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Transparency and Disclosure

**From Guidance to Sanctions:
Powers that Securities Commissions should Possess**
by

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Ladies and gentlemen!

To-date, securities market has become an integral part of the market economy of Kazakhstan Republic.

Since the time, when in 1992, Kazakhstan first began economic reforms which included 1) building of effective market relationship in the country, 2) development of private entrepreneurship and infrastructure that would ensure proper functioning of entities in a new market environment, 3) support and enhance the growth of the class of owners, - we have achieved significant progress in the development of favorable investment climate, formation of fair 'rules of the game' in the securities market, and ensuring protection of interests of various groups of investors.

Current state of the securities market may be characterized by the following:

1. The republic has shaped an institutional infrastructure of the securities market, the basis of which is composed of dealers and brokers (banking and non-banking organizations), registers, and companies managing pension fund assets.
2. In Kazakhstan, technical infrastructure of securities has been created in the appropriate scope and functions successfully. It includes:
 - 1) Depository, and settlement and clearing systems;
 - 2) Structured market.
3. The securities market of the republic has been developed and is successfully operating. It is represented by the following:
 - State treasury bills of the Ministry of Finance of Kazakhstan Republic;
 - Municipal securities of local (oblast) bodies of executive power;
 - national saving obligations of Kazakhstan Ministry of Finance, designed, primarily for distribution among investors - individuals.
 - Short-term notes of the National Bank of the Republic of Kazakhstan, used for distribution among banks of the second level and as a tool to regulate money supply;
4. In Kazakhstan, crucial preconditions to revitalize corporate securities market are being formed: in August 1998, the law of Kazakhstan On Joint-Stock Companies was adopted, stipulating the improvement of corporate governance principles applied by joint-stock companies and giving them more possibilities to raise additional funds through stock market. New drafts of legislation On Securities Market in the Republic of Kazakhstan, and On Joint-Stock Companies have been prepared and submitted for consideration.
5. From January 1, 1998, the republic has begun implementation of the pension reform, whereby the solidary accrual system will be eventually transformed into the system of individual pension savings. The pension system reform has resulted in the appearance of new players in the securities market, including the State Accrual Pension Fund (subject to privatization), non-government accrual funds, and companies managing pension fund assets.
6. The republic has formed a legal framework for securities in the adequate and sufficient scope.

Overall, Kazakhstan legislation, regulating operations of the securities market, may be characterized as fairly liberal with regard to all groups and forms of investors, and, at the same time, as imposing rather rigid requirements on market professionals (including brokers, dealers, and those dealing with registration of securities holders, or involved in custodial, depository activities), and issue of securities.

The legal base, regulating relationship in the securities market of the Republic of Kazakhstan, includes the Laws of Kazakhstan On Securities Market, On Registration of Transactions with Securities in the

Republic of Kazakhstan, On Joint-Stock Companies, On Investment Funds in the Republic of Kazakhstan, On Pension Security in the Republic of Kazakhstan.

The Law of Kazakhstan On Securities Market proves to be by far the most significant law among the listed legislation, as the one that largely determines further development of Kazakhstan legislation related to securities market. It addresses relationship between issuers, investors, professional market-players and other institutions of the securities market in the process of issue and circulation of securities. This law also outlines **the concept of further development** of the market (insofar as the legal framework is concerned).

The Law On Securities Market establishes legal norms, which professional participants of the securities market have to comply with, first and foremost, it concerns issuers (in particular, joint-stock companies at the time of registration of their stock and bonds), securities trading organizers (stock markets and over-the counter listing systems), and **investors**.

The Law On Securities Market allows for circulation on the territory of Kazakhstan of the following types of securities:

- Stock and bonds, issued in conformity with the legislation of Kazakhstan;
- Securities derivatives, recognized by the current legislation
- securities of foreign issuers
- mortgage certifications and consignments.

