او اوافق	لا اوافق	لا اعلم
					-اعتقد ان نقص التشريعات المنظمة لعمليات التلاعب هي السبب وراء انتشار هذه العمليات.			
					-اعتقد ان هناك تشريع يمنع هذه العمليات لكن عدم تطبيق هذا التشريع هو السبب في انتشارها.			
					-أرى ان تقاعس ادارة الرقابة في البورصة في ملاحقة عمليات التلاعب هو السبب في انتشارها.			
					-ارى ان انظمة التداول system تسمح بمثل هذه العمليات التلاعبية.			
					-اعتقد ان شعور المتداولين في البورصة بشرعية مثل هذه العمليات هو السبب في انتشارها.			
					-لا توجد رغبة حقيقية لمنع عمليات التلاعب في سوق الكويت للاوراق المالية.			

ما هو السبب الحقيقي بوجهة نظرك وراء عمليات في سوق الكويت للاوراق المالية؟

5- المحور الخامس: اضرار المشكلة:				
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما
				تعرض احد عملائك لكثر من مرة لخسارة مالية بسبب التلاعب.
				-المتداولين في السوق الكويتي يعانون من الجهل بالقوانين المنظمة لحقوقهم.
				تؤثر عمليات التلاعب على تحقيق الشفافية ومن ثم انخفاض اداء سوق الكويت

5- المحور الخامس: اضرار المشكلة:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					للاوراق المالية.
					-تؤثر عمليات التلاعب سلبا عل الاقتصاد الكويتي على المدى البعيد.

ماهو الاجراء المتبع من قبل ادارة البورصة تجاه عمليات التلاعب في سوق الكويت للاوراق المالية؟

6- المحور السادس: الحلول للمشكلة:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					-أؤكد ان هناك حاجة ماسة لتنظيم عمليات التلاعب في سوق الكويت للاوراق المالية.
					-أؤيد صدور قانون يجرم وينظم عمليات التلاعب في سوق الكويت.
					-أؤيد ضرورة انشاء هيئة سوق المال لما يساعد على القضاء على عمليات التلاعب.
					-أؤمن باهمية نشر الوعي بين المستثمرين بمخالفة هذه العمليات وخطورتها.
					-أؤيد اتباع انظمة تداول حديثة تساعد على الكشف عن عمليات التلاعب.
					-يجب ان يكون القانون واللائحة التنفيذية المنظم للتلاعب واضحين وقابلين للتطبيق.
					-أعتقد باهمية السعي الجدي من قبل ادارة البورصة للحد من هذه العمليات.
					-أعتقد ان عمليات التلاعب لا حل لها في سوق الكويت للاوراق المالية.

7- المحور السابع: قانون انشاء هيئة سوق المال:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					-اطلعت على القانون الجديد الخاص بانشاء هيئة سوق المال.
					-أوافق ان نسبة عمليات التلاعب في سوق الكويت للاوراق المالية قلت بعد صدور قانون هيئة سوق المال لسنة 2010.
					-أعتقد ان القانون الجديد سيتم تطبيقه وستتم ملاحقة المتلاعبين في السوق.
					-أعتقد انه سيتم سجن وتغريم المتلاعبين في السوق وخصوصا بعد صدور القانون الجديد.
					-أؤيد ان قانون انشاء هيئة سوق المال نظم عمليات التلاعب بشكل متكامل.

هل لديك اية اقتراحات او حلول للقانون الجديد بما يكفل للحد من عمليات التلاعب في سوق الكويت للاوراق المالية؟

Appendix (6)

Brokers questionnaire in Arabic

الجنس -	ذكر <input type="checkbox"/>	انثى <input type="checkbox"/>	
العمر -	اصغر من 30 عام <input type="checkbox"/>	من 30 50 عام <input type="checkbox"/>	اكبر من 50 عام <input type="checkbox"/>
المؤهل -	غير جامعي <input type="checkbox"/>	جامعي <input type="checkbox"/>	دراسات عليا <input type="checkbox"/>

أية شهادات او دورات تخصصية اخرى؟

1- المحور الاول: اثبات المشكلة				
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما

2- المحور الثاني: اوجه عمليات التلاعب:				
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما

