

## **PAC's 2022 INVITED CONFERENCE SUMMARY**

### **CORPORATE MISCONDUCT, FRAUD, AND WHISTLEBLOWING**

*Held virtually on the afternoon of Friday, June 3, 2022*

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#### **INTRODUCTION**

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The Professional Accounting Centre (PAC) was established to explore, and stimulate research and discussion, on issues facing professional accounting with the objective of enhancing the value of professional accounting to society. This invited conference is the first annual gathering of a small group of 45 thought leaders from assurance, academe, management, standard setting, and regulation, plus several PhD students, drawn primarily from North America.

Focused on **corporate misconduct, fraud, and whistleblowing**, three researchers presented pre-publication findings, and three discussants commented on their research design and results. Two whistleblowers recounted their dramatic stories at Bridging Finance and Wirecard about discovering, doubting, and finally reporting on corporate wrongdoing. And an overview was provided by ClearView Strategic Partners of the benefits – and perils – of a whistleblowing platform. Making the pertinence of the research clear to accountants and auditors, this document summarizes the research papers, discussants' comments, and the whistleblowers' stories.

Copies of the invited conference papers, PowerPoints, and session recordings are available at <https://www.utm.utoronto.ca/pac/pac-2022-invited-conference>

We encourage all those interested in adding value to professional accounting and to society at large to send us their comments and suggestions. Please visit our website at (<https://www.utm.utoronto.ca/pac/>) to access our research projects and events.

**Len Brooks**, Professor of Business Ethics & Accounting  
Director, **Professional Accounting Centre**

**PAC INVITED CONFERENCE AGENDA, JUNE 3, 2022**  
**CORPORATE MISCONDUCT, FRAUD & WHISTLEBLOWING**  
**AGENDA**

**1:00 Opening Remarks - on Zoom**

Leonard J. Brooks, Director, Professional Accounting Centre  
Soo Min Toh, Director, Institute for Management & Innovation, UTM  
Craig Smith, EVP, Member & Student Services, CPA Ontario

**1:15 Social media and corporate misconduct**

**Presenter:** Jonas Heese, Harvard University  
**Discussant:** Alexander Dyck, University of Toronto  
**Q&A**

**2:15 CEO Oath and financial reporting quality**

**Presenter:** Gerardo Pérez-Cavazos, University of California San Diego  
**Discussant:** Kyle Welch, George Washington University  
**Q&A**

**3:10 Break**

**3:25 Whistleblowing, Auditing and Enforcement**

**Presenter:** Minlei Ye, University of Toronto  
**Discussant:** Jonathan Black, Purdue University  
**Q&A**

**4:20 Recent Experience of Whistleblowers, Regulators, and Facilitators**

Pavandeep Gill (Pav Gill), Wirecard's former Senior Legal Counsel  
Alejandro Cardot, whistleblower, Bridging Finance accounting scandal  
Joe German, Director of Strategic Alliances, Clearview Strategic Partners Inc.  
**Q&A**

**5: 30 pm Closing Remarks & Adjournment - Len Brooks & Dushyant Vyas**

*PAC is pleased to acknowledge funding support for this conference from CPA Ontario.  
There is no cost to attendees.*

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## SOCIAL MEDIA & CORPORATE MISCONDUCT RESEARCH PRESENTATION

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### Jonas Heese, Harvard Business School

*Is social media an effective monitor of firms' corporate misconduct?*

Jonas Heese & Joseph Pacelli

### Alexander Dyck, Rotman School of Management (Discussant)

#### Research summary

With the continuing disappearance of traditional media –local newspapers, in particular – can social media take their place in monitoring corporate misconduct? Could social media play a role in corporate governance?

Speaker **Jonas Heese**, Associate Professor of Business Administration at Harvard Business School, opened his talk with a startling story about how a doctor was forcibly removed by police for refusing to give up an overbooked seat on United Airlines in 2017. Social-media users recorded the doctor's forcible removal, which left him with a concussion, missing teeth, and a broken nose<sup>1</sup>.

