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The Insider Trading Prohibition in Qatar: A Critical Comparative Study with US Law

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Abstract

The purpose of this research is to examine existing loopholes in Qatar's insider trading laws as impediments to a functional stock market. Weak insider trading rules diminish investor trust in local markets, which may encourage investors on the Qatar Stock Exchange to seek other markets, inhibiting Qatar's intent to serve as a regional financial hub. This research revolves around proposing new rules to the current insider trading regulations. This critical analytical study gives a breakdown of the Qatari law on insider trading, studying its deterrence, investigation, and punitive components. Comparing these components with US regulations on insider trading, which are globally recognized as effective, this work identifies a key issue in each component of the Qatari law. Based on the US model, this study found that Qatari regulations need: a disclosure system to prevent immediate trading after information publication, a corporate whistleblower system to curb illicit transactions, and a treble damages provision to prevent violators from profiting or avoiding losses. This research offers substantial value to academics, corporations, governments, and investors looking to strengthen corporations and market development in Qatar or similar economies, emphasizing the importance of effective laws on disclosure, whistleblowers, and damages.

Keywords: Insider trading; Market efficiency; Whistleblowers; Treble damages; Public disclosure

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حظر استغلال التعامل بالمعلومات الداخلية في قطر: دراسة نقدية مقارنة مع القانون الأمريكي

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ملخص

تهدف الدراسة إلى تحديد الثغرات الموجودة في قوانين تجريم التعامل بالمعلومات الداخلية في دولة قطر وتحليلها، بوصفها عائقًا أمام فعالية سوق الأوراق المالية. تقلِّلُ القوانين الهشة لتجريم التعامل بالمعلومات الداخلية من ثقة المستثمرين في الأسواق المحلية؛ مما قد يشجع المستثمرين في بورصة قطر على البحث عن أسواق أخرى، ويحول دون تحقيق هدف دولة قطر المتمثل في إمكانية كونها مركزًا ماليًا إقليميًا فعالًا.

تحلِّل الدراسة قوانين تجريم التعامل بالمعلومات الداخلية في دولة قطر، من حيث عناصر الردع، والتحقيق، والعقاب الخاصة بها. وتقارنها مع القوانين الأمريكية الخاصة بتجريم التعامل بالمعلومات الداخلية، المعترف بفعاليتها عالميًا. حددت الدراسة ثلاث ضرورات تنقيحية، تتمثل في اقتراح نظام يمنع التعامل الفوري بالأوراق المالية بعد إعلان الإفصاح إلا بعد توافر شروط معيَّنة، واقتراح نظام يخوّل التبليغ عن أيِّ تعاملات مشبوهة بناءً على معلومات داخلية، واقتراح نظام رد ثلاثة أضعاف قيمة المنفعة المالية المتحققة أو الخسائر المتجنبة.

تهم الدراسة كل الذين يتطلّعون إلى بناء قواعد من شأنها تطوير سوق التداول في قطر، أو في غيرها من الاقتصادات المماثلة، من الحكومات والشركات، والمستثمرين، الأكاديميين. مع إبراز أهمية القوانين المتعلقة بالإفصاح، والمبلغين عن مخالفات التداول غير القانوني للمعلومات الداخلية، وتقدير قيمة الأضرار المترتبة على مخالفة النصوص الآمرة لتداول المعلومات الداخلية.

تصل الدراسة إلى اقتراح مجموعة من القواعد الجديدة الساعية إلى تجريم التعامل بالمعلومات الداخلية.

الكلمات المفتاحية: التعامل بناءً على معلومات داخلية، كفاءة السوق، المبلغون، نظام رد ثلاثة أضعاف قيمة المنفعة، الإفصاح عن المصالح

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I Introduction

To maximize capital, corporations rely on broad market participation.[1] However, ordinary people may be discouraged from participating when other individuals can make investment decisions based on non-public material information. Accordingly, a well-functioning capital market protects all participants through insider trading regulations that prevent individuals from capitalizing on non-public information when buying and selling stocks.[2]

Insider trading practices have become widely prohibited in developed countries, and countries with emerging markets around the world.[3] The rationale behind this prohibition is to regulate the windows through which the information *per se* is available to all market participants, so that insiders do not take advantage of their positions and profit from privileged access to information.

Regulatory bodies in different legal systems have tested new insider trading theories, enhanced regulations prohibiting insider trading in some occupations,[4] and amended laws to punish those profiting from insider trading.[5] These collective efforts intend to level the capital market for all participants, where no single person makes money or escapes financial loss based on non-public information. Although these domestic laws prohibiting insider trading are often strong, loopholes circumventing these regulations remain prevalent.

The Gulf Cooperation Council (GCC) is a regional body focused on inter-state cooperation, but each state is working independently to improve its financial independence from the common rentier model by improving its capital markets. Yet, some countries, such as Qatar, could benefit from stronger regulations on insider trading. Qatar is one country in the GCC that regulates insider trading,[6] prosecuting corporate insiders for trading stocks based on a non-public information as far back as

1 Bruno Biais, Fany Declerck & Sophie Moinas, "Who Supplies Liquidity, How and When?," (Toulouse School of Economics (TSE), Working Paper No. 17-818, 2017).

2 *See* James D. Cox, Robert W. Hillman, Donald C. Langevoort, Ann M. Lipton & William K. Sjostrom, Securities Regulation: Cases And Materials 868, 956-1006 (9th ed. 2020) (sharing aspects of the debate about making insider trading illegal along with the opposing point of view and other insider trading elements).

3 John P. Anderson, Insider Trading: Law, Ethics, and Reform 118-140 (2018).

4 These occupations include elected representatives and other top ranked government employees. *See* Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), Pub. L. No. 112-105, 126 Stat. 291 (2012) (prohibiting members of Congress, employees of Congress and other government employees from trading for personal benefits upon information derived from their official position).

5 Like penalizing secondary insiders in Kuwait starting from 2015. *See* Law No. 22 of 2015 Amending Some Provisions of Law No. 7 of 2010 regarding the Establishment of the Capital Markets Authority & Regulating Securities Activities, art. 118 (Kuwait) (making insider trading a felony not only for primary insiders but secondary insiders as well).

6 Insider trading became illegal in Qatar in 2005 with the passing of Qatar Financial Markets Authority (QFMA) Law No. 33 of 2005, which was later replaced by the QFMA Law No. 8 of 2012. *See* QFMA Law No. 33 of 2005, arts. 24, 37 (Qatar).

2005,[7] when the Qatar Financial Markets Authority (QFMA)[8] was established. In its efforts to be known as a regional financial hub, Qatar enacted the QFMA Law No. 33 of 2005 to further align with internationally agreed market practices in 2012.[9] By regulating trading on the local stock exchange, the Qatar Stock Exchange (QSE),[10] while also prohibiting deceitful practices, the QFMA protected the local financial system, imitating developed market practices like disclosure rules and corporate governance regulations.[11]

Qatar's objective is to create a solid financial system that facilitates the government's ambitious plan, the Qatar National Vision of 2030.[12] Economic development is one essential pillar of the plan, intending to expand resources beyond the hydrocarbon industries to create an appealing business environment for local and foreign investments,[13] which requires dynamic investor protections. However, it has been ten years since Law No. 8 of 2012, the law regulating insider trading in Qatar, was enacted without any efforts to amend or improve a clear weak spot in its capital market rules: insider trading.

