

COSRA / OECD Joint Task Force Report on Privileged Information

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Genesis the Project

- Discussions between OECD and Council of Securities Regulators of the Americas at 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

Why Focus on Privileged Information?

- Informational asymmetries discourage investment and impede market development
- OECD Principle of Equitable Treatment of Shareholders
- IOSCO Principles and Objectives of Securities Regulation
- Roundtable and COSRA bring different, but complementary perspectives
 - ❑ Roundtable's White Paper (2003) Recommendations
 - ❑ IOSCO EMC *Insider Trading; How Jurisdictions Regulate It*

Task Force

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

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 (exchanges, other public and private sector actors)

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)

Weaknesses and Gaps

- Shortcomings in the legal/regulatory framework
 - e.g., tippee / tipper; jurisdiction over parties
- Obstacles to more effective policing of the market
 - Access to / sufficiency of evidence
 - Difficulty in identifying related parties
- Limitations on SROs playing a greater enforcement role

Many respondents also noted a lack of a culture of sensitivity to misuse of PI among companies and their boards. Some noted a disconnect between controllers (who may misuse PI) and company Boards / management.

General Recommendations

- Responsibility for preventing misuse of PI should be a priority for Boards as well as Supervisors
- Boards should strengthen corporate policies and practices on PI
- Standards and codes need to provide more detailed guidance on handling privileged information
- Supervisors should promote complementary company policies and practices
- Trading by insiders should be as transparent as possible
- Supervisors should share experiences with regulation and enforcement

More Specific Suggestions

- Current definitions of PI should be reviewed for adequacy
- Supervisors should regularly review the adequacy of their investigatory toolkit
- Disclosure of company policies and practices should be encouraged
- Insiders should disclose entities over which they exercise or influence investment decisions*