

PRESS RELEASE

Wirecard AG: an outrageous case of corporate governance, external auditing and supervisory failures, once again at the expense of investors and pension savers

It is with surprise that BETTER FINANCE and its member organisations representing financial services users read the headline on 18 June 2020 that Wirecard AG (“WD”), one of Europe’s FinTech success stories, may have mis-reported €1.9 billion in its balance sheets, filling for insolvency a few days later.

A LONG TRAIL OF RED FLAGS

- In 2015, a company specialised in short-selling did research [questioning](#)¹ the reports of WD’s Asia-Pacific businesses, claiming that figures in reality seemed much smaller;
- That same year, the FT started their “[House of Wirecard](#)” series, disclosing internal [leaked documents](#) and [e-mail exchanges](#) pointing to inconsistencies, as well as reporting on questionable accounting and business lines, alleging a “[€250 million hole in the group’s balance sheets](#)”;
- In 2016, an anonymous research group of alleged short-sellers “Zattara” [claimed](#) that WD was involved in, among others, money laundering; BaFin opened an investigation against Zattara for market manipulation;²
- In 2018, following whistleblowing from within, a Singapore law firm [conducted an internal investigation](#) into WD’s Asia Pacific HQ, finding evidence pointing to “*forgery and/or of falsification of accounts*”;
- In January 2019, the FT published a new series of investigations into fraud and forgery by WD Asia:
 - first, [FT journalists reported](#) that WD Asia executives used forged contracts to inflate business numbers;
 - second, the FT alleged that the mother company in Germany [had knowledge](#) of the allegedly “rogue” activities – while the Singapore Police [opened an investigation](#),³ and [BaFin opened an investigation against the FT journalists](#) for market manipulation;⁴
- February 2019: [ESMA approves BaFin’s temporary short selling ban](#) of WD shares;
- Beginning of 2019: [BaFin asks DAP \(FREP\)](#) to start an investigation into WD following FT reports; with just [1 person appointed](#) to investigate the account, to our knowledge the investigation is still ongoing [15 months later](#);
- October 2019: WD Germany [appoints another “big four” firm](#) for a special audit, which concludes in April 2020 that “[third-party profits](#)” couldn’t be checked;⁵
- 18 June 2020: the auditor [refuses](#) to sign off on the 2019 accounts on the grounds of a “missing” €1.9 billion;
- 22 June 2020: Wirecard [warns](#) the missing €1.9 billion likely never existed;
- 25 June: Wirecard [announces](#) application for insolvency.

¹ See FT article: <https://ftalphaville.ft.com/2015/11/20/2145256/jcap-on-wirecard-a-search-for-the-asian-business/> (from Dan McCrum, ‘JCap on Wirecard: A Search for the Asian Business’ 20/11/2015).

² See REUTERS article: <https://uk.reuters.com/article/uk-wirecard-report/head-of-germanys-wirecard-rejects-fraud-allegations-by-short-seller-idUKKCN0WH114> (E. Auchard, J. Poltz, A. Pal, ‘Head of Germany’s Wirecard Rejects Fraud Allegations by Short-Seller’ 15/03/2016).

³ See FT article: <https://www.ft.com/content/79bd8da2-2830-11e9-a5ab-ff8ef2b976c7> (Olaf Storbeck, Stephania Palma, ‘Wirecard Discloses Investigation into Accounting Allegations’ 04/02/2019).

⁴ See FT article: <https://www.ft.com/content/2997a4b2-255f-11e9-8ce6-5db4543da632> (Olaf Storbeck, ‘German Regulators Probe Price Decline at Wirecard’ 31/01/2019).

⁵ See FT article: <https://www.ft.com/content/4bed8775-01aa-457f-9dbb-1740e67a684d> (Dan McCrum, Olaf Storbeck, ‘Wirecard: What KPMG’s Report Found’ 29/04/2020)

BETTER FINANCE puts forward several policy recommendations for EU authorities to draw lessons from this terrible case:

1

SUPERVISION FAILURE: THE NEED FOR CONSISTENT REGULATION & SUPERVISION OF FINANCIAL SERVICES PROVIDERS WHOEVER THEY ARE

A key recommendation from BETTER FINANCE since 2012 is that EU and national financial regulatory frameworks should be ***consistent in scope and application*** whomever the provider is, in as far as the **key service** provided is a financial service.

From our understanding of the facts at hand, one of the issue was the limitation to the German Financial Supervisory Authority's (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) competence to directly supervise Wirecard AG - unlike its full competence vis-à-vis Wirecard Bank AG - which may have delayed action in this case.