Re-examining insider trading in Qatar is a fundamental step in attracting foreign investors in accordance with the Qatar National Vision of 2030. As the government aims to take the stock exchange to another level by attracting foreign issuers,[14] offering privately held companies various benefits for going public,[15] and ultimately privatizing the QSE,[16] stringent insider trading rules are a necessity rather

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7 The first case was in 2005 where two corporate executives were convicted of insider trading on The Qatar Stock Exchange. There is no further information on this case, no media coverage as the documents were sealed by the court. *See* Reuters, *Qatar Convicts Two Corporate Executives of Insider Trading*, Khaleej Times (Oct. 4, 2005), available at https://www.khaleejtimes.com/business/qatar-convicts-two-corporate-executives-of-insider trading.

8 Qatar Fin. Mrkts. Auth., available at https://www.qfma.org.qa/English/AboutUs/Pages/Whoweare.aspx (last visited June 6, 2022).

9 QFMA Law No. 8 of 2012 (Qatar).

10 *About*, Qatar Stock Exchange, available at https://www.qe.com.qa/historical-background (last visited June 7, 2022).

11 *See, e.g.*, *Governance Code*, Qatar Fin. Mrkts. Auth., available at https://www.qfma.org.qa/English/IssuingListingSecurities/Pages/Governance_and_disclosure.aspx (last visited Apr. 2, 2022) (defining "inside information" and "insiders").

12 Qatar National Vision 2030 (2008), available at https://www.gco.gov.qa/en/about-qatar/national-vision2030/.

13 *Id*.

14 *Qatar May Allow 100% Foreign Ownership of Listed Companies*, Arab News (Apr. 15, 2021), available at https://www.arabnews.com/node/1843266/business-economy. *See also Qatar Stocks Surge on Plans to Allow Full Foreign Ownership*, Bloomberg (Apr. 15, 2022), available at https://www.bloomberg.com/news/articles/2021-04-15/qatar-may-allow-foreigners-to-fully-own-listed-companies.

15 *Qatar-QSE Urges Private Companies to Seek Listing, Ensure Liquidity Provision for Existing and Potential Firms*, MENAFN (Mar. 3, 2020), available at https://menafn.com/1099796784/Qatar-QSE-urges-private-companies-to-seek-listing-ensures-liquidity-provision-for-existing-and-potential-firms.

16 Movements in the region towards privatizing government-run stock exchanges allow a greater role for the private sector in the economy, while also benefitting from a company operation to run portfolio investments. The Qatar Stock Exchange was formed in 1995 as a government body, and not as a company. In 2009, this body was changed to a Qatari Shareholding government-owned company with a sole owner of all capital—i.e., Qatar Holding LL.C.—, which was fully owned by Qatar Investment Authority that was 100% owned by the Government of Qatar. Regardless of what the

than luxury to promote market trust for all participants. Achieving these goals requires a revaluation of the insider-trading regulation in Qatar in two ways: to see how to amend and improve the existing rules, and to identify insider trading rules that the market lacks in Qatar.

Knowing that a thriving capital market requires solid insider-trading regulations, a level playing field, and better investments for both foreigners and locals—and that the legislature is interested in reviewing and amending the capital market laws—investors are looking forward to more stringent rules preventing and punishing insider-trading. Yet, most research on insider trading regulations among GCC member states focuses on local laws, broadly defining "material information" and reviewing corporate governance structures; however, none of these have addressed Qatar.[17]

The thesis is that weaknesses in Qatar's current insider trading laws impede the country's full implementation of its economic vision but using the United States as a model for insider trading regulations could strengthen Qatar's capital markets. As the market where insider trading prohibitions started, and as a model for many other countries, the United States serves as an ideal model here because of its ability to rapidly identify inequalities and innovate to close loopholes insiders could exploit, protecting market investors. Moreover, since no previous study has yet focused on laws regulating corporate confidential information in Qatar, the methodology and findings here can serve as guidance for Qatar and similar countries trying to improve market stability—an important topic for local and foreign investors, lawyers, issuers, law students, and the legislature.

Three prominent issues in the current scheme in Qatar limit the effectiveness of the country's insider trading regulations, which harms companies and the markets. First, under current regulations in Qatar, insiders are not obligated to observe a "reasonable waiting period" after the issuer of securities publicly discloses material non-public information; an apparent legal loophole enables insiders to exploit lax

name "shareholding company" may imply, this government shareholding company was not publicly traded on any financial market. In 2017, in a move to grant the QSE more autonomy, it was converted to a private shareholding company. This opened the door for full privatization of the QSE with shares owned by multiple investors via an initial public offering and a board of directors elected by investors. *See QSE CEO Reveals Plan to Privatize Stock Exchange, New Initiative to encourage IPOs*, Qatar Tribune (Apr. 22, 2019), available at https://www.qatar-tribune.com/news-details/id/161803; Press Release, Cap. Mrkts. Auth., Kuwait's Exchange Privatization Journey (Apr. 15, 2021), available at https://www.cma.gov.kw/en/web/cma/cma-board-releases/-/cmaboardreleases/detail/1030724.

17 *See, e.g.*, Abdulsalam Albelooshi, The Regulation of Insider Dealing: An Applied and Comparative Legal Study towards Reform in the UAE (Aug. 2008) (PhD dissertation, University of Exeter), available at https://ore.exeter.ac.uk/repository/bitstream/handle/10036/47094/AlbelooshiA.pdf?sequence=2&isAllowed=y; Mohammad A. R. S. Almutairi, A Critical Assessment of Regulation of Insider Trading Under the Kuwait Capital Market Authority Law: A Comparative Study with the Regulatory Structure of the United States, the United Kingdom and France to Enhance Market Fairness, Integrity and Effective Enforcement of the Kuwait Regulatory Structure (May 2020) (S.J.D. dissertation, School of Law of Case Western Reserve University); Nasser Saleh Altwayan, Corporate Insider Trading in Saudi Arabia - A Comparative Analysis with the United States (July 2019) (S.J.D. dissertation, University of Minnesota), available at https://conservancy.umn.edu/bitstream/handle/11299/206689/Altwayan_umn_0130E_20477.pdf?sequence=1.

rules for personal gain without which the outsiders will not be able to absorb the disclosure.[18]

Second, insider trading remains a misdemeanor in Qatar, rather than a felony, diminishing the seriousness of the crime. Minimal fines for this misdemeanor charge are not enough of a deterrent to discourage investors from insider trading. Rather, individuals can trade based on undisclosed information and pay minimal fines.

Third, Qatar lacks an insider trading regime that encourages whistleblowers to share any potential insider trading violation; whistleblowers are not entitled to compensation for disclosing violations and are not protected from retaliation under the current regulations.

