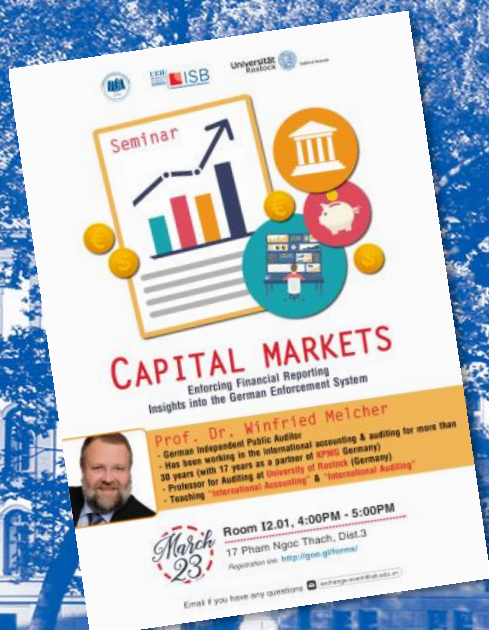


Capital Markets: Enforcing Financial Reporting – an Insight into the German Enforcement System



**Speech at UEH University of Economics,
Ho Chi Minh City, Vietnam**

Prof. Dr. Winfried Melcher
German Certified Public Accountant

Curriculum Vitae Winfried Melcher

1975-1978:	Industrial business management assistant (Bayer AG, Leverkusen)	Education
1979-1984:	Academic Studies of Business Administration and Economics (University of Cologne - Industrial Management, Corporate Tax, Tax Law)	
4/1988:	Steuerberater-Exam (German Tax Consultant)	
1/1990:	Wirtschaftsprüfer-Exam (German Independent Public Auditor)	
7/1998-7/2002:	Doctoral Studies (University Rostock): Ph.D. in Economics	University Activities
4/1999-4/2009:	Assistant Professor (University Rostock - Auditing / International Reporting / Group Accounting)	
since 5/2009:	Honorary Professor in Auditing (University Rostock)	
2010-2015:	Visiting Professor (Berlin School of Economics and Law - International Auditing)	
since 4/2014:	Flying Professor (VGU, Saigon - International Accounting/ International Auditing)	Work Experience
9/1984-4/1996:	KPMG AG Wirtschaftsprüfungsgesellschaft, Düsseldorf (Audit / Audit related Advisory / IT-Audit / National and international Engagements)	
5/1996-6/2001:	Managing Partner of KPMG offices in M-V (Schwerin / Rostock)	
9/2001-9/2013:	KPMG AG, DPP Audit & Accounting Germany, Berlin	
since 10/2013:	Independent Public Auditor, Business Consultant, Flying Professor	

Agenda

- 1. Introduction
- 2. International Background (IOSCO)
- 3. Insight into the German Enforcement System
 - 3.1. Institutions in Charge of the Enforcement
 - 3.2. The Enforcement Process
 - 3.3. Activity Report 2015
 - 3.4. Enforcement Priorities 2016
 - 3.5. Impact of the Activities of the FREP
- 4. Outlook: Enforcement of Financial Reporting in Vietnam

<http://www.wiwi.uni-rostock.de/bwl/rewe/downloads/dateien-aus-dem-bereich-publikationen/>

1. Introduction

Capital markets under spotlight at VN Business Forum

In a report presented to the Vietnam Business Forum 2015 on December 1 the Capital Markets Working Group expressed its appreciation of efforts made by the **Ministry of Finance** (MoF), the **State Securities Commission** (SSC), the **stock exchanges**, and the **Vietnam Securities Depository** (VSD) over recent years to improve the legal framework to create more favorable conditions for indirect investment activities but they also expect more changes to come.

"We welcome and appreciate the decision from the Prime Minister on State divestments in Official Letter No. 1787/TTg-DMDN dated October 8, 2015," the report said. Under the Letter, the government will have a divestment plan for State capital in ten companies, including Vinamilk, FPT, and Bao Minh Insurance.

The group believes this is a wise decision, expressing the determination of the Prime Minister and the government in regard to equitization. "The decision, along with allowing the increase in foreign ownership, is a breakthrough to bring Vietnam's stock market to the emerging markets ranking," according to the report.

(www.english.vietnamnet.vn 4th Dec 2015)

Principles for fair, effective and transparent markets

- Capital markets act like shy deer – trust runs away quickly
- International Organization of Securities Commissions (IOSCO)

Objectives and Principles of Securities Regulations (June 2010)

- Protecting Investors
- Ensuring that markets are fair, efficient and transparent
- Reducing systemic risks

Sets out 38 principles in 9 categories for Regulators of Capital Markets

- One element of fair, efficient and transparent markets is the enforcement of financial reporting

2. International background

- Information taken from publicly available sources
 - www.iosco.org
 - Annual Report 2014
(the Annual Report 2015 is going to be issued in June 2016)
 - About us ...



IOCSO International Organization of Securities Commissions



The screenshot shows the homepage of the International Organization of Securities Commissions (IOSCO). At the top, there is a dark blue navigation bar with links for "Home", "Annual Report 2014", and "Contact Us". Below this, the IOSCO logo is prominently displayed on the left, featuring a globe icon and the text "IOSCO" and "INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS". To the right of the logo is a search bar labeled "keyword search" with a magnifying glass icon. Further right are links for "Secondment Register", "IFRS Database", "Forums", and "Members Area", each accompanied by a small icon. Below these links is a horizontal menu bar with the following items: "ABOUT IOSCO", "MEDIA ROOM", "PUBLICATIONS", "INVESTOR PROTECTION", "TRAINING", "EVENTS", and "RESEARCH". The main content area features a large banner image of a world map composed of blue dots, with light rays emanating from the center. Below the banner, the text "The global standard setter for securities markets regulation" is displayed. At the bottom right of the banner area, there are two buttons: "SIGN UP FOR MEDIA RELEASES" and "JOIN IOSCO".

IOCSO Regional Committees



The screenshot shows the IOSCO website with the following elements:

- Header:** Home | Annual Report 2014 | Contact Us
- Logo:** OICU-IOSCO INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS
- Search:** keyword search
- Navigation:** Secondment Register, IFRS Database, Forums, Members Area
- Menu:** ABOUT IOSCO, MEDIA ROOM, PUBLICATIONS, INVESTOR PROTECTION, TRAINING, EVENTS, RESEARCH
- Organizational Structure:**
 - Who We Are
 - Organizational Structure (highlighted)
 - Presidents Committee
 - IOSCO Board
 - Growth and Emerging Markets Committee
 - Regional Committees (highlighted)
 - Africa / Middle-East Regional Committee
 - Asia-Pacific Regional Committee
 - European Regional Committee
 - Inter-American Regional Committee
 - Affiliate Members Consultative Committee
 - Key Regulatory Standards
 - MMoU
 - By-Laws
 - Resolutions
 - Policy and Standard Setting
 - Standards Implementation
 - Joint Forum
 - CPMI-IOSCO
 - Accounting and Audit Oversight


- Call to Action:** SIGN UP FOR MEDIA RELEASES

Vietnam is a member of the Asia-Pacific Committee (SSC State Securities Commission)

Germany is a member of the European Committee (BaFin Federal Financial Supervisory Authority)

3. Insight into the German Enforcement System

- Information taken from publicly available sources
 - www.frep.info
 - Activity Report 2015 (English version)
- Information taken from own insight
 - Support to clients in official inspections
 - 2005 till 2013

