DR. SPÄTH & PARTNER
RECHTSANWÄLTE mbB
BERLIN – HAMBURG

WIRECARD AG:
UpDate-Webinar, March 10th, 2022

Rechtsanwalt Dr. Marc Liebscher, LL.M.

Rechtsanwalt Dr. Marc Liebscher – track record

1. Attorney at law, specialized in banking and capital markets law
   - Out-of-court and in-court representation in mass tort cases
   - Member of various creditors' committees in insolvency proceedings
   - Appointed by various courts as chairman of shareholders' meetings in contentious shareholders' meetings
   - Appointed as joint representative of bondholders
2. Expert witness re investors' rights, finance law, auditing;
   - Federal Ministry of Finance, esp. re Wirecard
   - Finance Committee of Deutscher Bundestag
3. Training of BKA (equiv. FBI) investigators on financial/balance sheet crime
4. Board Member of the "Schutzgemeinschaft der Kapitalanleger" (SdK)
5. Spokesman for the Working Group on Banking and Capital Markets Law, Berlin Bar Association
6. External expert of VZBV on legal enforcement and model class actions

Further evidence against EY (1/7)

1. Audit of Wirecard Bank AG by EY

- Wirecard Bank AG used to funnel off funds from Wirecard AG
- EY audit report for 2018 with unqualified opinion despite numerous red flags in report
- Insufficient procedures/process in lending business
- Procedures not in line with banking practice, esp. for disclosure of economic circumstances, value adjustments
- Credit decisions by non-executive bodies
- Violations of auditor's duty of neutrality
- No further action taken by EY despite red flags
- Probably no forwarding of information by EY's Bank audit team to EY's audit team of Wirecard AG

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Further evidence against EY (2/5)

2. **KPMG position on necessary account info for proof of balances**
   - Upheld by KPMG despite massive EY opposition, e.g. video conference with top management/supervisory board EY on April 23, 2020

3. **KPMG position on accounting issue "cash vs. other assets"**
   - Despite EY objection in meeting March 3, 2020, KPMG has stuck to assessment

4. **Project Ring: Internal EY whistleblower (1/2)**
   - Parliamentary testimony by Mr Muth, EY's forensic partner
   - Starting point: EY-Whistleblower allegations to German EY Board about attempted bribery by Senior Wirecard management
     - Wirecard management profiting from purchase price payments in Asia/India
     - Over-excessive purchase price payments in Asia/India

Further evidence against EY (3/7)

5. **Project Ring (2/2): no consequences**
   - Forensic examination of allegations by EY (Mr Muth), produced red flags
   - Refusal to cooperate by Wirecard management
   - Stopped prematurely by Wirecard board of directors
   - EY auditors should have been sensitive to EY forensic findings
6. **EY requirements not met, nevertheless audited**
   - In letter dated March 29, 2017 (available to us), EY requires Wirecard to meet several conditions, otherwise no unqualified audit opinion for 2016 financial statements
   - EY's requirements were not met, but EY still issues an unqualified audit
7. **EY itself allegedly recommended escrow account model**
   - Violation of requirement by law to separate auditing and advisory services
   - Sec. 319 (3) sentence 1 no. 3 HGB (commercial code): Prohibition on EY's involvement for the purpose of ensuring EY's independence as auditor of financial statements

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Further evidence against EY (4/7)

7. APAS criminal complaint against EY

- APAS: German Federal Auditor Supervisory Authority)
- Complaint is confidential, but available to us
- Complaint is based on a detailed statement by EY to APAS
- APAS: Significant circumstances may have been incorrectly reported or concealed by EY in EY audit reports
- §§ 332, 321 HGB: Breach of reporting duty, inaccurate reporting.
- Analysis of allegations from Zatarra-report in 2015 audit report:
  - EY should have identified suspected market manipulation by CEO Braun
  - EY Statements that Executive Board had followed up on allegations and extended audit procedures by EY had not produced any indications of allegations are incorrect

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Further evidence against EY (5/7)