Primarily, this paper looks at U.S. insider trading laws and regulations as a model for enhancing insider trading laws in Qatar. As the birthplace of insider trading laws, the United States is also one of the most active countries in enforcing insider trading laws[19] through its designated governmental body—the Securities and Exchange Commission (SEC).[20] While the comparative focus of this study highlights U.S. practices, insider trading laws from other countries are referenced as an additional guide for enhancing Qatar's current insider trading laws.

Ultimately, to improve insider trading regulations and hold insiders appropriately liable while protecting all market participants, Qatar should regulate the current disclosure timing, add deterrent sanctions with treble damages provision, and initiate a corporate whistleblowing system.

II Disclosure Timing Lacks Waiting Period

The rationale for making insider trading illegal is quite clear; no one should take advantage of access to material non-public information that is not available to other investors in the market by trading for personal gain or avoiding loss.[21] Essentially, access to information that investors may consider prior to any investment decision (to sell or buy stocks) should be available to all. Insiders should not take advantage of their unique position to the detriment of other market participants.[22] Rather insiders and non-insiders should be on par when making investment decisions. This is the classical theory regarding

18 *See* SEC v. Texas Gulf Sulphur Co., 401 F.2d 833 (1968), the first insider trading case where "reasonable waiting period" concept was presented. In Texas case the court said: "reasonable waiting period during which outsiders may absorb and evaluate disclosures." (Remove the blue background colour)

19 Which finds its base in rule 10b-5 of the Securities Exchange Act of 1934 and the 1968 Williams Act Amendments. *See* Ako Doffou, *Insider Trading: A Review of Theory and Empirical Work*, 11 J. Acct. & Fin. Rsch. (2003).

20 *See* Press Release, SEC Insider Trading Cases Enforcement for the FY 2021 (Nov. 18, 2021), available at https://www.sec.gov/news/press-release/2021-238.

21 Kim Lane Scheppele, *"It's Just Not Right": The Ethics of Insider Trading*, 56 L. & Contemp. Probs., Summer 1993, at 123.

22 Sarah Baumgartel, *Privileging Professional Insider Trading*, 51 Ga. L. Rev. 71, 72 (2016).

material non-public information,[23] known as the "disclose or abstain rule,"[24] which simply refers to how material non-public information is used; insiders should either disclose it to all other investors in the market prior to selling and buying shares or abstain from trading until the information is publicly available. Disclosure of the previously undisclosed information is *per se* a public announcement to the market that would then allow insiders to legally trade on the relevant securities.

Current Situation in Qatari Law

In Qatar, the disclosure is regulated under the QFMA's Board Decision No. 04 of 2020 Concerning the Issuance of Offering & Listing of Securities on the Financial Markets Rulebook.[25] Article 76 requires that the securities issuer of a publicly listed company on the QSE immediately notify the QFMA and the market of any information that may affect share prices, and publish disclosures on its website as well as the QSE website.[26] Moreover, the issuer of the securities should immediately notify the QFMA of all material information[27] that is not yet publicly disclosed that positively or negatively affects the issuers' securities prices.

These include but are not limited to: mergers and acquisitions of the issuer's parent company or any of its affiliates; the sale, purchase, or mortgage of more than 5% of the issuer or its affiliates' assets; lawsuits brought by or against the issuer or any of its affiliates.[28]

Required disclosures by issuers of the securities may seem routine. The legal duty of disclosure imposed is timely fulfilled when the QFMA and QSE are notified of this information, and it is published on the issuer's and QSE's websites. Nevertheless, this immediate disclosure does not put all market participants on an equal footing. Insiders have time to consider their next step before the disclosure occurs and can act as soon as the information is published; other market participants will only be able to consider their next step after the disclosure—and after insiders have already acted. In other words, insiders of listed companies on the QSE, theoretically, could still benefit and make profits or avoid losses at the expense of all other market participants, while still conforming with the disclose or abstain rule.

Without a waiting period, insiders can theoretically act immediately upon disclosure.[29] Accordingly, all investors are not treated equal, because insiders have an access advantage[30] and can purchase or sell

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23 Zachary James Gubler, *A Unified Theory of Insider Trading Law*, 105 Georg. L.J. 1225 (2017).

24 SEC v. Texas Gulf Sulphur Co., 401 F.2d 833 (2d Cir. 1968).

25 QFMA Board Decision No. 4 of 2020 Concerning the Issuance of Offering & Listing of Securities on the Financial Markets Rulebook, available at https://www.qfma.org.qa/English/rulesregulations/pages/legal_decisions.aspx.

26 *Id.* art. 76.

27 *Id.* art. 80.

28 *Id.* art. 80 (listing thirteen cases as examples of information categorized as significant or material information).

29 John Elliott, Dale Morse & Gordon Richardson, *The Association between Insider Trading and Information Announcements*, 15 RAND J. Econ., Winter 1984, at 521.

30 The same effect applies with delayed disclosures where there is a need for such delay. *See* James J. Park, *Insider Trading*

immediately after disclosure while other investors are still calculating their next move. For example, when a company is about to disclose an acquisition deal with a target company, the acquiring company normally pays a premium for the acquisition of the target shares to incentivize the target shareholders to approve the acquisition deal. Buying shares in the target company then would seem to be a smart decision because of premium prices. Here, insiders in the acquiring company would already know about the merger but abstain from buying shares in the target company until the disclosure announcement.

If a disclosure is set for noon, insiders benefit in two ways. First, they have time to calmly contemplate buying shares of the target as an investment decision and calculate their anticipated profit.[31] Second, they can transfer the necessary funds to their portfolio account for immediately purchasing shares after the disclosure, enabling them to buy the target shares at their original price before subsequent purchases increase the price.[32]

Meanwhile, not all market participants will have sufficient trading funds in their portfolios or have the chance to think deeply about the same deal. By the time other participants hear and process this information, prices will have increased because of insider trading and other participants will have lost any benefits of the disclosure. The same scenario would apply, for instance, when insiders sell shares after a disclosure announcement regarding inevitable losses that would negatively impact a company's listed share prices.[33]

Relatedly, clearly identifying an "insider" determines the effectiveness of waiting periods or disclosure regulations. QFMA policy expands the definition of insiders beyond individuals in the company whose shares are listed on QSE, or others receiving tips from insiders. This creates a lot of insiders that may take advantage of the disclosure timing loophole and be apt to trade promptly after disclosure.

The inception of the QFMA law did not include a statutory definition of insiders under Qatari law. However, four years later, in 2016, a statutory definition of the meaning of insiders was promulgated in QFMA Board Decision No. 5 of 2016. This decision defined an insider as "Any person, due to the position, [who] became acquainted with information not available to the public. Such information could affect attraction or reluctance of dealers in the securities of the Company or other companies in which the Company or the shareholders have interest or could affect the Company's ability to meet its obligations. This could include the Board members, Senior Executive Management, employees of the Company or any company of its group and others who have access to such Information due to

and the Integrity of Mandatory Disclosure, 6 Wis. L. Rev. 1133 (2018).

31 That is what is called "dissimulation of insider traders," where insider benefits from using private information after the release of the disclosure from earlier knowledge. *See* Steven Huddart, John S. Hughes & Carolyn B. Levine, *Public Disclosure and Dissimulation of Insider Trades*, 69 Econometrica 665 (2001).