The videos, "...uploaded...on different social media platforms, including Twitter...attracted more than 100 million views and...became a number one trending topic," said Heese.

Traditional media picked up the incident from social media and added more information. The consequences for United Airlines were extra scrutiny by regulators for aviation safety violations, reputational costs, including a massive drop in stock price, and an undisclosed settlement for damages.

Heese said the example shows how "...social media could potentially affect a company's behavior and really be an active monitor." The CEO apologized for the incident, said Heese, "but are we actually sure that the company changed its underlying behavior?"

#### The Research Approach

Heese looked at the zip code-based expansion of 3G mobile broadband internet networks (3G) in the United States and asked if social-media monitoring occurred simultaneously. He focused on Twitter, because "it is one of the few, if not the only social media platform where you can identify the geographic or region from where a tweet has been sent."

*"Wherever 3G was introduced, there's actually more Twitter activity, and...we can show...that more Twitter activity is associated with changes in misconduct."*

Heese looked at the number and dollar amount of violations for publicly traded companies and their facilities in [Violation Tracker](#), an internet-accessible database on corporate misconduct. He looked at data three years prior to and after the introduction of 3G for specific zip codes. Non-financial

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<sup>1</sup> Kesslen, B. (2019, April 9). Doctor dragged off United Airlines flight speaks out on two-year anniversary of the viral incident. *NBC News*. <https://www.nbcnews.com/news/us-news/doctor-dragged-united-airlines-flight-speaks-out-two-year-anniversary-n992331>.

violations such as workplace safety or environmental violations make up most of the Violation Tracker database.

Non-financial misconduct should be important to accountants, added discussant **Alexander Dyck**, Professor of Finance and Economic Analysis and Policy at the Rotman School of Management. It is more common than financial misconduct, rarely studied, and often has material impact. An issue with the Violation Tracker database, however, is that it is incomplete in its coverage of multi-jurisdictional misconduct, types of misconduct, and it continues to expand (it's a moving dataset). More discussion in the paper about these topics is warranted, Dyck believes.

Heese agreed that most misconduct or violations are not covered anywhere. "If anything," he said, "there's not enough scrutiny on what companies are doing."

### Preliminary results

Preliminary results for one company and its various facilities seem to show that

- As soon as 3G became available in a zip code, the number of Twitter threads increased. So, a company with facilities in a zip code with high-media or high-Twitter activity engage in fewer violations.
- The introduction of 3G results in a decrease in penalties and a decrease in the number of violations. Engaging in less misconduct implies an actual behaviour change in the company.
- Higher Twitter activity is associated with less misconduct.

Dyck said the paper has admirably addressed the "mirror problem" in studying media; that is, "Is media just a mirror of reality reflecting what we're seeing or is it actually driving change?"

### A role in corporate governance?

Could social media be used in corporate governance? An organization could use social-media tips to monitor internal behaviour or business operations that work or don't work in different locations. The research doesn't answer this question but raises the question for further study. Dyck added that social media might be considered a form of involuntary corporate disclosure or publicity (good or bad). Company directors do care about social-media whistleblowing.

### Conclusions

*"It would be too strong, to conclude that social media can substitute for traditional media. There's no evidence for that."* Jonas Heese in Q&A

Heese said he wouldn't be surprised if the effect of an issue carried by social media is stronger when traditional local media also exists. As in the United Airlines example, a social media issue picked up by traditional media may result in a more thorough investigation with broader context that elevates the whole issue. Further to this point, Dyck said the research could include more information about the effect of social media on traditional media and the implications for broader social welfare.

The study showed, Heese says, systematic evidence on the consequences of social media as a monitor of firm behavior. This is important because it improves our understanding since:

- Prior research in capital markets primarily examines social media's informational role.
- Prior research in economics primarily examines social media's political monitoring role.