هل توجد عمليات اخرى يعاني منها السوق الكويتي للاوراق المالية؟ ماهي؟

ما هي اهم واشهر عمليات التلاعب التي يعاني منها السوق الكويتي للاوراق المالية؟

3-المحور الثالث: العوامل المؤثرة على المشكلة:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					-اوافق على اهمية الاخبار الايجابية عن الشركة عند شرائني او بيعي سهم معين.
					-اوافق على اهمية الطلب المتزايد على السهم عند شرائني او بيعي سهم معين.
					-اوافق على اهمية الاطمئنان الى مجلس ادارة الشركة عند شرائني او بيعي سهم معين.
					-اوافق على اهمية ارباح الشركة عند شرائني او بيعي سهم معين.
					-اوافق على اهمية التحليل الفني للسهم عند شرائني او بيعي سهم معين.
					-اوافق على اهمية التحليل المالي للشركة عند شرائني او بيعي سهم معين.
					-اوافق على اهمية الاخبار الخاصة عند شرائني او بيعي سهم معين.

4 - المحور الرابع: اسباب المشكلة:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					-اعتقد ان نقص التشريعات المنظمة لعمليات التلاعب هي السبب وراء انتشار هذه العمليات.
					-اعتقد ان هناك تشريع يمنع هذه العمليات لكن عدم تطبيق هذا التشريع هو السبب في انتشارها.
					-أرى ان تقاعس ادارة الرقابة في البورصة في ملاحقة عمليات التلاعب هو السبب في انتشارها.
					-ارى ان انظمة التداول system تسمح بمثل هذه العمليات التلاعبية.
					-اعتقد ان شعور المتداولين في البورصة بشرعية مثل هذه العمليات هو السبب في انتشارها.
					-لا توجد رغبة حقيقية لمنع عمليات التلاعب في سوق الكويت للاوراق المالية.

ما هو السبب الحقيقي بوجهة نظرك وراء عمليات في سوق الكويت للاوراق المالية؟

5-المحور الخامس: اضرار المشكلة:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					-تعرض احد عملائك لأكثر من مرة لخسارة مالية بسبب التلاعب.
					-المتداولين في السوق الكويتي يعانون من الجهل بالقوانين المنظمة لحقوقهم.

5- المحور الخامس: اضرار المشكلة:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					تؤثر عمليات التلاعب على تحقيق الشفافية ومن ثم انخفاض اداء سوق الكويت للاوراق المالية.
					تؤثر عمليات التلاعب سلبا عل الاقتصاد الكويتي على المدى البعيد.

ماهو الاجراء المتبع من قبل ادارة البورصة تجاه عمليات التلاعب في سوق الكويت للاوراق المالية؟

6- المحور السادس: الحلول للمشكلة:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					-أؤكد ان هناك حاجة ماسة لتنظيم عمليات التلاعب في سوق الكويت للاوراق المالية.
					-أؤيد صدور قانون يجرم وينظم عمليات التلاعب في سوق الكويت.
					-أؤيد ضرورة انشاء هيئة سوق المال لما يساعد على القضاء على عمليات التلاعب.
					-أؤمن باهمية نشر الوعي بين المستثمرين بمخالفة هذه العمليات وخطورتها.
					-أؤيد اتباع انظمة تداول حديثة تساعد على الكشف عن عمليات التلاعب.
					-يجب ان يكون القانون واللائحة التنفيذية المنظم للتلاعب واضحين وقابلين للتطبيق.
					-أعتقد باهمية السعي الجدي من قبل ادارة البورصة للحد من هذه العمليات.
					-أعتقد ان عمليات التلاعب لا حل لها في سوق الكويت للاوراق المالية.

7- المحور السابع: قانون انشاء هيئة سوق المال:					
لا اعلم	لا اوافق تماما	لا اوافق	اوافق	اوافق تماما	
					-اطلعت على القانون الجديد الخاص بانشاء هيئة سوق المال.
					-أوافق ان نسبة عمليات التلاعب في سوق الكويت للاوراق المالية قلت بعد صدور قانون هيئة سوق المال لسنة 2010.
					-أعتقد ان القانون الجديد سيتم تطبيقه وستتم ملاحقة المتلاعبين في السوق.
					-أعتقد انه سيتم سجن وتغريم المتلاعبين في السوق وخصوصا بعد صدور القانون الجديد.
					-أؤيد ان قانون انشاء هيئة سوق المال نظم عمليات التلاعب بشكل متكامل.

هل لديك اية اقتراحات او حلول للقانون الجديد بما يكفل للحد من عمليات التلاعب في سوق الكويت للاوراق المالية؟

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