The Law authorizes the National Commission, an independent government body, directly reporting to and supervised by the President, to exercise government regulation of securities market. The principal objective of the Commission is to secure the protection of rights of all securities market investors, through the introduction of principal “rules of the game” and oversight of their compliance.

As for specific regulatory functions, major of them include the following:

- 1) adoption of regulations, governing operations of professional stock market participants, stock dealers, and self-regulating organizations
- 2) registration of private securities’ issues and supervision of compliance by the issues of conditions and obligations specified in the issue of securities.
- 3) Licensing the operations of professional stock market participants
- 4) Licensing the operation of stock exchanges and listing organizations of over-the-counter market
- 5) Creation of the system for protection of shareholders’ rights on the stock market and control over the observance of shareholders’ rights by the issuers and professional stock market participants
- 6) Supervising the operations of professional stock market participants and application of respective sanctions for violations of current legislation
- 7) Detection of violations and undertaking measures on calling to accountability of the persons, who violate the provisions of securities legislation
- 8) Establishing the system for upgrading professional and educational level of stock market participants.

In accordance with the Law “On Stock Market”, powers of the Commission cover the issuers of securities regarding their obligations on:

- Full disclosure of the information included in the prospectus of the issue;
- Provision of reports (including interim reports) on results of the issue and placement of securities;

- The term of conducting the first and subsequent issues;
- Provision of the auditor's conclusion;
- Obligations to register any securities' issue with the Commission;
- Annual submission to the authorized body of operational reports in accordance with the format and within the time established by the authorized body;
- Etc.

On August 6, 1998 the Law "On Joint Stock Companies" was enacted in Kazakhstan. The adoption of this law practically completed the formation of legal framework, defining the legal status of joint stock companies (hereinafter - JSC). Currently the operations of JSCs are subject to a rather strict regulation, applied for this form of business in all developed economies..

Giving overall characteristic of this law, it is worth pointing out that it includes and takes into account major legislative provisions of countries with extensive experience in the area of regulating operations of JSCs. The drafters of the law also took into consideration own (Kazhakh) corporate governance experience accumulated in 90-ies, as well as the experience of other transition economies, including Russia. The law was developed to resolve a number of practical issues for one common goal – securing the protection of shareholders' rights through implementation of effective corporate governance mechanisms.

The most important conceptual peculiarity of the new JSC law is that it clearly defines the provisions, which secure the protection of shareholders' interests (especially those of minority shareholders) In addition to these norms, which secure the execution of property and non-property rights of shareholders, the law also includes provisions regulating the relations between shareholders and the company.

It is very important for shareholders and potential investors that the law clearly specifies the list of documents, which must be provided to any shareholder upon his request. These are mostly internal documents, such as the charter, the bylaw on affiliates and representative offices, prospectuses of share issues, financial statements, and conclusions of the Audit Commission.

Moreover, the law also includes specific provisions regarding disclosure of information on their operations by JSCs. For example, in accordance with the law open JSCs must annually publish in the press the balance sheet and profit and loss account, and public companies must publish this information on a quarterly basis.

Regarding public companies the law also stipulates mandatory disclosure of information on changes in the charter, financial status and business operations. For this purpose, the law specifies the following categories of such information:

- Attachment of accounts and property;
- Adoption of resolution on liquidation of the company or suspension of its operations;
- Suspension or withdrawal of a license;
- Loss of at least 10% of company assets due to extraordinary circumstances;
- Receipt of the loan by the company, which exceeds 25% of the issued charter capital;
- Conclusion of major deals by the company;
- Calling company officers to administrative or criminal accountability.

Provisions of JSC law governing the conclusion of agreements associated with the conflict of interest, became the first precedent in Kazakhstan on legislative limitations of the so-called “insider deals”, which, as a rule, run contrary to and damage the interests of the company and its shareholders.

Upon the whole, such limitations promote effective corporate governance and practical implementation of the policies for creation of transparent stock market, and over time will have a positive impact on the overall investment climate in Kazakhstan and attitude of potential investors.