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## CEO OATH & FINANCIAL REPORTING QUALITY PRESENTATION

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### **Gerardo Pérez-Cavazos, UC San Diego, Rady School of Management** *When executives pledge integrity: the effect of the accountant's oath on firms' financial reporting*

Jonas Heese<sup>2</sup>, Gerardo Pérez-Cavazos, & Caspar D. Peter

### **Kyle Welch, George Washington University (Discussant)**

#### Research summary

Do Dutch CEOs' and CFOs' pledges of integrity improve financial reporting quality?

This paper examines whether a 2016 regulatory change in the Netherlands for pledging integrity by executives has any effect on financial reporting.

It is the first to examine, in isolation, the effect of pledging an oath of integrity on financial reporting. Based on on-the-job behaviour, rather than an experiment, oath-takers' companies show reduced income-increasing discretionary accruals and reduced income-increasing discretionary expenditures, indicating that oath-taking executives reduce overall earnings management.

#### Research Approach

Much research has shown that executives' integrity is a determinant of a firm's compliance, said speaker and co-author **Gerardo Pérez-Cavazos**, Assistant Professor of Accounting, Rady School of Management. This, and the fact that many "traditional" governance mechanisms, such as codes of conduct, fail at deterring misconduct, motivated the research team to study if requiring an oath has any effect as an ethics reminder. "It is also possible that having executives pledge integrity has no effect as an implicit social contract," he added, because misconduct/lying is driven by personal characteristics. In other words, "A bad person is still going to be a bad person, even if they pledge an integrity oath."

*The oath "...isn't introducing a new punishment. It is basically reminding people...to act in a professional way with integrity...to be objective...to do what the job entails and treat financials [as though] they need to have those characteristics. So, really, it's a very simple oath." Gerardo Pérez-Cavazos*

The study looked at Dutch CFOs and CEOs with accounting backgrounds who took the oath. CEOs and CFOs that do not hold a Dutch professional accounting degree, not required to take the oath, were used as the control group. Of the 7,579 CEOs and CFOs of Dutch private and public firms, 40 CEOs and 84 CFOs held an accounting degree (approximately 15% of firms).

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<sup>2</sup> Jonas Heese was "winner of the 2021–2022 Glen McLaughlin Prize for Research in Accounting Ethics for "When Executives Pledge Integrity: The Effect of the Accountant's Oath on Firms' Financial Reporting," with Gerardo Pérez-Cavazos and Caspar David Peter." (Harvard Business School, [Accounting & Management Awards & Honors](https://www.hbs.edu/faculty/units/am/Pages/awards.aspx). <https://www.hbs.edu/faculty/units/am/Pages/awards.aspx>)

A difference-in-differences statistical approach for three years before and three years after the oath requirement looked at changes in discretionary accruals and real earnings management in each firm.

## Preliminary Conclusions

“The oath is effective in changing executives’ behavior and shows that they follow the spirit, rather than letter of the law,” concludes Pérez-Cavazos.

Results imply that oath-taking could be a low-cost measure to achieve higher quality reporting.

Discussant **Kyle Welch**, Assistant Professor, George Washington University School of Business, described the pre-2016 accounting scene in the Netherlands and advised the authors that it was very important to include that contextual material in their paper. For example, pre-2016, the Netherlands were rocked by accounting scandals (Figure 1).

Reports Welch, “The Dutch Minister of Finance delivered an ultimatum to the audit profession that they needed to improve their business practices. “You reform your profession, or we will do it for you.”

**FIGURE 1: NETHERLANDS ROCKED BY ACCOUNTING SCANDALS, PRE-2016**  
 (SOURCE: DISCUSSANT **KYLE WELCH**, GEORGE WASHINGTON UNIVERSITY, AND ICAEW INSIGHTS (2021)<sup>3</sup>)



The professional oath being studied is just one of 53 measures to reform the profession (Future Accountancy Profession Working Group, 2014, p. 36)<sup>4</sup>. So, Welch warns, in this period of hyper-reform for the culture of accounting, behaviour could be affected by a number of factors, including increased scrutiny on the profession.