32 Which is more prominent in takeover cases. *See* Laura Nyantung & H. Nejat Seyhun, *Has Insider Trading Become More Rampant in the United States? Empirical Evidence from Takeovers*, *in* Research Handbook on Insider Trading 211-29 (Stephan M. Bainbridge ed. 2013).

33 W. Bratton, *Enron and the Dark Side of Shareholder Value*, 76 Tulane L. Rev. 1275 (2002).

contractual, professional, or other relations."[34]

Here, the Qatari law provides a more expanded definition of insiders than the United States. Insiders are those who have a fiduciary duty to the source of the information, while secondary insiders are those who receive a tip from primary insiders or are temporary fiduciaries in corporations.[35] The idea of first having a fiduciary duty linked directly to the insider or inherited by secondary insiders and temporary fiduciaries must have existed beforehand.[36]

Therefore, those who learn material non-public information but do not have a direct or inherited fiduciary duty may not fall into the definition of insiders in the United States. This theoretically enables some professions with high-profile access to corporate information to trade without penalty on material non-public information they received as part of their job, such as members of Congress.[37] Recognition of this ambiguity led to a new bill, limiting insider trading by members of Congress, the Stock Act of 2012,[38] signed by former US President Barack Obama.[39] Under the act, members of Congress and congressional employees owe a duty to the American people not to trade based on material non-public information accessed because of their professional duties.[40]

With the expanded approach of the Qatari law, insiders are not only direct insiders in the company—like board members, executives, or employees. This open-ended meaning of "insiders," enables any individual with access to undisclosed information, no matter the nature of this access, to be considered an insider. Therefore, anyone receiving tips from an insider is treated as an insider. Likewise, anyone acquainted with undisclosed information because of their position is treated as an insider, regardless of whether access to the information came from a contractual, professional, or other relation. Government employees, members of the Shura Council, and Ministers in the Qatari Cabinet are all considered insiders after receiving a briefing with undisclosed information about one or more listed companies on QSE. Parties that contract with such companies, like accounting offices or law firms, and every individual who could access this information, are also considered insiders.

34 QFMA Board Decision No. 5 of 2016, art. 1.

35 Dirks v. SEC, 463 U.S. 646 (1983).

36 *See* Gubler, *supra* note 19 (providing insight on the evolvement of the insider trading fiduciary duty theory in the United States).

37 Members of Congress receive intelligence briefings about crucial matters in the country before the public. For example, in 2020, many members of Congress violated the Stock Act requirements when they received intelligence briefings about the novel Coronavirus and the imminent stock market crash. Many members sold their stocks before prices tumbled and before the public even knew about the severity of the virus and its effects on the stock prices. *See e.g.*, Sana Mesiya, *Failures* of the *Stock Act* and the *Future* of *Congressional Insider Trader Reform*, 58 Am. Crim. L. Rev. (2021).

38 Stock Act, *supra* note 2.

39 *See* Fact Sheet: The Stock Act: Bans Members of Congress from Insider Trading, Office of the Press Secretary (Apr. 4, 2012), available at https://obamawhitehouse.archives.gov/the-press-office/2012/04/04/fact-sheet-stock-act-bans-members-congress-insider trading ("Send me a bill that bans insider trading by members of Congress; I will sign it tomorrow").

40 *See* Stock Act, *supra* note 2, § 4 (g).

The Qatari legislature positively expanded the definition of insiders so that violators cannot claim that they do not own a fiduciary duty to the company shareholders. The standard of Qatari law is that *access* to the information creates an insider.

This expanded definition of insiders increases market instability with the potential for numerous insiders to immediately act at the time of the disclosure, which strips any insider trading regulation of its efficacy. While those with access to non-public material information are required to abstain from market transactions until after the disclosure, numerous individuals are in a superior position to other market participants.

Waiting Period in U.S. Law

With many insiders acting immediately after disclosure comes an urgent need to implement a waiting period before trading. The United States previously faced that exact same issue. In *SEC v. Texas Gulf Sulphur Co.*,[41] the court presented the idea of a "waiting period" on trading for all insiders after a disclosure to equalize all investors, noting that "[a]s to a waiting period after the information regarded as 'material' has been disclosed, any such time period should be specifically fixed by Congressional or Commission rule not retroactive in application…Before insiders may act upon material information, such information must have been effectively disclosed in a manner sufficient to insure its availability to the investing public."[42]

Determining a "reasonable" amount of time is dependent on the disclosure situation.[43] The purpose is to protect the public from insiders who already knew the information by prohibiting them from trading on the market immediately after the disclosure when others are still absorbing and assimilating the information. In other words, the waiting period recognizes a reasonable amount of time for the market to react to this information.

The United States has not yet established a defined period for abstaining from trading after the disclosure; instead, the waiting period depends upon circumstances.[44] The SEC has not provided a definition for a "reasonable amount of time" nor said anything about the circumstances. Instead, the SEC relies upon the standard established in the *Faberge* case of 1937: "In order to make information public, it must be disseminated in a manner calculated to reach the securities marketplace in general through recognized channels of distribution, and public investors must be afforded a reasonable waiting period to react to the information."[45]

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41 SEC v. Texas Gulf Sulphur, 401 F.2d 833 (2d Cir. 1968).

42 *Id.*

43 Faberge, Inc., 45 S.E.C. 249, 255 (1973) (citing Texas Gulf Sulphur, 401 F.2d at 854). *See also* Selective Disclosure and Insider Trading, 65 Fed. Reg. 51,716, 51,721 n.40 (Aug. 24, 2000).

44 United States Regulation FD, 17 C.F.R. §§ 243.100-243.103.

45 Faberge, Inc., 45 S.E.C. 249, 255 (1973). *See also* Securities and Exchange Commission, 17 C.F.R. §§ 241, 271 [Release Nos. 34-58288, IC-28351; File No. S7-23-08].

In the United States, the relevant waiting period depends on each company's policy. Most companies set a period of two full trading days from the release of the disclosure so the information is considered fully circulated among the public.[46]

To strengthen the insider trading ban in Qatar, a "reasonable amount of time" should be clearly defined as two full trading days are incorporated into the regulation rather than left to each company's policy. A uniform period set by law would deter insiders from exploiting the disclosure release in its current form for immediate trading. Moreover, every corporate insider trading in violation of the two-day period would be easily detected by the QFMA.

However, the issue becomes whether secondary or temporary fiduciary insiders would adhere to the two-day period as their violation is less detectable. Fortunately, the QFMA Law of 2012 allows evidence in securities cases to include all means of proof—whether written, electronic, recorded, etc.—that someone was previously exposed to non-public material information and acted on that information.[47] Ideally, expanded evidentiary rules would discourage anyone with prior access to information from acting immediately.

The proposed waiting period would ensure fairness for all investors, and enable disclosures to benefit all market participants, not just those with previous knowledge. In return, this will also bring confidence to the QSE and make foreign traders feel safe and protected.