7. APAS criminal complaint against EY (continued)

- Handling of findings from Project Ring – EY's 2016 audit opinion:
  - EY's unqualified audit opinion should not have been issued as requirements formulated by EY were not met
  - No indications in EY's report that whistleblower allegations were indeed true
  - No indications in EY's report about whistleblower mail from May 2016, about allegations specifically against Wirecards book-keeper Stephan von Erffa
- Handling of findings from Project Ring – EY's 2017 audit opinion:
  - No qualifications in EY's report, although red flag indicators, conspicuousness and unwillingness of Wirecard's Management Board to clarify allegations
  - Creating the false impression that the allegations had been thoroughly investigated
  - No information to Prosecuters Office about whistleblower: contrary to Art. 7 EU regulation on specific requirements regarding statutory audit of public-interest entities

Further evidence against EY (6/7)

8. **Wambach report**
   - Mr Martin Wambach: Special investigator appointed by parliamentary inquiry committee to investigate EY's shortcomings
   - Mr. Wambach:
     - member Board of Directors IDW (=Institute of Public Auditors in Germany)
     - Public Auditor partner with Rödl & Partner team
   - Result: Numerous breaches of audit obligations by EY
   - Classified, published Nov. 22, 2021 by Handelsblatt

9. **Conspicuous TPA's balance confirmation for escrow account**
   - Electronic form of confirmation from Citadelle dated 2.12.2016 is available to us
   - Stamp and signature of "Oliver" inserted
   - Date in German spelling

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Further evidence against EY (7/7)

10. Special report by Wirecard's insolvency administrator Mr Jaffe on Wirecard's TPA business

- Report based on special investigation, available to us
- Findings: No significant business with TPA partners traceable at Wirecard
- Fact that at Wirecard no significant business actions were traceable in regard to TPA business should have been apparent since 2016

11. Warth & Klein Grant Thornton report on TPA escrow account balance confirmations (available to us) vs. foreign deposits in banking system

- Comparison of (publicly reported) sum of all foreign currency deposits at a given account-holding bank with the confirmed TPA balance: Makes apparent that since 2016 deposits on escrow accounts have been higher than total foreign currency deposits of given bank
- TPA balance confirmations would thus have failed plausibility test

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„Investment sentiment“ – Anlagestimmung (1/7)

1. **Investment sentiment opens presumption for causality**
   - LG Munich so far: each plaintiff must prove close causality between unqualified audit opinion and individual investment decision = hurdle of transaction causality
   - Now OLG Munich: Proof of an "investment sentiment" based on the unqualified audit opinion opens a presumption for causality between attestation and investment decision
   - Consequence: Causal connection between a audit opinio and a purchase decision of the investor is presumed if share was purchased after publication of EY opinion.
   - Irrelevant whether investor has read opinion.
2. **Argument investment sentiment**
   - Unqualified audit opinion in conjunction with annual financial statement helps to determine the assessment of the security in professional circles and thus generates a so-called investment sentiment among the public
   - The audit opinion in conjunction with the statement is an important source of information for prospective investors about the economic situation of the company.
   - Wirecard in particular: audit opinion was "acquittal" of charges

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Investment sentiment (2/7)

3. **Duration of investment sentiment**
   - Duration of investment sentiment unclear, probably 1 year until new audit opinio.
   - Investment sentiment may end if, over time, other factors become decisive for the assessment of the security; unlikely in this case, however, as the audit opinion is fundamental.
4. **Basic function of the audit opinion in connection with annual financial statements**
   - BGH has expressly considered publication of new company data, such as annual financial statements, to be suitable for ending a positive investment sentiment. Reverse conclusion: Then publication of such an annual account with positive must be suitable to justify or continue such a positive investment mood.
   - OLG Munich also: Without a certificate, no stock exchange listing and earlier readiness for insolvency, i.e. no possibility to buy shares.