<sup>3</sup> ICAEW (Institute of Chartered Accountants in England and Wales). (2021, April 19). [How the profession won back trust in the Netherlands](https://www.icaew.com/insights/viewpoints-on-the-news/2021/april-2021/how-the-profession-won-back-trust-in-the-netherlands). ICAEW Insights. <https://www.icaew.com/insights/viewpoints-on-the-news/2021/april-2021/how-the-profession-won-back-trust-in-the-netherlands>.

<sup>4</sup> Future Accountancy Profession Working Group. 2014. [In the Public Interest: Measures to Improve the Quality and Independence of the Audit in the Netherlands](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi3hJfvi9b4AhUilYkEHSVeCaAQFnoEC_AgQAO&url=https%3A%2F%2Fwww.nba.nl%2Fglobalassets%2Fprojecten%2Fin-het-publiek-belang%2Fin-the-public-interest-measures-to-improve-quality.pdf&usg=AOvVaw0MgVMVzP_4IHm4jV3hkawT). Netherlands Institute of Chartered Accountants. [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi3hJfvi9b4AhUilYkEHSVeCaAQFnoEC\\_AgQAO&url=https%3A%2F%2Fwww.nba.nl%2Fglobalassets%2Fprojecten%2Fin-het-publiek-belang%2Fin-the-public-interest-measures-to-improve-quality.pdf&usg=AOvVaw0MgVMVzP\\_4IHm4jV3hkawT](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi3hJfvi9b4AhUilYkEHSVeCaAQFnoEC_AgQAO&url=https%3A%2F%2Fwww.nba.nl%2Fglobalassets%2Fprojecten%2Fin-het-publiek-belang%2Fin-the-public-interest-measures-to-improve-quality.pdf&usg=AOvVaw0MgVMVzP_4IHm4jV3hkawT).

He adds that the oath “doesn't have any teeth associated with it...[and] is apparently benign, which leads to more doubt associated with examining [its] impact.”

That said, this research is an important addition to the literature on regulatory tools to improve financial reporting, behavioural economics, and ethics and compliance training. In addition, to the extent possible – dictated by meaningful sample size – the researchers’ difference-in-differences statistical approach reduced cross effects of other events and other regulatory measures.

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## WHISTLEBLOWING, AUDITING AND ENFORCEMENT PRESENTATION

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**Minlei Ye, Rotman School of Management, University of Toronto**

*Auditing with a chance of whistleblowing*

Lin Nan, Chao Tang, and Minlei Ye

**Jonathan Black, Purdue University (Discussant)**

### Research summary

“The benefit of whistleblowing to investors is huge, so regulators around the world started to encourage whistleblowing, starting with the Dodd-Frank whistleblower program in 2010,” said University of Toronto Associate Professor of Accounting, **Minlei Ye**.

Whistleblower programs, for example, through the SEC and OSC may offer rewards for tips that can lead to enforcement action. Even so, “the personal cost to the whistleblowers is huge,” said Ye, as we’ll learn from Alejandro Cardot, whistleblower on Bridging Finance, and Pav Gill, the whistleblower who exposed Wirecard’s mis-dealings.

The huge cost to internal whistleblowers, whether motivated by monetary benefit or moral obligation, includes being fired, future career concerns, retaliation from the company, and implicating/harming co-workers, added discussant **Jonathan Black**, Assistant Professor of Management Accounting at Purdue University

Auditors are independent professionals regarded as gatekeepers to help protect investors’ interest by providing assurance to the financial statements. Yet, in the accounting scandals surrounding WorldCom, Enron, Bridging Finance, Wirecard, Carillion, and many others, auditors issued clean opinions on materially misstated financial statements. So, what is the overall effect of whistleblowers and auditors on financial reporting quality? Will auditors increase or decrease their audit quality in response to a higher likelihood of whistleblowing?