III Current Corporate Sanctions are not a Deterrent

As a public enforcement tool, sanctions are a form of deterrence for insider trading violations.[48] Without proper sanctions, whether criminal or civil, insider trading regulations would be useless and operate like advisory rules. Insider trading deterrence in many countries often imposes criminal sanctions, like imprisonment or a substantial monetary penalty, or implements civil sanctions with a risk-award policy of e.g., treble damages.[49]

Insider trading sanctions under QFMA law apply to all primary and secondary insiders, and anyone who learns about material non-public information and uses that for their benefit on the market.

46 *See, e.g.*, Seres Therapeutices Inc., available at https://ir.seresthерapeutics.com/static-files/cc6aa50f-d9d1-41c5-857e-bd1df7ec877c (last visited June 4, 2022) (an American company incorporated in Massachusetts whose shares are traded on NASDAQ); PriceSmart, available at https://investors.pricesmart.com/sites/pricesmart/files/2021-08/updated-insider trading-policy-081121.pdf (last visited June 4, 2022) (an American company incorporated in California and whose shares are traded on NASDAQ); UHC Universal Health Services, Inc., available at https://ir.uhsinc.com/inside-information-and-trading-company-stock (last visited June 4, 2022) (an American company incorporated in Pennsylvania whose shares are traded on the NYSE).

47 QFMA Law No. 8 of 2012, art. 39 (Qatar).

48 Laura N. Beny, *Insider Trading Laws and Stock Markets Around the World: An Empirical Contribution to the Theoretical Law and Economics Debate*, 32 J. Corp. L., no. 2, 2007, at 237.

49 For a wide lens comparison of insider trading regulations sanctions globally, see James H. Thompson, *A Global Comparison of Insider Trading Regulations*, 3 Int'l J. Acct. & Fin. Rep. (2013).

However, the QFMA law contains somewhat lax rules regarding deterrence; insider trading violations are still considered misdemeanors rather than felonies, with imprisonment of no more than three years.[50] Moreover, it puts an upfront monetary limitation on the fine to not exceed 10 million Qatari Riyals ($2.7 million USD).[51]

The policy of considering insider trading violations as misdemeanors means that using material non-public information for financial gain or to avoid imminent loss of an investment portfolio is not as serious as other financial crimes Qatar considers as felonies, like money laundering, [52]public fund embezzlement,[53] and bribery.[54] These are felonies not misdemeanors because of the effect of the act itself; money laundering effects the financial system and the well-being of the country, while public funds embezzlement and bribery also impact the integrity of the public office.

Meanwhile, insider trading affects market liquidity, stock prices, and investor returns[55]—consequences that could be considered felony-level offenses. In fact, many countries treat insider trading violations more seriously than Qatar, distinguishing a felony and a misdemeanor as serious crimes and less serious crimes, and imposing at least five years of imprisonment: the United States,[56] Australia,[57] Germany,[58] Singapore,[59] Japan,[60] and Kuwait.[61] However, the imprisonment varies between legal systems.

In US law, where insider trading is considered a federal felony, imprisonment of less than five years but more than one year is considered a Class C Felony, not a misdemeanor.[62] In Qatar, felonies are crimes

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50 QFMA Law No. 8 of 2012, art. 40 (Qatar).

51 *Id.*

52 *See* Law No. 20 of 2019 on Combatting Money Laundering and Terrorism Financing in Qatar, ch. 11 (Qatar), available at http://www.namlc.gov.qa/en/legislations.html.

53 *See* Law No. 11 of 2004 Issuing the Penal Code of Qatar, pt. 3, ch. 2 (Qatar), available at https://almeezan.qa/LawPage.aspx?id=26&language=en.

54 *See id.* pt. 3, ch. 1.

55 Beny, *supra* note 42.

56 15 U.S.C. §32(a) (imprisonment of no more than twenty years for insider trading violations).

57 *See* Corporation Act of 2001 §§1043A(1)(d), 1311(1) (Austl.), available at https://www.legislation.gov.au/Details/C2018C00031 (imprisonment of ten years, which expanded to fifteen years for insider trading in 2019); Australian Securities & Investments Commission ASIC Media Statement (Jan. 22, 2022), available at https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-010mr-caloundra-man-pleads-guilty-to-insider trading/.

58 Wertpapierhandelsgesetz [WpGH] §§14, 38 (Ger.), available at https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsrecht/Gesetz/WpHG_en.html (imprisonment of up to five years).

59 Securities and Future Act 2001 art. 221 (Sing.), available at https://sso.agc.gov.sg/Act/SFA2001 (imprisonment of no more than seven years).

60 Financial Instruments and Exchange Act of Japan No. 25 of 1948 (FIEA), art. 197-2, available at https://www.fsa.go.jp/en/ (imprisonment of no more than five years).

61 Law No. 7 of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and its Amendments art. 118 (Kuwait) (imprisonment of no more than five years).

62 18 U.S.C. § 3559.

sanctioned by imprisonment of more than three years,[63] while misdemeanors are crimes sanctioned by imprisonment of three years or less or fine over 1000 Qatari Riyals ($275 USD).[64]

Not treating insider trading as a serious violation undermines the nature of the act of misusing undisclosed information and restricts the court from applying some important secondary penalties that are only applicable to felonies. Two important and relevant secondary penalties are not applicable here under the current scheme. The first is in Article 66(2) of the Qatari Penal Code, which prevents a person convicted of a crime from "becoming a member of the legislative, consultative and municipal councils, boards of directors committees, public establishments, joint-stock companies, associations, private establishments and mutual associations, being in charge of the administration of any of them or participating in the election of their members" for three years.[65]

Anyone who commits an insider trading violation should at least be prevented from serving on a board of directors for public companies; it would make no sense for the shareholders of a company to trust this person as a fiduciary for a defined period. The same applies to members of legislative parliaments, either elected or appointed. Individuals who are entrusted by the agent-principal relationship should never be allowed to face gentle sanctions when committing insider trading.

The second penalty is in Article 68 of the Qatari Penal Code and enables a judge to prevent a convicted person from working in their profession for ten years if their profession requires a professional license and they committed their crime in the scope of their work.[66] If the convicted person is also imprisoned for more than seven years, the judge can prohibit the person from working in their profession for a time equal to their imprisonment term.[67]

This secondary penalty applies only to felonies and not misdemeanors. Under current insider trading regulation in Qatar, self-employed professionals that work with stocks daily, like market makers and brokers on the QSE, are not prevented from continuing their profession after committing insider trading violations.

Under the current insider trading regulations in Qatar, the secondary penalties in Article 66(2) may also be applied to any insider trading violation, despite being a misdemeanor. Moreover, according to Article 69, the court can prohibit a person convicted of a misdemeanor "from any of the rights or privileges" under Article 66 for at least one year and up to three years.[68]

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63 Law No. 11 of 2004 Issuing the Penal Code of Qatar, art. 22.

64 *Id.* art. 23.

65 *Id.* art. 66.

66 The English translation of Article 68 of Law No. 11 of 2004 Issuing the Penal Code of Qatar says "criminal penalty" which is not correct. A criminal penalty may indicate both felonies and misdemeanors. The original version in Arabic states "criminal felony."