Based on BETTER FINANCE's research,⁶ in many instances European FinTech companies are treated as "technology" companies, rather than financial services providers, even when duly registered as financial intermediaries (e.g. advisors, investment firms) with the competent supervisory authorities.

EU and Member States regulation and supervision must apply consistently to all providers acting on a specific market (payment services in this case) regardless of the provider category (whether it is a bank or a non-bank in this case) in order to ensure that the hard-won financial regulation acquis produces its intended effects. ESMA must ensure consistent enforcement of EU rules in all Member States.

2

SUPERVISION FAILURE: INVESTIGATE THE FUNCTIONING AND GOALS OF THE PUBLIC SUPERVISORS IN THIS CASE

Does the German financial watchdog have the necessary powers, governance and statutory goals to prevent such huge market failures?

BETTER FINANCE congratulates the European Commission for having promptly asked for an analysis that "should seek to establish a comprehensive description and assessment of the events, including the adequacy of the supervisory response to these events", and hopes it will soon deliver answers.

3

EXTERNAL AUDIT FAILURE: INVESTIGATE THE AUDIT FIRM'S FAILURE AND THE IMPACT OF "LONG-TERM RELATIONSHIPS" OF AUDIT COMPANIES WITH LISTED COMPANIES

The European Securities and Markets Authority (ESMA) should coordinate a supervisory exercise with national supervisory authorities (NSAs) into the often too long and close relationship of auditing companies with their "clients", i.e. listed companies who should be kept in check through financial audits.

Although the information available is not sufficient to determine a liability of the 12-year auditor, BETTER FINANCE has since 2012 EU Audit reform highlighted the need to ensure that auditing, in particular financial auditing, remains truly impartial and independent of the audited company.

4

CORPORATE GOVERNANCE FAILURE: REVIEW CORPORATE GOVERNANCE RULES

Although the liability of the heads of Wirecard AG has not been demonstrated as of today, nor is the information available sufficient to reasonably deduct it, the fact that almost a quarter of the company's total balance sheet was allegedly held in opaque escrow accounts in the Asia-Pacific region should have

⁶ See BETTER FINANCE's 2019 *Robo-Advice Report* for instance: <https://betterfinance.eu/wp-content/uploads/Robo-Advice-Report-2019-FINAL.pdf>.

raised suspicions at least with the Management Board of said company, in particular given its duties in terms of risk management.

5 INDEMNIFICATION OF THE VICTIMS: STOP DISCRIMINATING INDIVIDUAL EQUITY INVESTORS IN EU DRAFT RULES ON COLLECTIVE REDRESS

Except for in the Netherlands, Europe has always shown benign neglect towards the victims of such abuses: the investors and the pension savers that depend on them, whilst simultaneously wondering why they do not trust financial markets. The current draft *“Directive on representative actions for the protection of the collective interests of consumers”* again excludes nonprofessional individual investors in shares from its scope, discriminating them versus those who invest in intermediated packaged investment products such as funds and life-insurance. The High-Level Forum on the Capital Markets Union has just recommended to include equity investors back in its scope. Is the Wirecard case another and sufficient reminder that it would be rather timely for the EU authorities to follow suit?

6 SECURITIES EXCHANGE INDICES MUST BE MORE FLEXIBLE IN LISTING AND DE-LISTING

Wirecard AG dislodged another large company from the German blue-chip index (DAX 30) when it reached €22.5 billion market capitalisation in 2018. However, today, Wirecard AG continues to be part of that index, at least until the September 2020 review.

This is of great significance for individual, non-professional investors as many “retail” financial products, such as UCITS, UCITS ETFs, pension funds or multi-option life insurance products (IBIPs), track and aim to replicate the components of blue chip indices, leaving them for the time being with considerable losses.

Although not all securities exchange groups have the same rules, EU financial regulation should harmonise the obligation of trading facilities operators to allow the immediate exclusion of companies in cases where, due to a variety of reasons, a significant drop of the share price occurs .

Guillaume Prache, Managing Director of BETTER FINANCE warned that *“Wirecard is a terrible case of accumulated failures by supervisors, auditors and corporate governance bodies, resulting in huge detriment for non-insider investors and pension savers. EU policy makers must draw the lessons and act swiftly. Otherwise their stated goals to achieve a Capital Markets Union that “works for people” and to restore investor trust will remain wishful thinking.”*

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