*“In our paper, we develop a theoretical framework to analyze the impact of promoting whistleblowing on audit quality, financial reporting quality, and social welfare.”*

Minlei Ye

Ye and co-authors developed a theoretical framework, a mathematical model, to analyze the impact of promoting whistleblowing on audit quality, financial reporting quality, and social welfare by including the strategic interaction of auditors, whistleblowers, and regulators (aka “enforcers”).



Discussant Jonathan Black:

- reviewed whistleblower protection/compensation programs and their pros and cons
- interpreted the research's theoretical findings
- reviewed some of the applications of the model, and how the model fits in with empirical findings on whistleblowing

### When does the model show that audit quality **increases**?

A regulator is going to catch more audit failures in companies with strong whistleblowing programs. Auditors will worry about having audit failure, so they will work harder to provide high quality audits.

### When does the model show that audit quality **decreases**?

When whistleblowers are highly incentivized **yet remain silent**, their silence suggests to regulators that fraud risk at a company is low – but their silence may be because they perceive the personal cost of whistleblowing to be too high. Regulators, however, may exert less effort reviewing those firms, and auditors may not fear audit failure. Consequently, regulators may not uncover fraud and auditors may provide lower quality audits.

### Do regulators rely too much on whistleblowers?

Regulators' resource constraints might affect both monitoring and corporate misconduct, said Black. Geographically close firms, and firms/industries with greater past enforcement activity or past information about fraud – e.g., through whistleblower complaints -- might be monitored more closely by the SEC, for example. And those firms may also be less likely to adopt aggressive accounting practices.<sup>5</sup> Similarly, SEC investigation of firms for which information about fraud is already known – for example, at a firm that has had whistleblower complaints -- might increase the chance of enforcement success. In other words, the regulator might allocate scarce resources where they're more likely to have an effect.

### In conclusion

The model can be adapted to take into account frivolous or false whistleblowing tips, as well as the interactions of other enforcers, such as short sellers and investment analysts. The practical implication of the study is that "...whistleblowing can have positive impact on audit quality, financial reporting quality, and social welfare under certain conditions. But we also need to pay attention to the negative impact when those conditions are not satisfied," concluded Ye.

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<sup>5</sup> See Kedia, S. & Rajgopal, S. (2011). [Do the SEC's enforcement preferences affect corporate misconduct?](https://econpapers.repec.org/article/eeeejaecon/v_3a51_3ay_3a2011_3ai_3a3_3ap_3a259-278.htm) *Journal of Accounting and Economics*, 51 (3): 259-278. [https://econpapers.repec.org/article/eeeejaecon/v\\_3a51\\_3ay\\_3a2011\\_3ai\\_3a3\\_3ap\\_3a259-278.htm](https://econpapers.repec.org/article/eeeejaecon/v_3a51_3ay_3a2011_3ai_3a3_3ap_3a259-278.htm).



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## PANEL: REVELATIONS OF RECENT WHISTLEBLOWERS & FACILITATORS

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### *Panelist 1: Alejandro Cardot*

**Alejandro Cardot** shared his experience as an external investor whistleblower who exposed the wrongdoings of Toronto firm **Bridging Finance** and offered ideas on how whistleblowing programs could be improved.

#### Misappropriated funds

News of the OSC investigation for “...alleged mismanagement and self-dealing at Bridging Finance Inc., a Toronto firm that provides credit to businesses” erupted in May 2021.<sup>6</sup>

*“...there's a huge gap between the amount misappropriated and the amount that investors are facing to lose.” Alejandro Cardot*

Cardot explained, the Ontario Securities Commission “alleged that management misappropriated around \$100 million of investors’ funds. [But] investors are facing losses of up to \$1.3 billion. So, you can see there's a huge gap between the amount misappropriated and the amount that investors are facing to lose.”