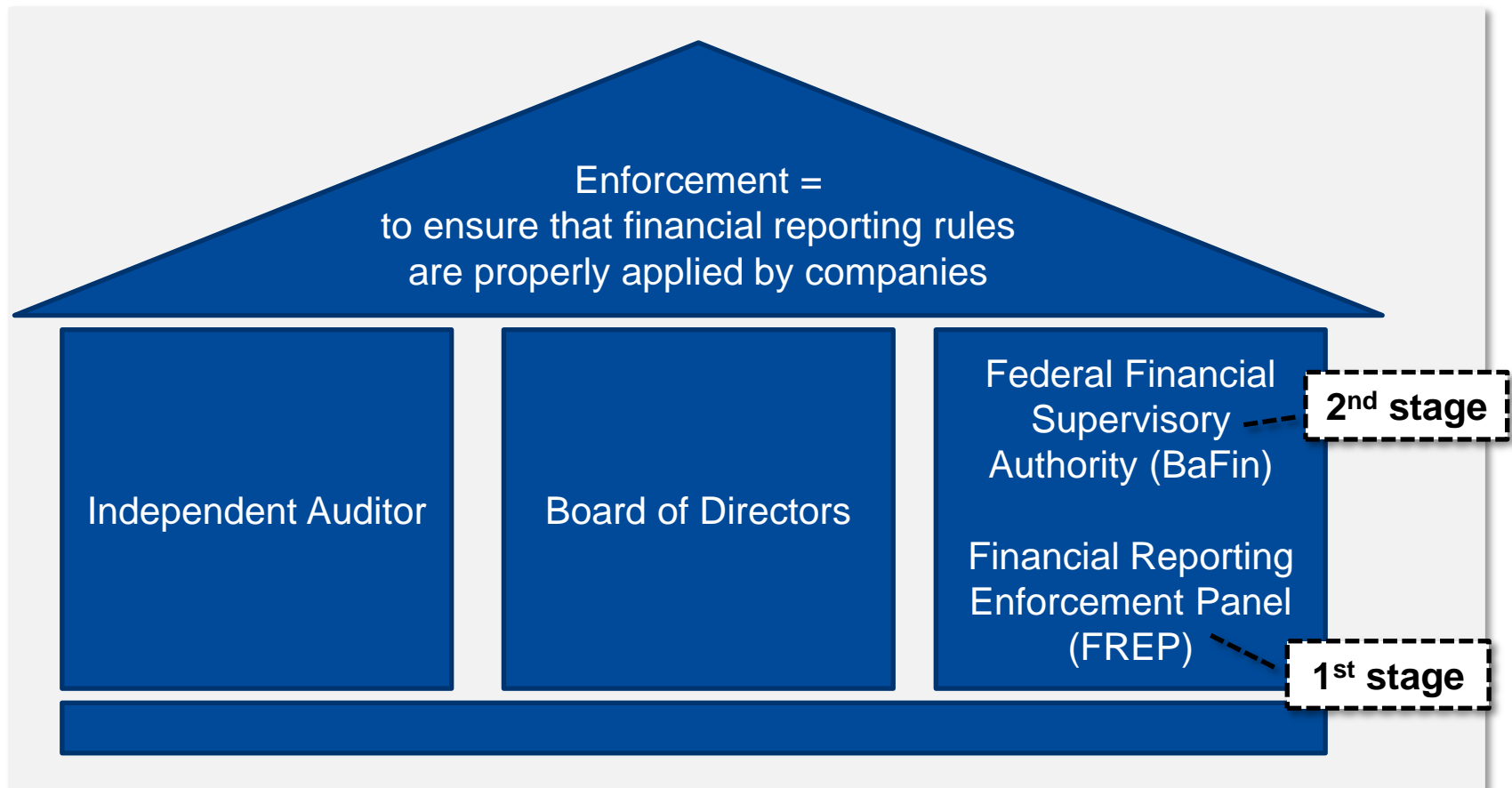
		DEUTSCHE PRÜFSTELLE FÜR RECHNUNGSLEGUNG FINANCIAL REPORTING ENFORCEMENT PANEL
FREP Presidential Board		Berlin, 28 January 2016
Annual Activity Report 2015		
1	Overview	2
2	Examinations in 2015	3
	2.1 Examination results	3
	2.2 Types of errors and related analysis	6
	2.3 Acceptance rate	7
	2.4 Length of examinations	9
	2.5 Recommendations made	9
	2.6 Follow-up on 2014	10
	2.7 Implementation of recommendations regarding GAS 20	12
3	Error prevention	13
	3.1 Overview	13
	3.2 Enforcement priorities for 2016	15
4	Ten years of financial statement oversight in Germany	16
5	Developments in Europe	18
	5.1 European Enforcers Coordination Sessions (EECS)	18
	5.2 ESMA Guidelines on Alternative Performance Measures	19
6	Acknowledgements and outlook	19

3.1 Institutions in charge of Enforcement

- Enforcement of financial reporting is performed in Germany in two stages;
 - the **first stage** involves a government-appointed privately organized institution, the Financial Reporting Enforcement Panel (FREP) www.frep.info as its active body, while
 - the **second stage** is performed by the Federal Financial Supervisory Authority (“Bundesanstalt für Finanzdienstleistungsaufsicht” – BaFin www.bafin.de), which has sovereign authority.
- The Financial Reporting Enforcement Panel (FREP) has been examining financial reporting of companies listed in the regulated market in Germany since 1st July 2005.



Three Pillars of Enforcement



Organization of the FREP

- FREP workforce
 - President
 - Vice President
 - 14 further members of the FREP (auditors, tax consultants, practitioners)
- Panel for one case (organized like a court)
 - President or Vice President
 - 1 member in charge
 - 1 further member
 - 1 member as a “cold” reviewer
- Cost is approximately € 5 Mio. p.a.



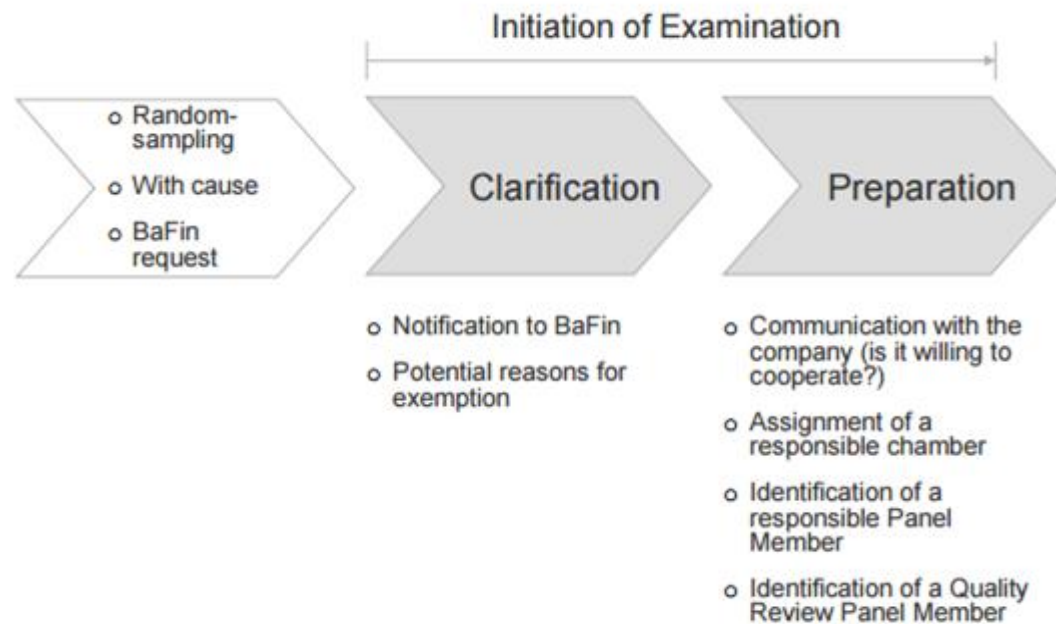
Population for the Enforcement Activities

