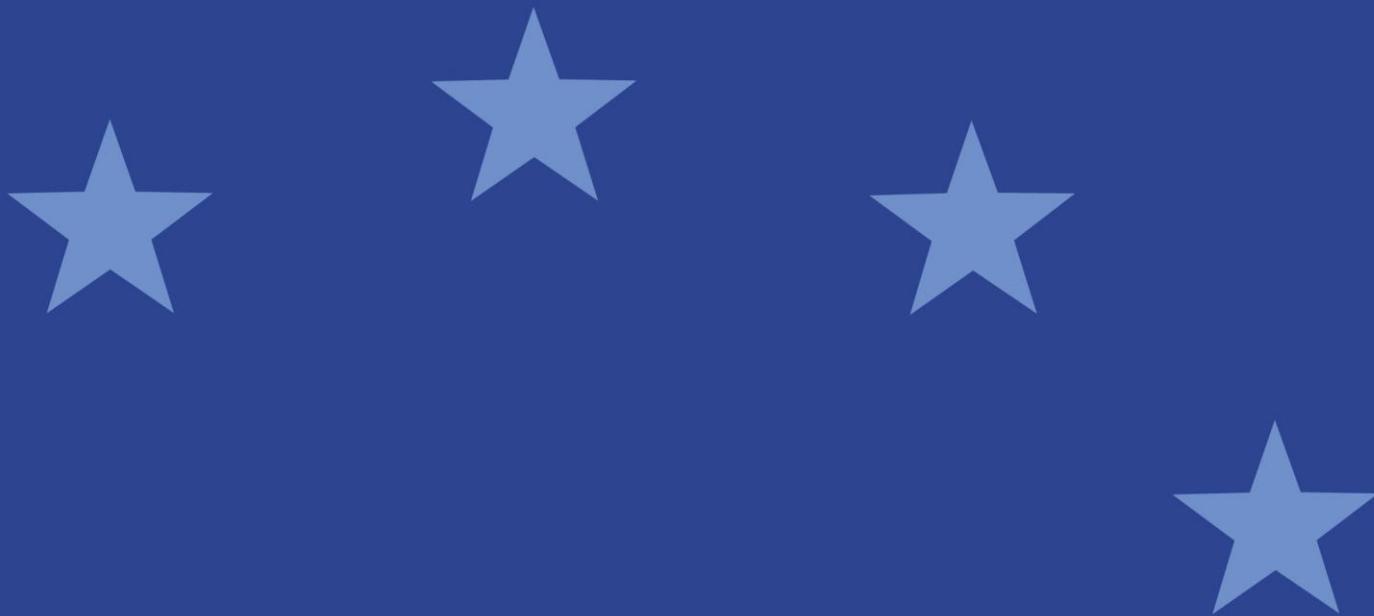


Questions and Answers

Fast Track Peer Review on the Wirecard case





1: What is Wirecard?

Wirecard was a fintech company founded in 1999 in Aschheim, Germany. The company was listed on the Frankfurt Stock Exchange and then included in the German DAX 30 index. It described itself as a global technology group that supported its customers and partners in accepting electronic payments from all sales channels and in issuing payment instruments. Its business model was to enable transactions to be completed between customers and merchants by means of secure payment processes. Wirecard expanded internationally to Singapore, New Zealand, Australia, South Africa, Turkey, USA and China.

2: What were the events leading to the collapse of Wirecard?

In June 2020, Wirecard announced that €1.9bn it had claimed to hold in escrow accounts were missing. The investigations by the German prosecutor are still ongoing, but the June 2020 announcement, which was the final trigger which led to the insolvency of Wirecard, can be traced back to the following key events.

Since its shares were admitted to trading on Germany's regulated market in 2005, Wirecard has repeatedly been accused of various types of money laundering, fraud, lack of transparency on its business model by the press and other media and been subject to short-selling attacks. Wirecard systematically denied any wrongdoing and continued to grow at a rapid rate, expanding its operations overseas.

More recent allegations were made at the beginning of 2019 and in October 2019, in particular with reference to fictitious customer relationships in Wirecard's Third Party Acquiring partners. Following the latter, as the pressure grew on the company, KPMG was commissioned by Wirecard's Supervisory and Management Boards in October 2019 to perform forensic investigations into the allegations. The 'KPMG report', as it is known, was published in April 2020 revealing a series of issues which the firm had not been able to fully investigate due to lack of evidence.

Following the uncertainties left unaddressed in the report, the publication of Wirecard's 2019 financial statements was delayed, and the announcement concerning the cash missing in the escrow account shortly followed.