Those losses, Cardot added, “...can only be explained by Bridging Finance management’s misrepresentation to investors. And that, in my opinion, could have been avoided if investors and auditors had been a little bit more skeptical.”

#### When it sounds too good to be true...

By chance, Cardot discovered the fraud when a relative asked him to look at one of Bridging Finance’s funds. The first thing that caught Cardot’s attention was that the monthly returns at the fund in more than six years *were only positive*.

Cardot dug a little further. In a BNN interview, the fund manager David Sharpe “...was claiming amazing returns with really, really low volatility [i.e., low risk],” said Cardot. But, Cardot added, anyone who has taken a finance course learns that increased returns come with increased risk.

Additionally, the low risk of the private debt fund was attributed to the strategy of lending on a “senior secure basis against a lot of collateral [i.e., the company’s assets],” said Cardot. This was not enough to explain the exceptional returns, explained Cardot, since “debt and equity move in tandem with the value of the assets. So, if the assets increase in value, equity will appreciate. But, if the assets decrease in value, equity will suffer. If they keep decreasing in value, eventually debt holders will be impaired.”

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<sup>6</sup> Sambo, P. [Self-dealing scandal at Bridging Finance strikes fear in sector](https://www.bnnbloomberg.ca/private-lenders-tremble-over-self-dealing-probe-at-toronto-firm-1.1599557). (2021 May 5). *BNN Bloomberg*.  
<https://www.bnnbloomberg.ca/private-lenders-tremble-over-self-dealing-probe-at-toronto-firm-1.1599557>.

## More red flags

Identifying the borrowers was a huge challenge for Cardot. The company lacked transparency and identified loans by cardinal number, not borrower name. Cardot was only able to identify some borrowers as public companies' filing and others through court documents of insolvency proceedings. Shockingly, the audited accounts of most of these public borrowers had going-concern warnings. They were not sound investments as the fund manager claimed.

## What to do?

Cardot could not believe his findings. Why had no one else discovered these issues? He formulated a plan (**FIGURE 2**).

On the advice of a journalist friend, Cardot produced a 20-page report substantiated by links to only verifiable primary information sources.

He submitted the report to the OSC but received no feedback.

He tried talking to investors, auditors, and large media firms. Only when he found an individual journalist willing to pursue the story, did the scandal break.

## What to expect as a whistleblower and how programs can improve

Cardot provided invaluable advice on what prospective whistleblowers should expect (Figure 3), and how whistleblowing programs could improve (Figure 4).

### FIGURE 3: WHAT PROSPECTIVE WHISTLEBLOWERS CAN EXPECT

#### What to expect?

- By definition, you are a contrarian.
- Lonely Experience.
- You will have doubts about your judgement.
- Confirmation bias will be triggered to the point of obsession.
- Unless you provide overwhelming evidence, it will be extremely hard to convince someone about the soundness of your thesis.
- It will take a long time for authorities to take action, probably years, if ever.
- Generally, former whistleblowers will be happy to help. Don't hesitate to reach out.
- "Smart and properly incentivized journalists are often our only financial regulators." — Jared Bibler

### FIGURE 2: A PLAN TO PROCEED

#### Now what should I do?

- Why is no one talking about this? Can I be wrong?
  - Formulate a hypothesis and test it against evidence
  - Look out for trusted parties who can find flaws in your analysis.
- Which is the best way to communicate what I found?
  - Writing a description of the facts, not an opinion
    - Must use primary and verifiable sources.
- Who can be interested in this information?
  - Authorities
    - Whistleblowing programs with awards
  - Investors
  - Auditors
  - Media

### FIGURE 4: HOW WHISTLEBLOWING PROGRAMS COULD IMPROVE

#### How whistleblowing programs can improve?

- Improve communication.
  - A whistleblower is a collaborator to an authority. To improve success rates in any relationship, the parties should be able to communicate.
- Programs should let people know what they expect and what they don't expect from whistleblowers.
  - Provide redacted versions of successful tips.
- Canadian Securities Regulators must follow the OSC and establish monetary awards for whistleblowers.
  - Even if you are granted anonymity, it is not a risk-free activity.
  - Whistleblowing consumes a lot of time.