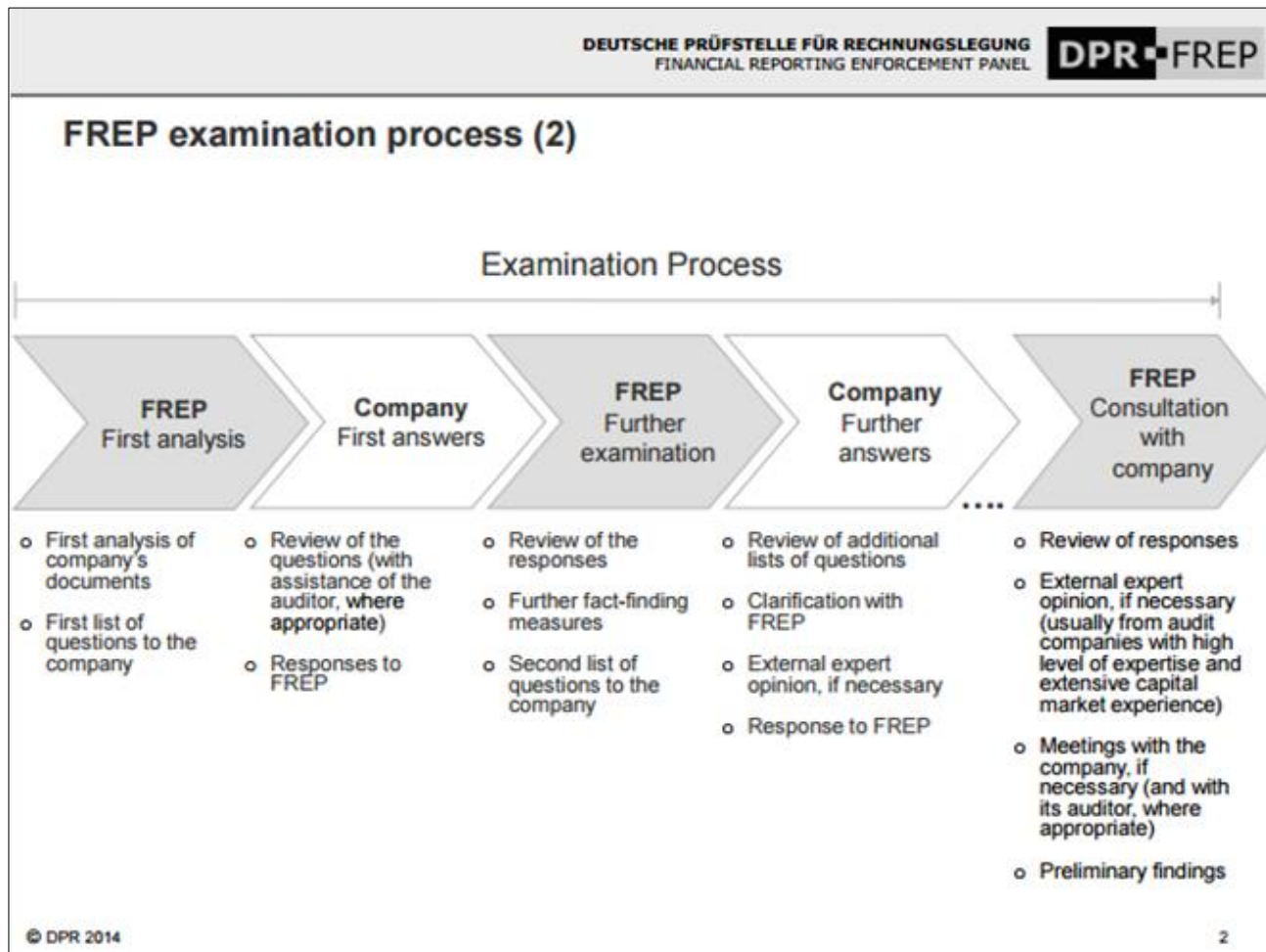
- Population for examinations
 - There were appr. 1,000 **capital market oriented** companies in 2005
 - companies, whose **financial instruments** are authorized to trade within regulated markets on domestic stock exchanges
 - Financial instruments can be **equity** or **debt**
 - In 2015 capital market oriented companies decreased to appr. 800
- Number of FREP activities
 - Goal: **Full coverage**, that means that each company has to be examined within a certain amount of time
 - 2005 till 2015: approx. 1,100 examinations performed
 - In average a company is examined once in 10 years (but some companies were examined several times)

3.2 Enforcement Process

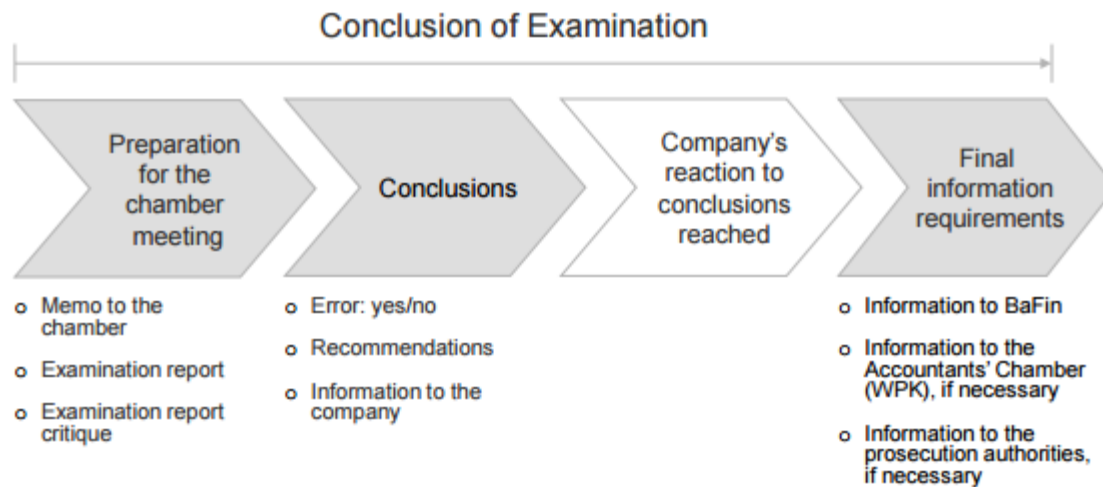
- The Panel will initiate 3 types of examinations:
 - Examination with cause, if there are **concrete indications** of an infringement of financial reporting requirements,
 - Examination on request, at the **request of BaFin**, when certain indications exist or
 - Random sampling examination, without any concrete indications based on **random sampling**

FREP examination process (1)





FREP examination process (3)

