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# Enforcement Priorities and Challenges: A Regional Survey

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*eStandardsForum – The Financial Standards Foundation*

*OECD Corporate Governance Roundtable*

*Santiago de Chile, December 1<sup>st</sup> 2009*

# The 2009 Survey



- Follow-up survey to 2004 survey
- This year, securities regulators from six countries participated: Argentina, Brazil, Chile, Colombia, Panama and Peru
- Additional questions in 2009 to self-assess strengths of enforcement framework as well as priorities for improvement
- Successful consultative process in obtaining the answers to the questionnaire is an encouraging sign for future studies



## Key Findings of the 2009 Survey

- I. Institutional Framework
- II. Administrative Procedures
- III. Areas of Strength & Priorities for Improvement
- IV. Conclusions

## Key Changes since 2004

- Sizable **budget increases** across all countries with the exception of Peru; staff numbers have grown everywhere except for Peru
- The Superintendencia Financiera has acted as the unified market and financial regulator in Colombia since 2006.
- Since 2008, a centralized enforcement department, the Superintendencia de Processos Sancionadores, has been active in Brazil.
- There is a continued lack of specialized judicial institutions; however, there is a tentative movement towards the establishment of dedicated specialized administrative agencies with quasi-judicial powers.

## Trends since 2004

- The **number and amount of fines and sanctions** are at times difficult to compare, due to **different conventions** of reporting and categorizing fines and sanctions, distinct administrative procedures, as well as legal and administrative reporting constraints.
- However, aggregate numbers between 2004 and 2009 are mostly comparable, and in Brazil, Chile and Peru, a **significant upward trend in the number of sanctions**, if not the amounts being fined, is apparent.
- **Appeals processes** are still lengthy across most countries.
- The “**Termos de Compromiso**”, settlements that allow Brazil's Securities and Exchange Commission (CVM) to cease an administrative proceeding if the accused party commits to correcting the irregularity and pays a fine, are on the rise in Brazil.

## Main issues identified by regulators

- **Minority shareholder rights** and **related party transactions** were seen by all participants as two of the highest priorities for improvement.
- **Insider trading** and the **use of privileged information** were emphasized by some to be an area of strength and by others to be a priority for improvement.
- The enforcement of **disclosure requirements** is seen as both a strength and a weakness of the enforcement framework by different participants.

- Despite significant increases in budgets and personnel, **adequate resources** continue to be a concern for most regulators.
- **Judicial process is seen as key obstacle** to effective enforcement.
- The **role of SROs in enforcement appears to be stagnant**, and with the exception of Brazil, focused on financial intermediaries.
- **Possibilities for cooperation and exchange of information** on successfully implemented programs in the areas of insider trading, use of privileged information, and enforcement of disclosure requirements.
- The need to **improve efforts to combat abusive related party transactions** is a clear additional priority for protection of minority shareholder rights.



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