67 Law No. 11 of 2004 Issuing the Penal Code of Qatar, art. 68.

68 *Id.* art. 69.

Nonetheless, this article makes it optional, rather than mandatory, for the court to apply the penalties in Article 66(2) to misdemeanors. This may lead to more lenient verdicts if the court determines that a secondary penalty is unnecessary. Yet insider trading violations should have a secondary penalty that applies automatically and is not under the court's discretionary power.

Under Qatari law, the maximum penalty cannot exceed 10 million Qatari Riyals ($2.7 million USD).[69] Rather than detering insider trading violations, this limit may actually encourage insider trading when the insider may buy shares and earn profit gains that exceed 10 million Qatari Riyals or sell shares and avoid a loss above the penalty sum.

For example, an insider could buy shares of a publicly traded company on the QSE and make a profit of 15 million Qatari Riyals. The insider would then pay the highest penalty of 10 million Qatari Riyals (if not less) and would keep at least 5 million Qatari Riyals as profit.[70] The same thing applies to avoid a loss; when an insider sells to avoid a loss, paying the upper limit of the penalty may still be less than the full loss.

Moreover, Article 49 of the QFMA Law allows settlement for insider trading violations. The Chairman of the QFMA may dismiss any insider violation claim when the insider agrees to pay half of the maximum fine, which is 5 million Qatari Riyals.[71] This policy essentially considers insider trading a victimless crime,[72] allowing the insider to avoid imprisonment as well as costly and time-consuming litigation.

Yet, Qatari law is not completely outdated. The QSE may file a civil lawsuit against those who violate insider trading rules under the tort rules included in the Civil Code of Qatar No. 22 of 2004.[73] However, these lawsuits are time consuming and costly, and the court needs to be persuaded in each case that further litigation is necessary when an insider already paid a penalty for violating insider trading rules.

Moreover, individual tort suits to hold secondary insiders accountable are particularly difficult based on a lack of fiduciary duty—an additional challenge for individual shareholder suits, which are also ineffective and cumbersome. Instead, to avoid this dilemma, some countries have implemented a direct penalty instead of filing a tort lawsuit, such as the United States.[74]

69 QFMA Law No. 8 of 2012, art. 40.

70 While the potential for tort or damages remains, the likelihood of investor lawsuits is minimal. *See* note 73 and accompanying text.

71 *Id*.

72 On the analogy of who are the real victims of insider trading, see William K. Wang, *Stock Market Insider Trading: Victims, Violators and Remedies - Including an Analogy to Fraud in the Sale of a Used Car with a Generic Defect*, 45 Vill. L. Rev. 27 (2000).

73 Law No. 22 of 2004 Regarding Promulgating the Civil Code (Qatar).

74 Other countries also adopted the American approach of treble damages provision for insider trading, like Australia. *See Fines & Penalties*, Austl. Sec. & Inv. Comm'n, available at https://asic.gov.au/about-asic/asic-investigations-and-enforcement/fines-and penalties/#:~:text=The%20maximum%20civil%20penalty%20for%20companies%20is%20the%20greater%20of,units%20(currently%20%24555%20million) (last visited Apr. 2, 2022).

In the United States, under section 21(A) of the Securities Exchange Act of 1934 on the civil penalties of insider trading, the penalty is the greater of $1,000,000 or three times the amount of the profit gained or loss avoided due to the unlawful purchase or sale of the stocks based on material non-public information.[75] This treble damages provision was presented by the Insider Trading Sanctions Act of 1984 (ITSA), amending the 1934 act as an effort to deter any insider trading activity by increasing its risks.[76]

Section 21(A) of the Securities Exchange Act of 1934 heavily punishes inside traders. Instead of an upper monetary limit, like in Qatar, the violator pays triple the profits made or losses avoided. Violators cannot benefit from insider trading activity that exceeds a *de jure* monetary penalty limit, unlike insiders in Qatar under the current QFMA law.

The treble damages provision, if enacted in Qatar, would bring many benefits. It would ensure that any person contemplating an insider trading activity thinks twice as it would be very risky and not worth jeopardizing their personal wealth, paying triple, the profits gained or losses avoided.

Furthermore, shareholders of the targeted company, as well as the market, would feel they are equal with other market participants by enacting stringent rules where market manipulators will eventually pay for their wrongful acts for undermining the integrity of the stock market. The treble damages provision encompasses the outcomes of the tort lawsuit; it goes beyond, because the traditional tort lawsuit will not always provide up to three times the profits or losses. A treble damages provision compensates the stock market and corporate shareholders who may be unaware of an insider trading violation but have suffered from its occurrence.

Meanwhile, the settlement procedure the SEC follows enables insiders to settle insider trading claims within the SEC investigation period by paying up to the upper limit of the treble damages provision on a case-to-case basis.[77] To make the Qatari law more effective in this area, the adoption of an SEC-like system is widely encouraged.

The current penalties in Qatar are ineffective at deterring insider trading based on the monetary penalty limit and the settlement limit. The proposed treble damages provision would deter insider

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75 15 U.S.C. §21(a).

76 Brian G. Howland, Note, *The Insider Trading Sanctions Act of 1984: Does the ITSA Authorize the SEC to Issue Administrative Bars?*, 42 Wash. & Lee L. Rev. 993 (1985).

77 *See* Press Release, SEC Charges Six Individuals with Insider Trading in Stock of E-Commerce Company Prior to Acquisition by eBay 2014-85 (Apr. 25, 2014), available at https://www.sec.gov/news/press-release/2014-85; Press Release, SEC Charges Two Clinical Drug Trial Doctors with Insider Trading 2014-100 (May 19, 2014), available at https://www.sec.gov/news/press-release/2014-100; Press Release, Traders in China and Hong Kong Paying $920,000 to Settle Insider Trading Case 2015-290 (Dec. 28, 2015), available at https://www.sec.gov/news/pressrelease/2015-290.html. For other settlement actions of insider trading by the SEC see, *SEC Enforcement Actions: Insider Trading Cases*, Sec. Exchange Comm'n, available at https://www.sec.gov/spotlight/insidertrading/cases.shtml (last visited June 11, 2022).

trading to protect investors. In addition, this will also increase confidence in the QSE and QFMA.