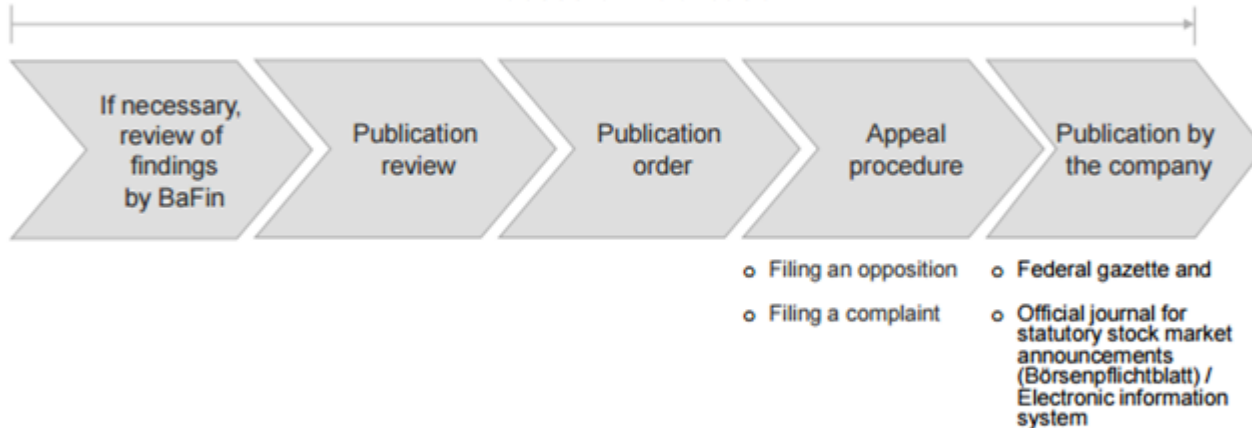


DEUTSCHE PRÜFSTELLE FÜR RECHNUNGSLEGUNG
FINANCIAL REPORTING ENFORCEMENT PANEL

DPR + FREP

BaFin examination process

Process of Publication



Possible outcomes

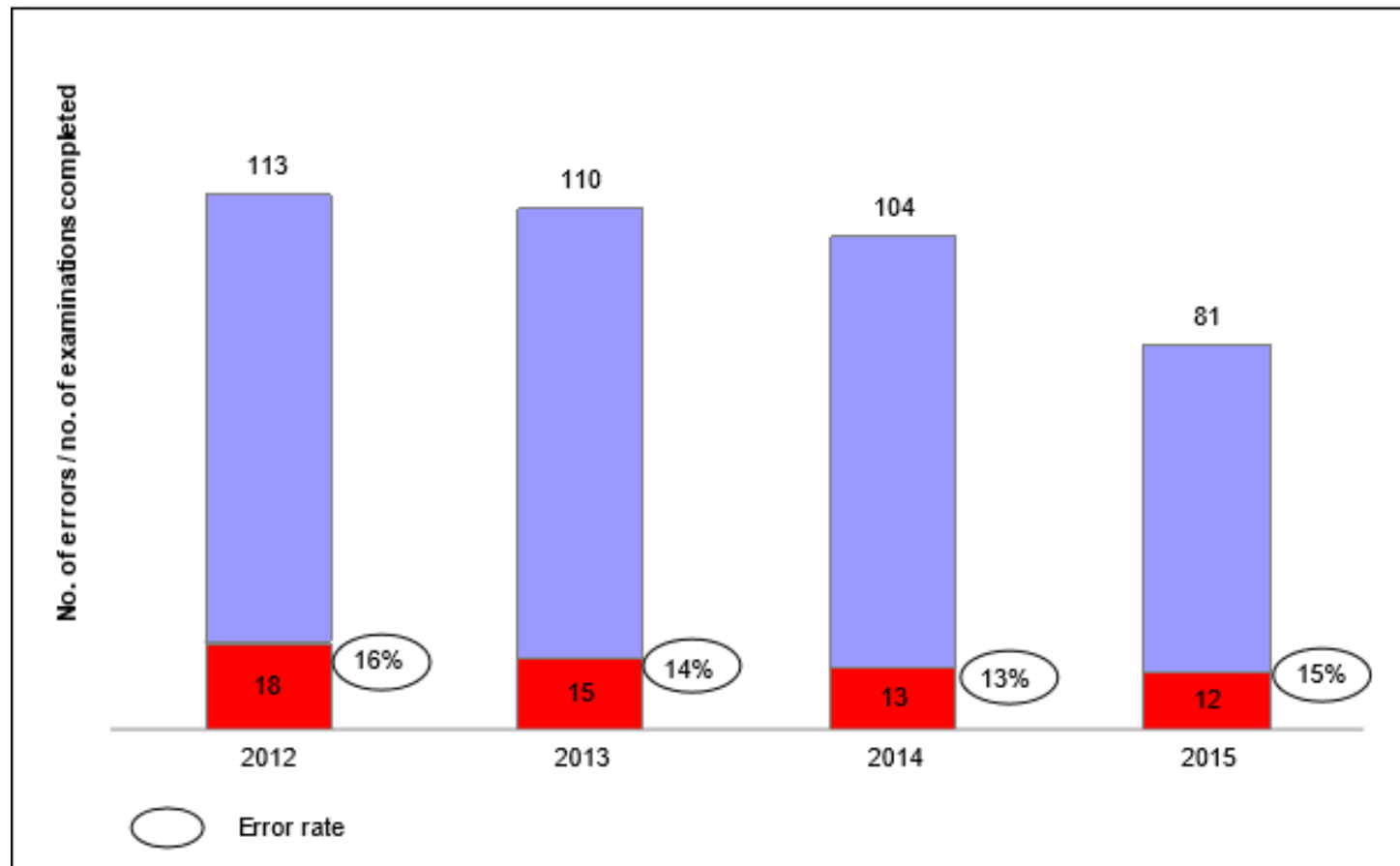
- Company does not accept FREP's findings
- Company accepts FREP's findings

3.3 Activity Report for 2015

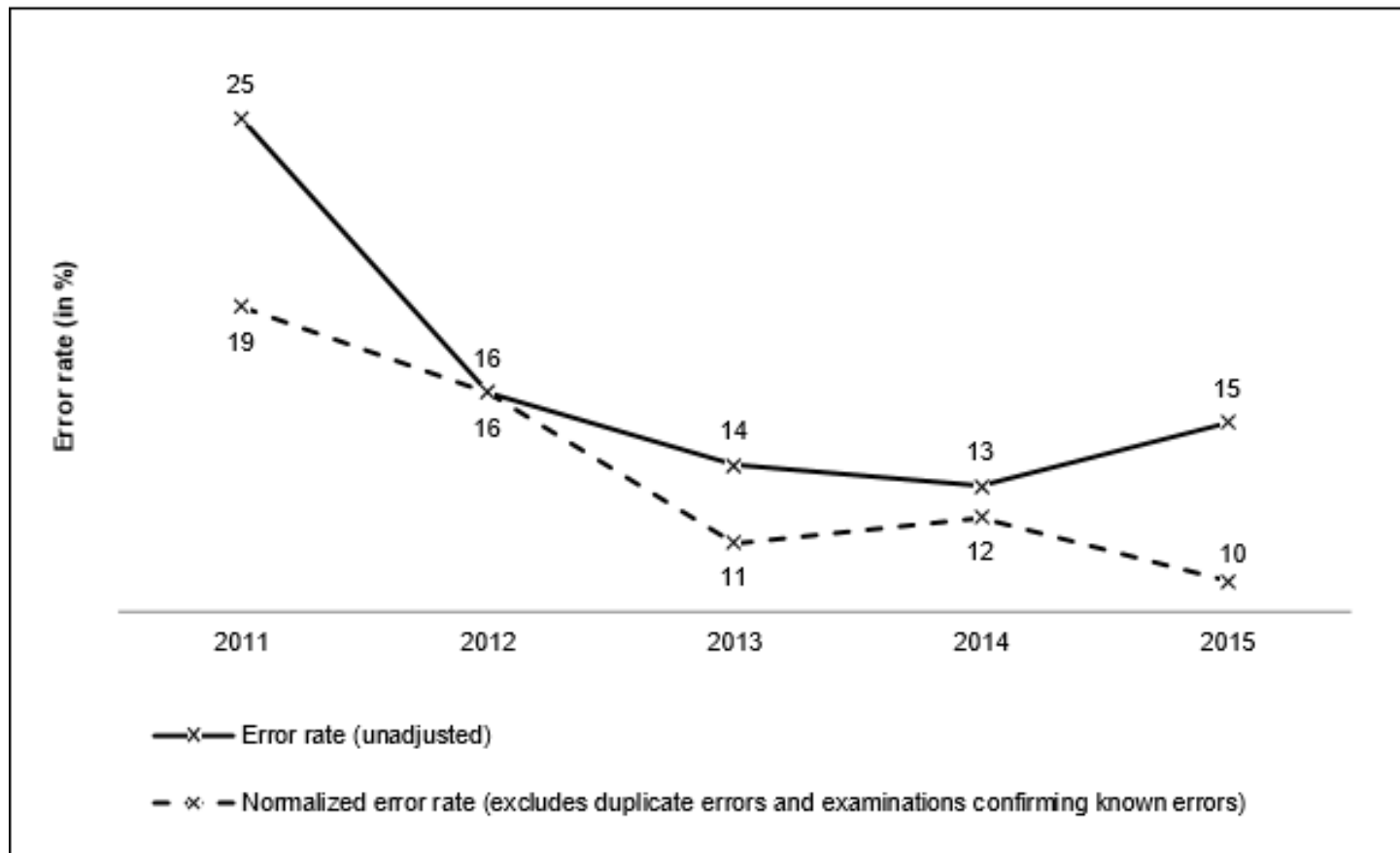
- Published by the FREP in February 2016 in German and English
- www.frep.info > Publications > Activity Reports > 2015
- Main result: Total error rate for 2015 was 15% (12 out of 81 examinations)



