

International Fraud and Related Responses

Regional Securities Program

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Agenda

Characteristics of Hot Money Companies:

- International Dimension
- Use of SPEs
- Off-Shore Jurisdictions
- Cross-Listing of Financial Instruments
- Investment banks and Financial Analysts
- Roles of Auditors
- International Cooperation

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International Dimension

- Several subsidiaries based in different jurisdictions
- Different auditors for parent companies and subsidiaries
- Major subsidiaries in off-shore centres
- Funds raised outside the jurisdiction of parent company (in Europe, largely on the Euro market)

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Use of SPEs

- No applicable regulatory requirements, whether: mandatory / customary / voluntary
- No explanation of SPEs in financial statements or MD&A
- New European legislation introduced in 2006

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Off-Shore Jurisdictions

- No IMF definition of what an “off-shore centre” is, although normally the beneficial owners of accounts are not resident in the jurisdiction
- Strong reliance on supervision carried out in other jurisdictions
- Exemptions from regulations which can preclude the identification of the beneficial owners and the assets held by a company/trust

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Cross-listing of financial instruments in more than one jurisdiction

- Inconsistent disclosure rules
- Inconsistent requirements for admission to listing (mainly disclosure requirements)
- Limited responsibility for Directors in preparing financial statements; specific provisions under the Transparency Directive and Sarbanes-Oxley Act
- Poor disclosure of price sensitive information (in Europe, Market Abuse Directive)
- Corporate governance rules and their enforcement (Comply or Explain?)
- Legislative developments

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Investment Banks and Financial Analysts

- Potential conflict of interest in universal banks
- Is there an information gap between intermediaries, financial analysts, and the general public?
- Is due diligence on the issuers conducted by the auditors for the underwriters made available to the public?
- What safeguards are in place when securities originally placed with institutional investors are subsequently sold to retail investors? (in Europe - Prospectus Directive, in the US – Anti-Fraud Provision)
- Is the CRA process sufficiently sound and independent? Are CRAs monitored to avoid misleading ratings? Is the IOSCO Code widely respected and sufficient?
- How might conflicts of interest arise for financial analysts?

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Role of Auditors

- Auditor selection/rotation
- Full responsibility of parent company auditors for consolidated accounts in Europe under the VIII Directive
- Problems arising from the use of different auditing firms in auditing the parent company and subsidiaries (possible problems in accessing working papers, particularly when several jurisdictions are involved)
- Auditing standards
- Supervision of auditors

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International Cooperation

- IOSCO MMoU as universal minimum standard for cooperation
- Cooperation should be extended to become proactive, broad ranging (regulators of different sectors: banking, insurance, securities, and, where possible, judicial authorities) in the face of borderless securities markets, providing information flows and including unsolicited assistance on any violation of laws and regulations
- Scope of cooperation should go beyond what is strictly the securities sector to include accounting, auditing, money laundering, etc, insofar as these issues impact on securities markets

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