## *Panelist 2: Pavandeep Gill*

**Pav Gill**, former senior legal counsel with Wirecard, tells his story of dealing with internal whistleblower reports about the serious corporate misconduct within the company, infamously known as Europe's Enron. Pav was ill on June 3, but his presentation was recorded later in June.

Wirecard<sup>7</sup> was a German merchant transactions payments processing business: “The best way to summarize the whole Wirecard situation,” said Gill, “might be to say it was a systemic failure on multiple fronts. Regulators, auditors, government officials, law enforcement, investment analysts-- practically everyone involved -- refused to deal with the elephant in the room, despite many red flags raised by multiple people over the course of several years.”

Says Gill, “The *Financial Times* and other news outlets had to do the job of the regulators in order to expose this company.” EY audits were also not helpful. Even though EY refused to sign off on the company’s 2019 accounts in June 2020, a week later, the company collapsed.<sup>8</sup>

Gill was the first legal counsel to be based in the Asia-Pacific region. From Singapore, he covered all 11 markets in the region at that time, from Singapore to various parts of Southeast Asia, all the way to Australia and New Zealand, and reported directly to the Munich office.

“I was told to be the eyes and ears for the legal team on the ground,” he said, because Wirecard had entered the market through a series of acquisitions, including Citigroup’s payment operations.

Despite its extensive global operations, Wirecard only had about 15 legal and compliance staff, including Gill, which might have been an early red flag. More red flags appeared. In Gill’s role, these included internal whistleblowers coming to him in confidence to say that they were being instructed to carry out what were very obviously illegal transactions.

Gill had to protect the identity of the whistleblowers and report to his direct supervisors in Munich. They then instructed him to engage a third-party law firm in Singapore, who would then with an objective independent lens review evidence from the whistleblowers, but also the inboxes of some of the suspects.

“An irresistible inference [was] that a lot of forgery was going on and fake contracts were entered into,” recalled Gill. “Multiple millions seemed to be flowing through unknown third-party companies,” he continued, “in the form of round tripping<sup>9</sup> and what looked like accounting fraud at a time.”

But when the board of directors at Wirecard found out about this investigation, Gill was immediately told to stand down. Soon after, the board launched what they said was an anonymous whistleblowing channel, but Gill believed it was an attempt to weed out troublemakers.<sup>10</sup>

*“It is pretty frightening if you have legitimate internal processes, such as that whistleblowing program, which is meant to be anonymous, but is actually being abused as a tool to weed out people with knowledge.”* Presenter Pav Gill

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<sup>7</sup> For an overview of the scandal, see McCrum, D., & Palma, S. (2019 February 7). [Wirecard: inside an accounting scandal](https://www.ft.com/content/d51a012e-1d6f-11e9-b126-46fc3ad87c65). *Financial Times*. <https://www.ft.com/content/d51a012e-1d6f-11e9-b126-46fc3ad87c65>.

<sup>8</sup> Storbeck, O. (2021 October 25). [EY and Wirecard: anatomy of a flawed audit](https://www.ft.com/content/bcadbdcb-5cd7-487e-afdd-1e926831e9b7). *Financial Times*. <https://www.ft.com/content/bcadbdcb-5cd7-487e-afdd-1e926831e9b7>.

<sup>9</sup> For more information, see McCrum & Palma (2019), q.v.

<sup>10</sup> Speaker Joe German learned from Pav Gill that Clearview Strategic Partners’ whistleblowing platform was weaponized against whistleblowers at Wirecard.