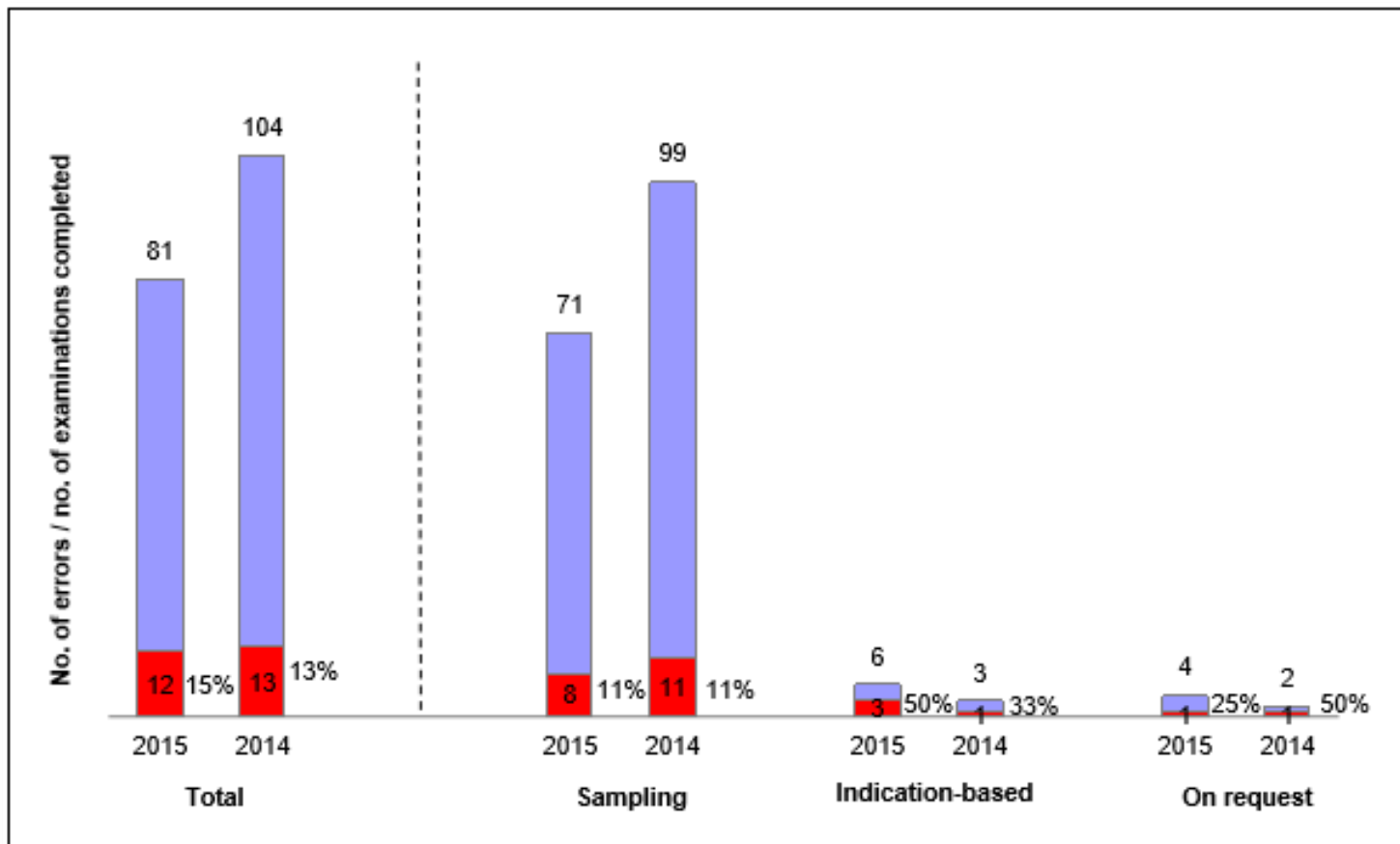
Examination Results for 2012 till 2015



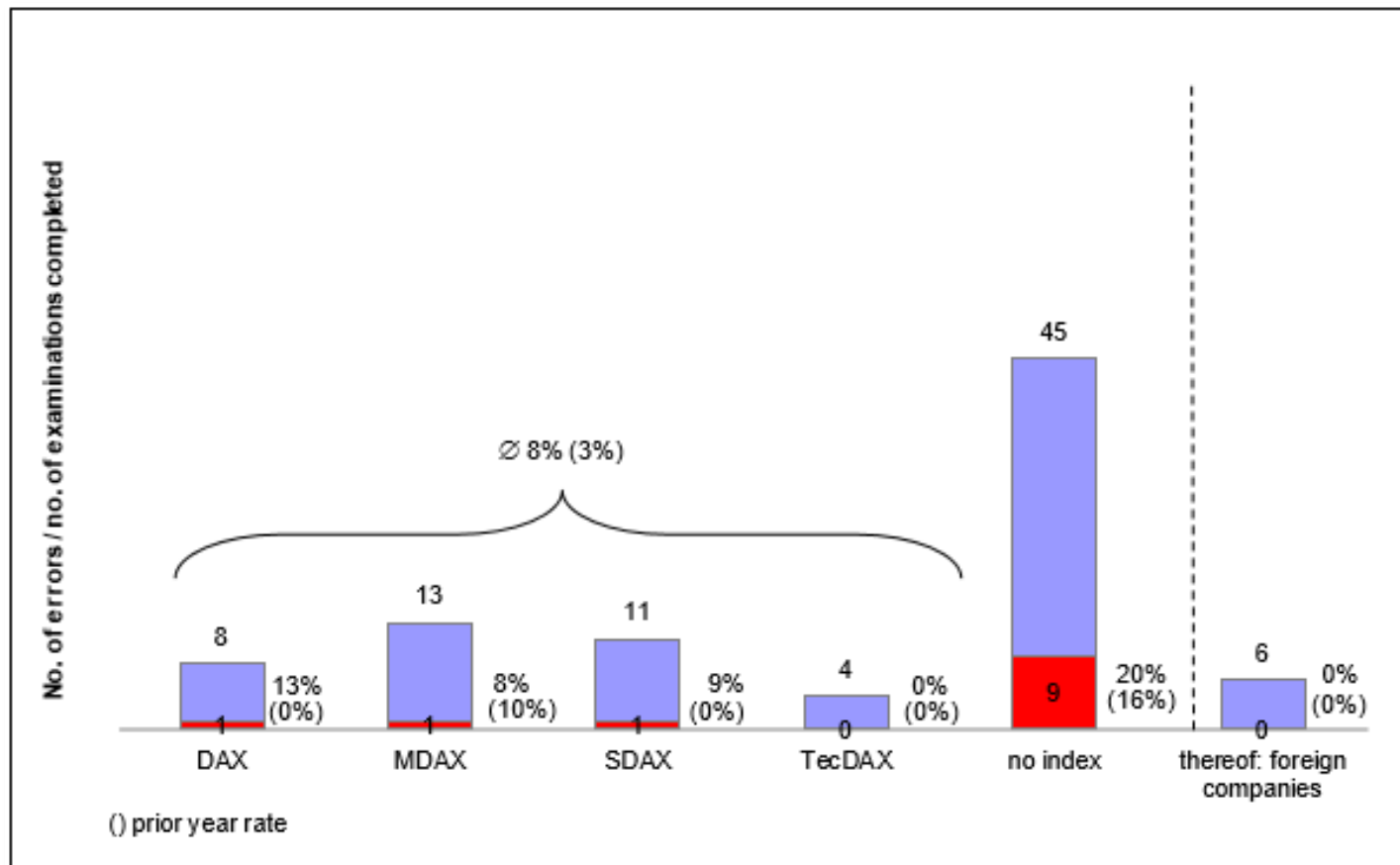
Error trend for 2012 till 2015



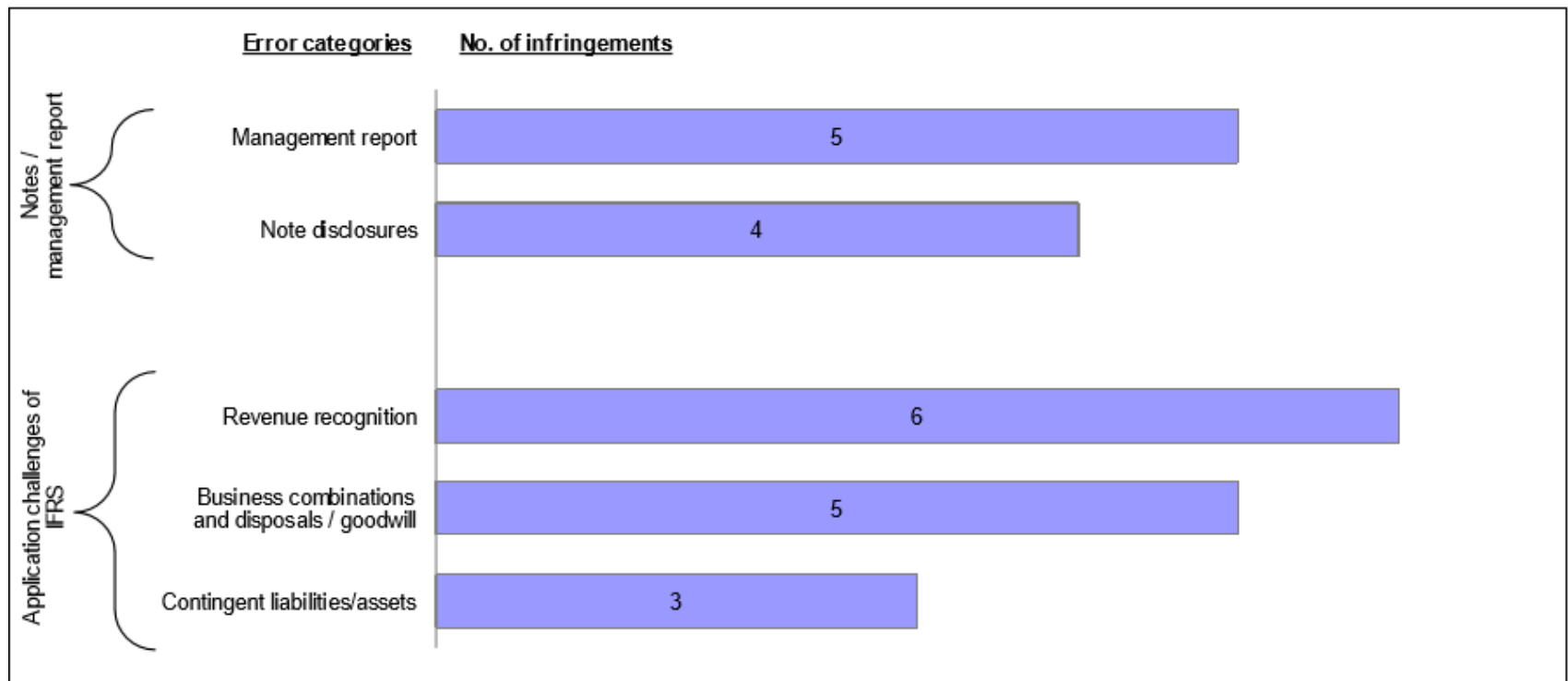