Investment sentiment - Anlagestimmung (3/7)

5. **Testimonies Bundestag Investigative Committee on the Significance of EY audit opinions**
   - Neske, Chairman of the Board of Managing Directors of LBBW: "The audited annual financial statements are an essential component of the creditworthiness assessment by the bank's risk management".
   - Michalak, Chairman of the Board of Managing Directors of KfW IPEX-Bank: "(EY audit opnion) is confirmation from external renowned experts. [...] We have also received the information that EY has seen this (critical press) report, and thereafter the annual financial statements have been unqualifiedly certified, so to speak.“
   - Pauls, analyst CoBa: "The unqualified audit of the annual financial statements up to and including 2018 by EY was also proof that the allegations of fraud voiced by the press and short-sellers could not be true and thus the sources were dubious"

Investment sentiment - Anlagestimmung (4/7)

5. **Testimonies Bundestag Investigative Committee on the significance of the EY opinions (continued)**
   - Andreas Mark, fund analyst Union Investment: "The 2018 annual financial statements were again given an unqualified audit opinion by EY, as in all the previous years since 2009 [...]. These were all arguments to continue to have confidence in Wirecard's business model" and "An unqualified audit opinion on a balance sheet is the basis for the economic and financial assessment of a company. It is trusted by lenders, investors, business partners and employees. The audit of the balance sheets despite recurring allegations was essential for us in our assessment of Wirecard."
   - Markus Kramer, BayLB Board of Management: consolidated financial statements are "compulsory reading and a central component in the assessment of a company's financial situation". In the case of annual financial statements certified by the auditor, he has "no reason whatsoever to suspect that what is written in them is not correct.

Investment sentiment - Anlagestimmung (5/7)

5. **Testimonies Bundestag Investigative Committee on the significance of the EY opinions (continued)**
   - Dr. Markus Chromik , Risk Director CoBa: "Well, an unqualified auditor opinion is actually the prerequisite for a credit decision. Without an opinion, there are actually only - - Or even with a qualified one, there are enormous issues when granting a loan.... with a listed company, and especially one in the DAX, we naturally rely on it." AND "we actually question quite a bit with auditors or also with balance sheets, with goodwill and assets that are audited at fair value and mark-to-model. There's a lot of questions there, and we look at that critically, and that's where we also work with discounts. And we also work with discounts on a client's liquidity, but never on the cash issue. That's really a topic where we don't actually expect to check that exact number, but that's actually the easiest step in the analysis."

Investment sentiment - Anlagestimmung (6/7)

6. **Issuance of unqualified audit opinions was subject of media reports**

   - Finance Magazin of 04/25/2019, "EY gives WIRECARD unqualified audit opinion";
   - FinanzSzene of 04/25/2019, "Wirecard presents financial statements - Ernst & Young nods";
   - Handelsblatt of 04/26/2019, "Wirecard's long road to normality".
   - Handelsblatt of 08.04.2016, "WIRECARD lets numbers speak. After a dubious analysis, the Tec-Dax share recently collapsed. Now the company presents a solid balance sheet.“

Investment sentiment - Anlagestimmung (7/7)

7. **Audits issued with immediate positive effect on share price**
   - Audit report for the 2016 financial year, issued on April 5, 2017
   - Audit report for the financial year 2017, submitted on 04/11/2018
   - Audit report for fiscal year 2018, submitted on 04/24/2019
   - Always:
     - Immediately before the issuance of the audit opinion, the share price remains on a plateau. Immediately after issuance of the unqualified audit opinion, share jumps upwards, with substantial trading volumes
   - Overall view over a 3-year period:
     - Issuance of the audit opinion on April 5, 2017 for 2016 provides the impetus for a sustained linear upward movement.
     - Issuance of audit opinion on April 11, 2018 for 2017 triggers massive increase in share price until almost the end of the year. Issuance of the audit certificate on April 24, 2019 leads to a further robust increase in the share price.

DR. SPÄTH & PARTNER
RECHTSANWÄLTE mbB
BERLIN – HAMBURG

THANK YOU FOR YOUR ATTENTION.

WE ARE AT YOUR DISPOSAL.

RA DR. MARC LIEBSCHER, LL.M.
0049(0)176/93150194
LIEBSCHER@DR-SPAETH.COM
DR. SPÄTH & PARTNER RECHTSANWÄLTE
PARTG MBB
KURFÜRSTENDAMM 102
10711 BERLIN
TEL.: +49 (0) 30 88 70 16 17
FAX: +49 (0) 30 88 72 94 61
WWW.DR-SPAETH.COM