



Survey on Regulation and Enforcement of the Use of Privileged Information

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Genesis the Project

- December 2009 Latin America Corporate Governance Roundtable Meeting in Santiago
- “Legal / Regulatory and Institutional Framework for Enforcement Issues in Latin America: A Comparison of Argentina, Chile, Colombia, Panama and Peru” identified as priority enforcement issues:
 - Abuse of Privileged Information and Insider Trading
 - Oversight of Related Party Transactions
- COSRA / IARC discussed possibility of a joint project on these topics at April 2010 meeting in Washington
- Joint project approved at IARC meeting in June 2010 in Montreal

Why Focus on Privileged Information?

- Informational asymmetries discourage investment and impede market development
- OECD Principle of Equitable Treatment of Shareholders
- Roundtable and COSRA bring different, but complementary perspectives

Task Force

- Supervisory Authorities of Argentina, Brazil, Colombia, Dominican Republic, Peru, Quebec, Spain, Uruguay
- OECD and IFC
- Reporters: Jean Lorrain (Quebec; COSRA/IARC) and Mike Lubrano (Consultant; OECD)

Timeline

- June-July 2010: Decision to focus first on Privileged Information and Insider Trading
- Agreement on survey questionnaire
- August 2010: Circulation of survey questionnaire
- September 15, 2010: Deadline for responses (Nineteen received by Oct. 13)
- October 11, 2010: First draft sent to Task Force members
- October 15, 2010: Current Draft Preliminary Report distributed to COSRA/IARC members

Key Questions and Issues

- What are the main areas of concern identified in the survey?
- What are the main commonalities and differences?
- What actions are needed to make enforcement more effective?
 - By the legislator
 - By the Supervisory Authority
 - By other institutions (public and private sector)
- What follow-up work should be considered by the Task Force?

Differences “Spotted” in the Survey Responses

- Definition of “Privileged Information” – Broad vs. Narrow
- Powers/Jurisdiction of the Supervisory Authority
- Degree of “Corporate Guidance”
- Private Rights of Action
- Board Responsibility
- Adequacy of Market Surveillance
- Role of SROs and Exchanges

(A dramatic difference is obviously the number of actual complaints, investigations and enforcement actions undertaken)

Comments from Yesterday's Session

- Do market participants make sufficient use of existing market surveillance tools? (e.g., insider reporting)
- How do market participants rate the adequacy of enforcement against abuse of privileged information?
- Final report should give practical guidance on how to overcome current obstacles to enforcement
 - Taking into account differences in stages of market development
 - Taking into account differences in resources and priorities
- Useful references to OECD experiences
- Technical corrections / clarifications

Next Steps

- November – December 2010: Follow-up discussions with selected/requesting respondents
- January 2011: Revised Report sent to Task Force members
- April 2011: Final Report to COSRA/IARC (S. Africa)
- Roundtable 2011: discussion of Final Report and consideration of preliminary result of second COSRA/IARC Roundtable survey on Related Party Transactions (to be confirmed).