Completed FREP Examinations by Type of Examination and Error Rate



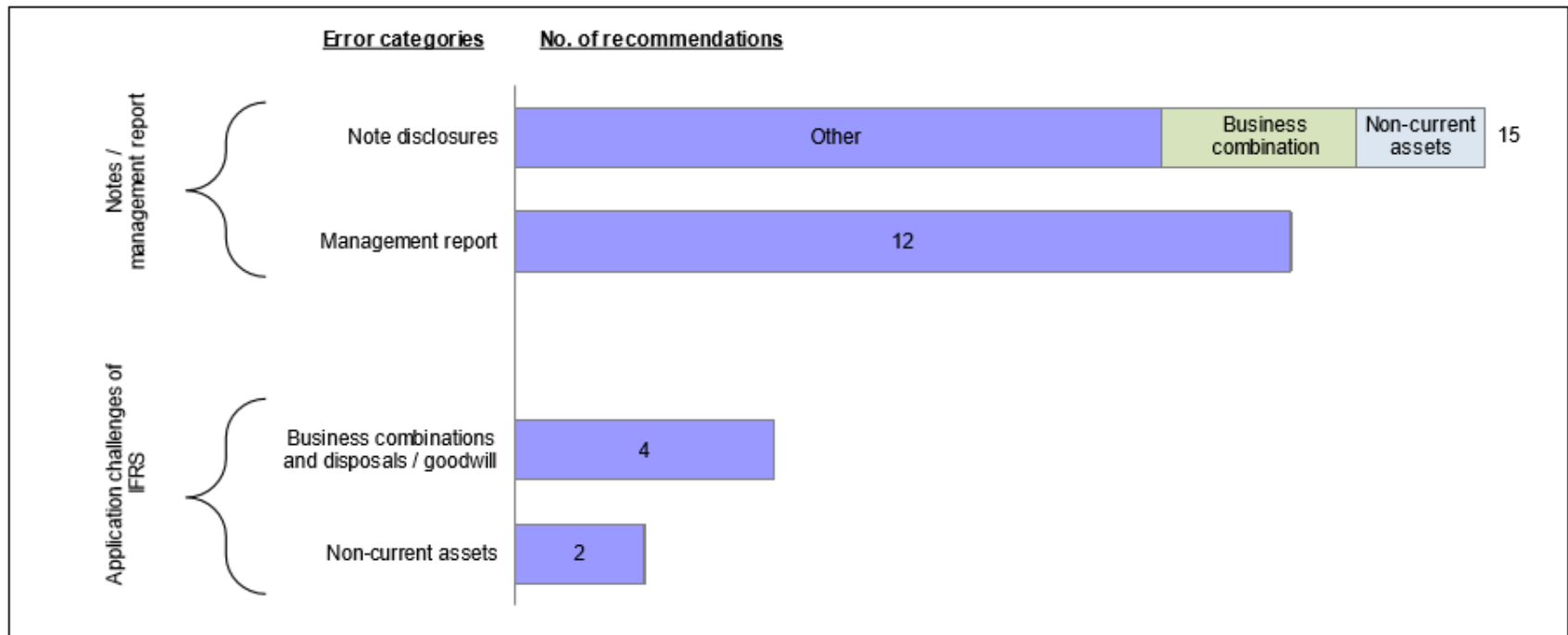
Completed FREP Examinations by Stock Index and Error Rate



