

The Rising Tide:
Cross-Border Enforcement of Securities Law



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Areas to Consider

- Cross-border enforcement
- New era of regulatory cooperation
- FSA, US regulatory (SEC, banking agencies, OFAC) and DOJ enforcement processes
- How to respond in the new enforcement environment
- Joint settlements

Overview and Context

- Markets combining
- EU directives — converging laws and rules
- Europe moving toward US enforcement model?
- New agreements for sharing information

Combination of Markets

- NYSE — Euronext
- NYSE — Tokyo?
- NASDAQ — LSE?
- Combined SRO for NYSE and NASD (NASDAQ, Amex)

Laws and Rules Converging

- EU market abuse directive
- Other EU directives
- Similarities to US laws and rules
- SEC mutual recognition

Europe Adopting US Enforcement Model?

- US model —still evolving
 - SEC model
 - Banking agency model
- New European regulators: FSA, AMF, BaFin
- FSA taking the lead

Perspective

- Market competitiveness
- How much is too much?

Accelerating Regulatory Cooperation

- 2002 Multilateral IOSCO MOU for Enforcement Assistance
- 2006 FSA — SEC MOU for Oversight and Inspection
- 2007 MOU concerning NYSE-Euronext

Reciprocal Assistance

- FSA assistance to foreign regulators
- US regulators (SEC and banking agencies) assistance to foreign regulators

Comparing FSA and US Regulatory Investigations

- FSA's process
- SEC's process
- Leveraging differences for a full and fair presentation

Strategy Considerations in Cross-Border Investigations

- Understanding the nature of your investigator
- Determining goals
- Proactive steps—recognizing nature and scope of problem early
- Potential issues

Responding to Cross-Border Investigations

- Considerations in dealing with regulators
- Cooperation
- Full defense
- Collateral issues
 - Private civil litigation
 - Legislative inquiries

Joint Civil and Criminal Investigations

- Criminal interest not always apparent in early stages
- Extradition concerns
- Draconian US criminal sentences

Joint Settlement Negotiations

- Considerations
- Benefits

Distribution

- “A New Age Dawns — International enforcement is becoming more cooperative and more similar to the SEC’s Model” by Mayer Brown Partners Steve Crimmins (Washington), Ed Sautter (London), Jean-Pierre Lee (Paris) and Peter Nägele (Frankfurt) — *International Financial Law Review, February 2007*
- “FSA Due Process Superior to That Accorded by SEC” by Mayer Brown Partners Joe Goldstein and Adriaen Morse (Washington) — *BNA Securities Regulation and Law Report, April 2006*