Gill was subjected to harassment and intimidation and was forced to resign. Even after his resignation, the intimidation continued. To end it, he resolved to expose the company, which took over a year and a half of effort.

He said that the company had legitimate departments and functions, many mandated by regulations. For example, the merchant onboarding team managed risk and undertook due diligence. Most merchants were legitimate, but some massive ones were not. Could they have been onboarded through a different channel, perhaps by the still-fugitive COO, Jan Marsalek?

Even as the chief legal officer Gill could set up a process to, say, require contracts to be reviewed by the legal team, but management could choose to override that. Wirecard was run much like a startup. “Even when the company exploded in size, and until the game ended, there were only four members on the board.” Control stayed in-house. At the very top were powerful people able to push decisions through the company.

### Advice to prospective board members or whistleblowers

If people do not know whether fraud is actually going on, Gill thinks it is very important that they ask themselves: “Do you want to stay in this company?” “It’s always better if you can just resign and find another job, because that is the safest route [for you].”

“But Directors cannot hide behind the corporate veil,” said Gill. Every director or prospective director needs to understand that the same standards of fiduciary duty apply to executive or non-executive board members.

Added moderator and PAC Director, **Len Brooks**, “If, as a director you resign and it can be proven that you did nothing, but you knew something was going on, then liability can attach in some jurisdictions. Particularly for the large worldwide companies, that’s a concern for directors that they should keep in mind.”

Legal and compliance professionals have a strict confidentiality rule, said Gill. “So, if a whistleblower comes to you, or if you suddenly came across really incriminating information, you can’t even talk to anyone about it – say, an external party -- without breaching that rule. It puts you in a very difficult spot.”

Going to media or police should be a last resort. Follow the right steps, internally first. But, Gill advised, “If you are put [into a] corner, don’t just find a spot that makes it tighter. Turn around and ask yourself, do you want to live this way? Do you want to continue operating and living in fear and doing nothing about it? Or do you think that at some point, you should put an end to the nonsense?”

“That’s what I chose to do. Because we can’t cower in fear. As long as we’ve got truth on our side, and we have not done anything wrong...then the only people who should be living in fear are those that committed the wrongdoing and who continue to commit them.”

### ***Panelist 3: Joe German***

**Joe German**, Director of Strategic Alliances at [ClearView Strategic Partners](#), explained how his company “helps create platforms and structures, including hotlines, that support whistleblowers and people who want to speak up and share ideas.”

The platform is usually handled by a company’s audit, legal, or HR group, German explained. “But,” he added, “I actually prefer it when multiple groups are in it together, because then they start talking about all the risks that the organization is facing and that’s what we’re really trying to help them solve.”

“We create a system that people are going to trust to speak up to you. But also customize it to help get ideas.” Giving people a platform for asking questions or raising concerns is related to whistleblowing, asserts German. For example, suppose the compensation structure of a proposed sales program is linked to quotas that are unattainable without wrongdoing. Allowing employees to raise concerns in advance, through a platform like ClearView Connect, can prevent problems later.

German was shocked to learn from Pav Gill (Panelist 2) that ClearView Connect was weaponized against whistleblowers at Wirecard. “What ClearView does,” German explained, “is...provide a bespoke system to organizations for them to use as they see fit per their business requirements. Only a very, very small number of people inside our organization... can look at reports that come in and only with the permission of that organization.”

Further, he said, “We operate on this principle of making sure the right people see the right reports...We work with organizations to make sure that the right people are covering the right categories at their organization.

“Reports will initially be received by whoever [in the company] was made responsible in that [reporting] category. There are five different permission levels that people can be assigned within the organization...”

“It is really important to have a fulsome discussion with all the stakeholders, e.g., HR, legal, audit, and I didn’t mention the board. But board members are critical, because we want to be customizing the platform so that they get clear, clean reporting that helps them hold management accountable.”

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