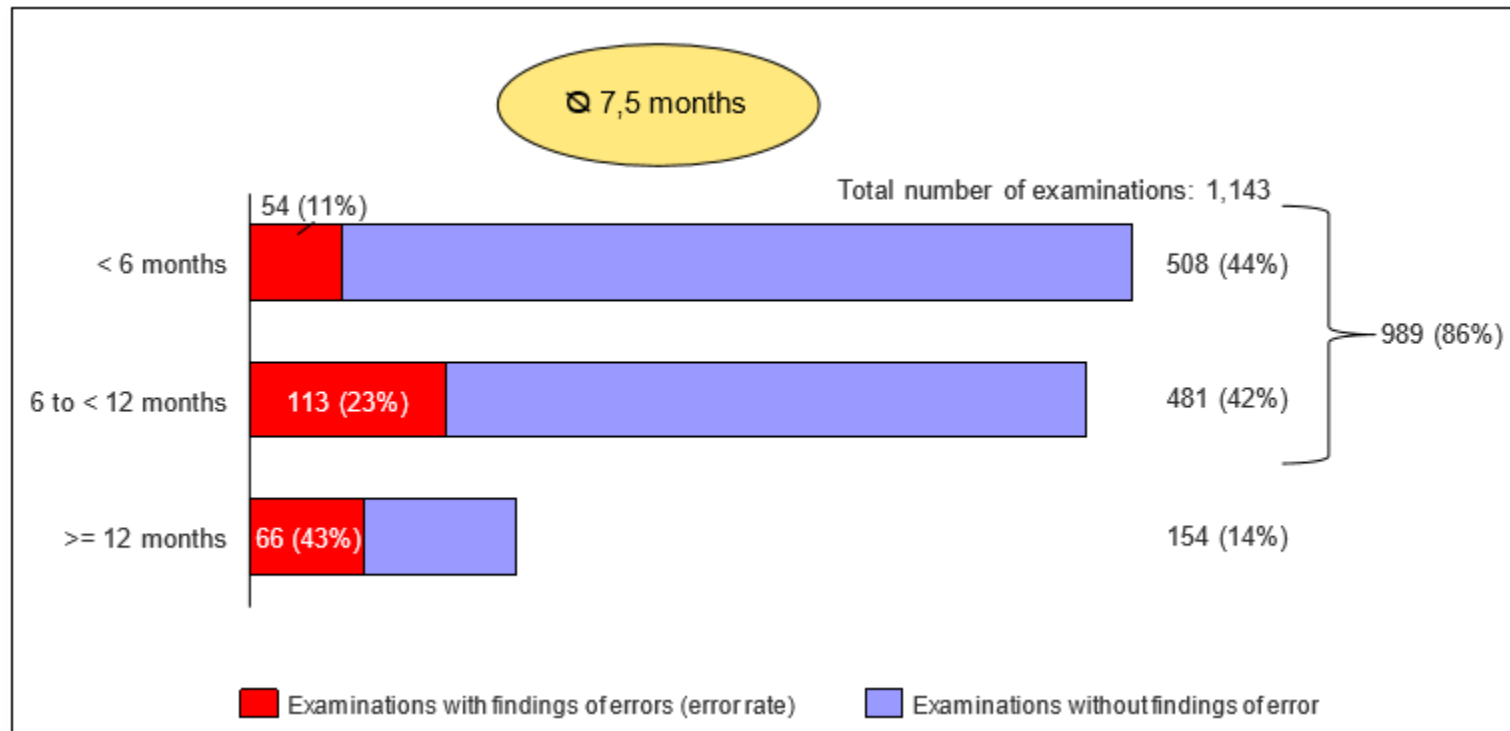
Most Common Types of Errors



Most Common Recommendations to Companies



Length of examinations 2005 to 2015



Factors for Errors

The errors found in 2015 were again attributable to the following factors:

- Comprehensiveness and application challenges of IFRS with respect to accounting for complex transactions
- Insufficient reporting in the notes and in the management report

Error Announcement (excerpt) of Deutsche Bank Aktiengesellschaft

**Publication acc. to
§ 37q (2) 1 WpHG**

The Financial Reporting Enforcement Panel (FREP) discovered, that the consolidated financial statements of Deutsche Bank group as of 31. December 2012 and the group management report for 2012 contain errors:

... Neither in the notes to the consolidated financial statements nor in the group management report of Deutsche Bank AG the extent of resource outflows from litigations that are not unlikely, and the impact of legal risks on earnings and the financial condition of the group are made sufficiently clear. At the balance sheet day the legal litigation risks of the Bank include numerous civil lawsuits and significant regulatory proceedings.

The development of provisions for pending litigation is not separately shown in detail in the notes although this is required by IAS 37.84. Contrary to IAS 37.13 f. and IAS 37.85 f. it is not clear which legal risks have been provided for and which risks have not been accounted for following IAS 37.26 and which risks covered by contingent liabilities were quantified or only described verbally.

...

Frankfurt am Main, November 2015

Deutsche Bank Aktiengesellschaft

Error Announcement of Intertainment Aktiengesellschaft, Munich

**Publication acc. to
§ 37q para. 2 WpHG**

The Federal Financial Supervisory Authority (BaFin) discovered, that the consolidated financial statements of the group and the financial statements of the parent Intertainment Aktiengesellschaft as of 31. December 2012 contain errors:

1. The trade liabilities in the consolidated financial statements are understated by 1.5 Mio. Euro, because a liability with Paramount Pictures Corp. that existed since the end of 2014 at the latest. This is in conflict with IAS 39.14, IAS 8.42, which state that a financial liability has to be accounted for, when the company becomes part of a financial instrument, and material errors resulting from previous periods have to be corrected retroactively.
2. In the financial statements of the parent trade liabilities are understated by at least 1.5 Mio. Euro, because the liability with Paramount Pictures Corp. was not accounted for. This is in conflict with § 246 (1) sentences 1 and 3 HGB, which state, that the financial statements have to include all liabilities of the company.

Munich, December 2015

Intertainment Aktiengesellschaft

Translation of the error publication,
29th December 2015, eBundesanzeiger

Error Prevention Activities of the FREP



source: (www.frep.info)

3.4 FREP Enforcement Priorities for 2016

The following enforcement priorities for 2016 were announced in November 2015:

- Impact of the financial markets conditions on the financial statements
- Statement of cash flows and related disclosures
- Fair value measurement and related disclosures
- Revenue
- Business combinations

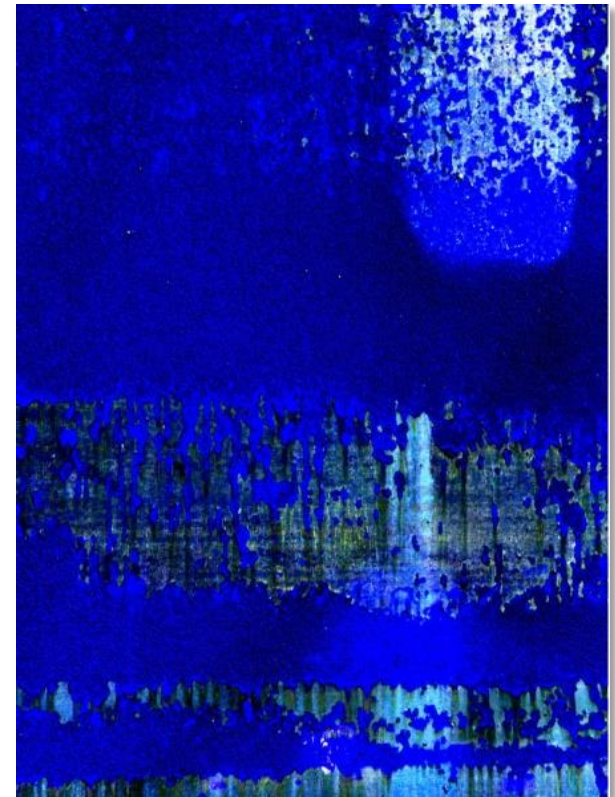
Chance for the preparers to get at least this right

3.5 Impact of the Activities of the FREP

- High-quality work done by the FREP
- Pressure on companies to perform better accounting (including a review in the following year whether the company complies)
- If necessary, the error has to be reported publicly
- Strengthening of the position of the auditors of financial statements
- Pressure on auditors to maintain high audit quality
- If necessary, note to WP-chamber (disciplinary proceedings against the auditor)
- Especially in the financial crisis (2007, 2008) the financial statement oversight system proved effective
- Number of capital market oriented companies decreased from 1,000 in 2005 to 800 in 2015

Continued: Impact of the Activities of the FREP

- Financial statements oversight serves strengthening the trust in the accuracy of financial reporting and, as a consequence,
- Increases trust in the capital markets



4. Outlook: Enforcement of Financial Reporting in Vietnam

- Information taken from publicly available sources
- www.ssc.gov.vn
 - Annual Report 2013 (English version)
 - Annual Report 2014 (English version)
- Annual Reports are not published on the English Website, but are only available on the Vietnamese Website.