IV Improper Channels to Encourage and Protect Corporate Whistleblowers

Informants of insider trading violations (known as whistleblowers) may be hesitant to report violators to the authorities fearing retaliation or uncertain outcomes of the report. To ease such concerns, leading countries prosecuting insider trading-like the United States—have enacted clear corporate insider trading whistleblower policies that protect those who want to report violations.[78] Killing two birds with one stone, the policy encourages voluntary corporate whistleblowing by eliminating harmful consequences, while also helping financial regulators discover illegal insider trading activities.[79]

The QFMA has provided a channel for submitting complaints about any violations of the obligations set in the QFMA Law, like market manipulation, conducting financial market activities without prior license, or other violations by a financial market company or security issuer. The QFMA regulated the complaint process in QFMA Board Decision No. 6 of 2009 on Rules and Procedures of Complaints,[80] which was later amended by QFMA Board Decision No. 1 of 2018.[81] Under Article 7 of the 2009 Decision (which was untouched by the 2018 amendments), a complainant may only receive pecuniary compensation based on the amount of loss incurred or profits foregone.[82]

The QFMA law essentially decided to regulate complaints as a method to help enforce the law and stopped; it did not create a whistleblowing regime to encourage or protect those that share information about insider trading on the QSE. The 2009 Decision requires that the QFMA disclose the name and information of the complainant to the respondent[83] and that the complainant information is disclosed within the QFMA; unlike a traditional whistleblower protection mechanism, the QFMA does not protect the whistleblower's identity. In fact, in the 2018 Decision, the term "whistleblower" appeared for the first time in three different places and was used interchangeably with the term of "complaint informer"; this usage is completely wrong as it does not indicate a new regime of whistleblowing but mixes two different terms whose usage is completely different.[84]

Essentially, the QFMA law and the 2009 and 2018 Decisions regulated only a regular complaint. There is no indication of a whistleblowing policy in insider trading, no legal protection for whistleblowers,

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78 Jacob Raleigh, The Deterrent Effect of Whistleblowing on Insider Trading, 2020 (PhD dissertation, University of Minnesota) (on file with author).

79 *Id.*

80 QFMA Board Decision No. 6 of 2009 Concerning Rules and Procedures of Complaints of Qatar Financial Markets. These rules were issued primarily for QFMA Law No. 33 of 2005, which was later annulled by QFMA Law. No. 8 of 2012 and remain today.

81 QFMA Board Decision No. 1 of 2018 Concerning the Amendment of Some Provisions of Rules and Procedures of Complaints Issued by Decision No. 6 of 2009.

82 QFMA Board Decision No. 6 of 2009, *supra* note 73, art. 7.

83 *Id.* art. 29.

84 *Id.* arts. 1, 25.

and no whistleblower identity anonymity. Moreover, the law lacks a compensation regime for the loss incurred or the profits forgone by the whistleblower, despite knowing other jurisdictions have found success offering financial rewards to motivate individuals to report insider trading violations.[85]

Insider trading is a crime, but it is not easy to detect in a market where hundreds of thousands of transactions happen daily, even in countries with developed economies, like the United States.[86] Accordingly, policies can help market regulatory authorities prosecute insider trading activities by introducing a whistleblowing system to report alleged insider trading activities. It is a system of protecting and rewarding: it protects the whistleblower's identity and encourages reporting of insider trading activities for financial reward.

The seminal insider whistleblowing system was created in the United States after the 2008 financial crisis due to the subprime mortgages market.[87] Through the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 enacted by the United States Congress,[88] a system of financial rewards helps the SEC detect insider trading activities and reward whistleblowers through the SEC Investor Protection Fund.[89] The financial reward for whistleblowers in insider trading cases is 10%-30% of the total monetary sanctions[90] under the administration of the SEC Office of the Whistleblower.[91]

The SEC policy has proven successful. Since its inception, SEC awards have exceeded $1 billion in monetary payments to 207 whistleblowers[92] who helped the SEC Office of the Whistleblower discover fraudulent activities sooner. The reward is beneficial in many ways: it mitigates investors' harm; preserves the integrity of the U.S. stock exchanges' ethical practices; and offers justice by holding violators accountable for misconduct.[93]

The U.S. whistleblower program targets unlawful corporate activities, including insider trading. To

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85 Jonathan Macey, *Getting the Word Out about Fraud: A Theoretical Analysis of Whistleblowing and Insider Trading*, 105 Mich. L. Rev. 1899 (2007).

86 Brian J. Adams, Tod Perry & Colin Mahoney, *The Challenges of Detection and Enforcement of Insider Trading*, 153 J. Bus. Ethics 375 (2018). *See also* Vinay Patel & Talis J. Putnins, *How Much Insider Trading Happens in Stock Markets?*, SSRN (Jan. 11, 2020), available at https://ssrn.com/abstract=3764192.

87 Mary Kreiner Ramirez, *Whistling Past the Graveyard: Dodd-Frank Whistleblower Programs Dodge Bullets Fighting Financial Crime*, 50 Loy. U. Chi. L.J. 617 (2020).

88 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as amended in scattered sections of the U.S. Code).

89 *Id.*

90 *Id.*

91 SEC Office of the Whistleblower, available at https://www.sec.gov/whistleblower (last visited Apr. 2, 2022).

92 The highest single award for an individual whistleblower was in October 2020 for $114 million. *See* Press Release, SEC Surpasses $1 Billion in Awards to Whistleblowers with Two Awards Totaling $114 Million, Sept. 15, 2021, available at https://www.sec.gov/news/press-release/2021-177. For the number of insider trading tips received compared to all whistleblower cases by the SEC, and for all insider trading reward amounts to whistleblowers, see SEC 2021 Annual Whistleblower Program Report to Congress, available at https://www.sec.gov/files/2021_OW_AR_508.pdf.

93 SEC Office of the Whistleblower, available at https://www.sec.gov/whistleblower (last visited Apr. 6, 2022).

encourage whistleblowers to report such activities to the SEC, the laws provide two types of protection to any person reporting a crime.

First, whistleblowers are protected against any actions taken to impede their reporting and against retaliation in the workplace.[94] The SEC may take legal action against individuals who attempt to impede whistleblowers from reporting a violation and against an employer who fires an employee for being a whistleblower.

Second, whistleblowers may request the SEC keep their identities anonymous and not disclose any of their information.[95]

The U.S. whistleblower policy has been adopted in other countries, like Canada-which created the Whistleblower Protection Program in 2016 to encourage tips from potential whistleblowers for financial rewards[96] -and Kuwait, a neighboring country of Qatar, which adopted a system without financial reward.

Kuwait's Experience

In its new Capital Market Executive Bylaws[97] of 2015, Kuwait introduced a whistleblowing system for unlawful corporate activities, including insider trading, similar to the SEC; it hides the identity of the whistleblowers, protects against report impediments, and prevents workplace retaliation.[98] To incentivize reporting, the Kuwaiti law affirms that no criminal, civil, or disciplinary penalties will be taken against whistleblowers believing in good faith that the information reported is true, regardless of the ultimate determination of an insider trading investigation.[99] However, Kuwait offers no mandatory reward system for whistleblowers.

The Capital Market Authority has discretionary power to reward whistleblowers,[100] even if financial charges are imposed upon the insider(s). Kuwait appears to have taken a position between the US policy and the UK policy. The UK system of whistleblowing has no financial rewards. For several reasons, the UK regulators believed that there should not be a financial reward for performing a public duty, which is reporting unlawful activities to the authorities; moreover, if these whistleblowers often have a high income and social status, there is no point of providing high reward sums. Accordingly, Kuwait gave the

94 Dodd-Frank, *supra* note 81, §748.

95 *Id.*

96 Brooke Neal, *Ontario Securities Commission Whistleblower Protection Program*, 22 L. & Bus. Rev. Am. 271 (2016).

97 Resolution No. 72 of 2015 the Issuance of the Executive Bylaws of Law No. 7 of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and its Amendments (Kuwait), available at https://www.cma.gov.kw/en/web/cma/cma-board-releases/-/cmaboardreleases/detail/352508.