3: What is ESMA's role in relation to financial reporting?

ESMA's role is to promote the consistent application of legislation and convergence in



enforcement practices amongst the national competent authorities given that issuers across the EU apply the same financial reporting rules and that high-quality financial reporting is core to investor trust in the Capital Markets Union. ESMA does not have any direct supervisory powers as regards financial reporting of issuers.

In light of the high-level principles of the [Transparency Directive](#) as regards supervision and enforcement of financial reporting, ESMA issued the [ESMA's Guidelines on enforcement of financial information](#) (GLEFI) in 2014, on its own initiative, to promote consistent application and supervision of IFRS. In that respect, ESMA acts to coordinate NCAs' actions to ensure EU-wide similar understanding and application of the rules.

4. What are BaFin and FREP?

[BaFin](#) (Bundesanstalt für Finanzdienstleistungsaufsicht) and [FREP](#) (Financial Reporting Enforcement Panel) are the designated competent authorities for the supervision and enforcement of financial information in the Federal Republic of Germany under the Transparency Directive.

The German system is a two-tier system, whereby FREP intervenes in the first instance by reviewing issuers' financial reports with the cooperation of the issuer (the so called "Tier 1") and BaFin intervenes in the second instance in specific cases (the so called "Tier 2").

5: Why was ESMA asked to carry out an analysis of the Wirecard case?

On 25 June 2020, the European Commission (EC) invited ESMA to conduct a fact-finding analysis of the events leading up to the collapse of Wirecard and the German supervisory response in the area of financial reporting. The European Commission deemed that it was necessary to assess these events to help restoring investors' confidence in capital markets.

Even if ESMA does not have direct supervisory powers in the area of financial reporting, it has played an important role over the years in the area of supervisory convergence in the enforcement practices of European enforcers of financial information. ESMA is therefore well placed to assess whether BaFin and FREP's response to the events leading to the collapse of Wirecard met the expectations specified in the GLEFI.

6: How did ESMA set out to respond to the EC request?

In response to the EC request, the ESMA Board of Supervisors (BoS) decided to launch a Fast Track Peer Review (FTPR) in order to assess the supervisory response to the events leading to



the collapse of Wirecard in the area of financial reporting by the German supervisory authorities, i.e. BaFin and FREP.

The assessment focused on the application of the GLEFI issued by ESMA in 2014 by BaFin and FREP in the context of the Wirecard case.

This is the first Peer Review carried out by ESMA under the revised ESMA Regulation and the new Peer Review Methodology, and the first Peer Review to be carried out in the form of a Fast Track procedure and focusing on only one jurisdiction and one market participant.

These actions were communicated in a response letter to the EC and in a press release on 15 July 2020.

BaFin and FREP have cooperated with the Peer Review Committee (PRC) and have shared information and documents.

The report was prepared by the PRC and adopted and approved by the BoS.

7: What is a Peer Review and why does ESMA organise and conduct Peer reviews?

ESMA periodically organises and conducts Peer Reviews on some of the activities of national competent authorities in order to strengthen consistency in supervisory outcomes.

Peer Reviews are performed by a Peer Review Committee chaired by a senior member of ESMA staff and composed of experts from National Competent Authorities and from ESMA.

To ensure objective assessment and comparison between the authorities, the peer reviews are conducted according to the:

- ESMA Regulation (article 30);
- [ESMA Peer Review Methodology](#);
- [Principles on Stakeholder engagement in Peer Reviews](#).

8: What are the key findings in the Fast Track Peer Review assessment?

The Peer Review Report identifies deficiencies in the application of the GLEFI in the areas of independence from issuers and government, market monitoring by both BaFin and FREP, and FREP's examination procedures.

In addition, with regards to the effectiveness of the supervisory system in the area of financial



reporting, ESMA identified inefficiencies and legal and procedural impediments around BaFin and FREP's respective roles regarding fraud, the basis and circumstances for BaFin (Tier 2) to take over an examination from FREP (Tier 1) based on the notion of "substantial doubt" as to how FREP is carrying out the examination, the strong confidentiality regime to which both institutions are bound (which may hinder the exchange of relevant information between them and with other relevant bodies) and the exchange of information within BaFin.

9. What is ESMA's role in relation to audit?

ESMA does not have any supervisory powers as regards audit. Through its non-voting membership in the CEAOB, ESMA provides securities regulators' perspectives and contributes to the implementation and consistent application of the statutory audit rules, the technical examination of international auditing standards and the monitoring of the audit quality and competition in the provision of statutory audit services to public interest entities.