The screenshot shows the official website of the State Securities Commission of Vietnam. The header features the SSC logo and the text "THE MINISTRY OF FINANCE STATE SECURITIES COMMISSION OF VIET NAM". A navigation menu includes links for Home, About the SSC, News & Events, Legal Documents, Company Database, Education, and Market Information. A language selector shows the UK and Vietnamese flags. The date "March 19, 2016" is displayed. A sidebar on the left lists categories like Leadership's Message, Development History, Functions and Tasks, Organization Structure, and Contact Us. The main content area features a large graphic for "2016 HAPPY NEW YEAR" and a news article titled "New Year's Greetings Message from the Chairman of the State Securities Commission of Vietnam".

THE MINISTRY OF FINANCE
STATE SECURITIES COMMISSION OF VIET NAM

Home | About the SSC | News & Events | Legal Documents | Company Database | Education | Market Information

March 19, 2016

Tin hoạt động

CHỦNG KHOÁN NHÀ NƯỚC
SECURITIES COMMISSION OF VIETNAM

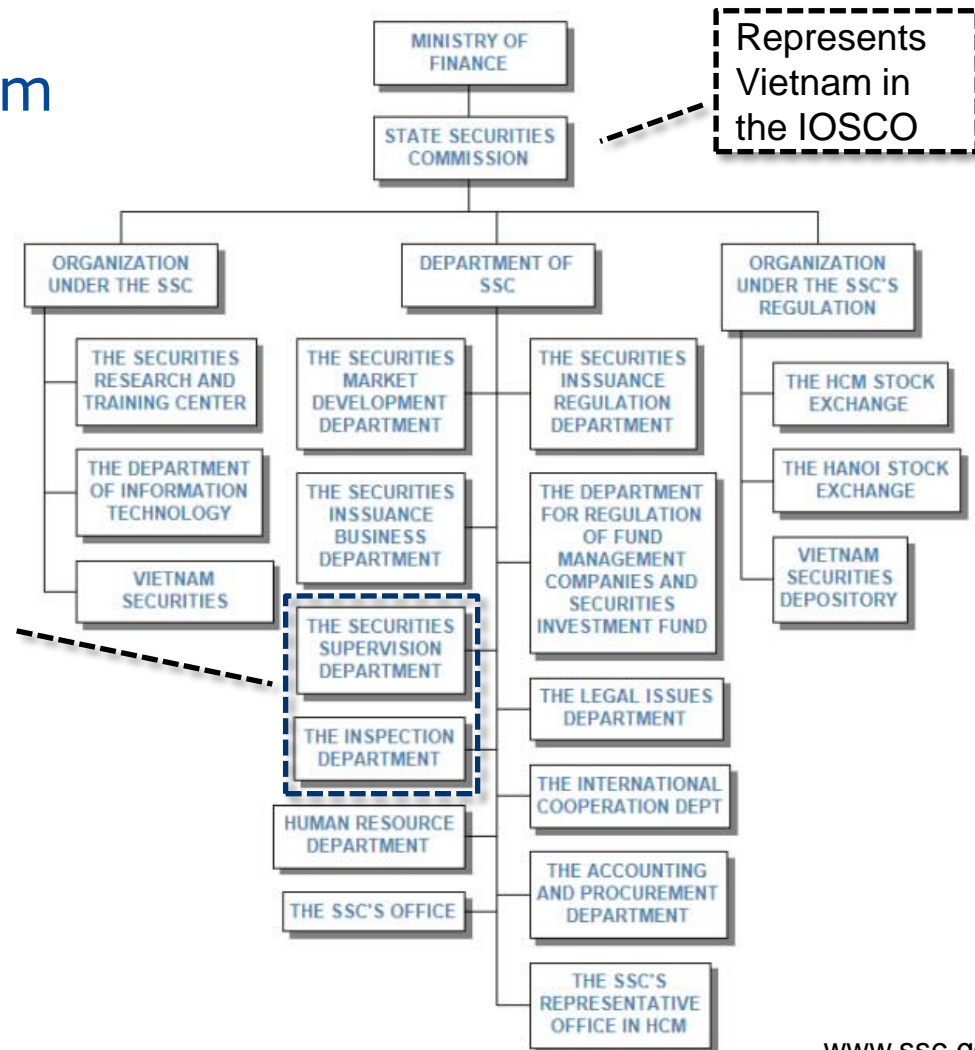
CHÚC MỪNG NĂM MỚI
2016
HAPPY NEW YEAR

New Year's Greetings Message from the Chairman of the State Securities Commission of Vietnam

On behalf of the leadership of the State Securities Commission of Vietnam, I would like to convey our most sincere sentiments to all working and retired cadres and staff of the securities sector, the market participants and journalists of media agencies in the field of securities on the occasion of the New Year 2016.

SSC - State Securities Commission of Viet Nam

as of 1st January 2016



www.ssc.gov.vn/

Organization of the SSC (comparable with BaFin including FREP) / Supervision and Inspection Departments

- Management
 - 1 Chairman
 - 3 Vice chairmen
- Inspection and examination teams
 - 14 inspection teams
 - 33 examination teams
- Cost not published in the annual report



Sanctioning of Administrative Violations



THE MINISTRY OF FINANCE
STATE SECURITIES COMMISSION OF VIETNAM

Home About the SSC News & Events Legal Documents Company Database Education Market Information

News & Events Inspection and Supervision

March 15, 2016

News & Events

- Disclosure - News
- Inspection and Supervision
- Issuance Activities
- Business Operations
- International Cooperation
- Strategy for Development
- Anniversary Activities
- Projects, Investment, Bidding and Public Procurement

Enforcements

Administrative sanction against violations in the field of securities and the securities market with regard to Kinh Bac Consultants and Investment JSC
2/5/16
On 05 February 2016, the State Securities Commission (SSC) issued Decision No.162/QĐ-SSC sanction for violations in the field of securities and securities markets of the Kinh Bac Co., Ltd. (address: Que Vo Industrial Park, Phuong Lieu Commune, Que Vo District, Bac Ninh Province, Vietnam)

Administrative sanction for violations in the field of securities and securities market with regard to Mr. Xiang Qing Song
2/4/16
The State Securities Commission (SSC) issued Decision No.157/QĐ-XPVPHC on administrative sanction with regard to Mr. Xiang Qing Song (address: No. 11 Cen Shan Street, Long Du, Zhejiang Province, China)

Administrative sanction for violations in the field of securities and securities market with regard to Ms. Nguyen Thi Xuan
2/4/16

In 2013: 108 decisions of sanctions for administrative violations with total fines of over 8 billion VND; (approximately 320.000 Euro)

In 2014: 121 decisions of sanctions for administrative violations with total fines of over 10 billion VND; (approximately 400.000 Euro)

www.ssc.gov.vn/

Differences at First Sight*

	Germany		Vietnam
	BaFin	FREP	SSC
Type of organization	Federal Financial Supervisory Authority, controlled by Federal Ministry of Finance	Privately organized association, supervised by the BaFin	State Financial Supervisory Authority, controlled by Ministry of Finance
Enforcement of capital markets	Focus is on capital market participants	Focus is only on financial reporting	Focus is on capital market participants
Enforcement of financial reporting	Only on the 2nd stage (rarely)	Mainly done on the 1st stage	Not mentioned in the Annual Reports of the SSC
Sanctioning	Companies with an error are ordered to issue an adhoc publication in the federal gazette within two weeks	Errors are reported to the BaFin (see BaFin)	Fines have to be paid if violations against the law were found. Cases are published on the website of SSC (under sanctions)

*) needs further research

Room for Questions and Discussion



Thank you for your attention and discussion!



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