98 CMA Executive Bylaws, mod. 3, arts. 3-8, 3-9, available at https://www.cma.gov.kw/en/web/cma/by-law-documents.

99 *Id.* art. 3-11.

100 *Id.* art. 3-13.

CMA discretion to reward or not reward whistleblowers.[101]

Recommendations

In Qatar, Law No. 8 of 2012 does not create a clear whistleblowing system, mixing the term "whistleblowers" with "complainants." Yet, another business-oriented law in Qatar uses a limited whistleblowing system: Qatar Financial Centre Employment Regulations No. 10 of 2016 pursuant to Qatar Financial Centre (QFC) Law No. 7 of 2005.[102] This law guarantees that whistleblowers with good faith will not be penalized or lose any job benefits.[103] However, the QFC laws and regulations are not applicable to the QSE,[104] as the QFC is a common law island in Qatar's civil law system, with its own laws and court system that applies only within the QFC and no other functioning institutions in Qatar.

A comprehensive whistleblower program in Qatar must be incorporated into QFMA Law No. 8 of 2012 to combat insider trading. Any amendments to the law should clearly recognize that whistleblowers are not mere complainants and need to be protected in order to report any violations without facing harmful consequences.

A whistleblower program like the SEC whistleblower program is ideal for protecting whistleblowers against workplace retaliation and encouraging reporting of any possible insider trading violations, by allowing whistleblowers to hide their real identities. Moreover, whistleblowers in Qatar should be able to report to the local authorities without fear of being charged with criminal or civil penalties when doing so in good faith regardless the complaint's outcome, just like the rule the CMA adopted in Kuwait for good faith whistleblowers.[105]

In addition, Qatar should initiate financial rewards for insider trading violations, to encourage reporting, similar to the 10%–30% reward for whistleblowers in the United States rather than the discretionary reward system in Kuwait. Real incentives will encourage whistleblowers to report unlawful corporate activities regardless of whether whistleblowing is considered a public duty.[106]

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101 *See* UK Financial Conduct Authority and the Prudential Regulation Authority, Financial Incentives for Whistleblowers, 2-3 (2014), available at https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/financial-incentives-for-whistleblowers.

102 Qatar Financial Centre Law No. 7 of 2005, available at https://qfcra-en.thomsonreuters.com/rulebook/qfc-law-no-7-year-2005.

103 *See* Qatar Financial Centre Employment Regulations No. 10 of 2006, art. 16, available at https://qfcra-en.thomsonreuters.com/rulebook/enactment-notice-21.

104 The QFC exists to attract foreign investors to expand their business in Qatar by establishing companies with 100% foreign ownership and a legal corporate tax rate. *An Overview*, Qatar Fin. Ctr., available at https://qfc.qa/en/about-qfc/overview (last visited Apr. 2, 2022).

105 CMA Executive Bylaws, art. 3-11.

106 In contrast to the absence of rewards for whistleblowers in the UK, other countries increased the whistleblower reward to make it more attractive for individuals to come forward and report, curbing insider trading activities. In India, the whistleblower reward for insider trading increased from one million Rupees ($13,000 USD) to ten million Rupees ($130,000 USD) in August 2021. *See* Securities and Exchange Board of India 'SEBI' Second Amendment of Prohibition

A well-founded whistleblowing policy that protects and rewards those who report insider trading violations, when possible, would not only help detect insider trading activity on the QSE, but also help cross-border whistleblowing from foreign investors in the Qatari financial market.[107] On the road to the 2030 economic vision, whistleblower protections and financial benefits becomes a priority for the greater good of the market.

While no empirical studies have yet examined how much the QSE and Qatar's capital market investors are affected by illegal insider trading, corporations benefit from regulations promoting market fairness. Having an effective insider trading policy, regardless of whether insider trading is occurring, pre-emptively discourages insider trading and demonstrates market sophistication, which encourages foreign investment and increases corporations' bottom lines.

A well-regulated whistleblower program that protects and rewards would likely expose any illegal insider trading activities,[108] as well as retain confidence in the QSE as a model financial regulator[109] that punishes those who violate its insider trading regulations.

V Conclusion

In the last decade and a half, QSE regulations have improved. Outlawing insider trading was a major milestone to deter insiders from profiting without regard for the rest of the market participants. However, academic research and evaluation of insider trading regulations can provide the legislature with strategies to amend or improve regulations.

In some aspects, insider trading regulations in Qatar are advanced, like expanding the definition of insiders. To further strengthen insider trading rules in Qatar, however, a new waiting period after disclosure is needed, as well as strong whistleblower rules to help the QFMA to detect insider trading activities, and proper regulation of sanctions like the treble damages provision.

An insider trading ban is part of the capital market regulations under QFMA laws and bylaws as well as decisions. This set of rules not only effects local matters in Qatar, where investors seek a level playing

of Insider Trading (Aug. 5, 2021), available at https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-prohibition-of-insider trading-second-amendment-regulations-2021_51932.html.

107 In 2021, the SEC Whistleblower Office received tips from individuals in 99 countries, for multiple categories of unlawful capital market activities, including insider trading. *See* SEC 2021 Annual Whistleblower Program Report to Congress, *supra* note 85.

108 No insider trading case has been adjudicated under QFMA Law No. 8 of 2012, nor has any investigation been published. Insider trading remains hard to detect because it is a hidden activity and knowing the scienter of those that violate the law is challenging.

109 As a financial regulator, the QFMA remains abreast of the best practices in capital markets and applies this to companies listed on the QSE. The QFMA'S Board Decision No. 5 of 2016 on The Governance Code for Companies & Legal Entities Listed on the Main Market is a clear example of adapting new practices that benefit all market participants on the QSE. New principles were established in this decision like transparency, justice, and equality for all market participants. While beneficial, improving insider trading regulations in Qatar should be a priority. *See* QFMA Board Decision No. 5 of 2016 Governance Code for Companies and Legal Entities Listed on the Main Market.

field on the stock exchange, but also has a transcendent effect outside Qatar for foreign investors on the QSE who are looking for a level playing field.

With Qatar's ambitious vision of a better future in 2030, as well as its desire to attract foreign investments on QSE, the current insider trading policy in QFMA is not enough and more work is needed. Essentially, to improve Qatar's corporations and its business laws, the intention is to create a level playing field for all market participants to strengthen confidence in the stock exchange without benefitting insiders over other investors. Hopefully, this strategy helps businesses by attracting more investments to Qatar due to investor confidence in strong Qatari laws.

Adopting policies used in developed markets, Qatar can promote the QSE as a safe harbor for local investments within Qatar, and a well-desired stock exchange for foreign portfolio investments. First, Qatar should implement a ban of two full trading days on insider transactions following disclosure. Second, Qatar should develop a modernized whistleblower policy that helps the QFMA detect insider trading violations while also incentivizing and protecting whistleblowers. Finally, Qatar should enact a treble damages provision and classification of insider trading as a felony, not a misdemeanor.

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