Something as simple as an e-mail from any employee worded in an ambiguous way can trigger an investigation that necessitates the hiring of external attorneys, said Suzanne Schoettger. “In the end you find out nothing wrong happened, but meanwhile you were distracted from business and potentially ruined your relationships in a foreign country. This is why all employees should be given training in the corruption laws.”

Red flags

Schwartz and panelists agreed that risk assessments should start with the most obvious red flags.

■ Some countries are more likely to be hotbeds of corruption than others. The Transparency International Corruption Perception Index ranks countries perceived to be high risk for this kind of activity. Companies low on the index automatically raise a red flag.

■ Bonuses or payments directed to an account in the Channel Island for services provided in some other country.

■ Beware the ‘politically exposed person’ which is a government official’s close family member or business associate. This might be a very innocent relationship but could be very risky under the FCPA rule.

■ Joint ventures. From an FCPA perspective, this is a high risk area to the extent that you rely on third parties or agents to do business on your behalf. And if you are a minority partner you have very little ability to control the business activity of the company. This is why it’s important to know who you’re dealing with, their reputation and business practices and how they acquired their book of business. It’s a good idea to write compliance issues into contracts and it’s best to do so in the local language.

“The FCPA is about where you touch government, and there are particular industries that are problematic in distinguishing between private and state-owned entities,” said Schwartz. He cited oil and pharmaceuticals in China, telecom in Netherlands, and the health care industry in Canada.

“Canada may be fine from a corruption perception, but the reality is you’re dealing with government officials when you’re dealing with health care in Canada.”

The future of the EU in a globalized world

PETER J. WIDMER is financial advisor to a small number of wealthy European families. He previously was Chairman of Julius Baer Investment Management Inc. New York/London, Chairman of Julius Baer Investments Ltd London and a Member of the Executive Board of Julius Baer Holding Ltd. Zurich. He was responsible for all institutional asset management business of the group outside Switzerland. Prior to working for Julius Baer, Widmer was with Swiss Bank Corporation Zurich and various asset management and brokerage firms in Geneva and London. He was a member of the Swiss Financial Analysts Society and holds the Commercial Diploma of the Swiss Business Association.

In 1957, six European nations signed the Treaty of Rome to create a common market for goods and services while laying the groundwork for peace and security. To what extent has the EU fulfilled this mission?

“What started as a loose confederation of six fiercely independent nations has changed the course of history, initiating the longest period of peace in more than 300 years,” said Peter Widmer, addressing the KPMG-University of Colorado Denver Global Enterprise Institute on the subject of the European Union.

“Today, the EU is a major world power representing 27 member countries with a combined population of 450 million,” said Widmer. These numbers make it a significant trading bloc on a level with the US, China, Russia and India.”

Furthermore, Widmer added, “By providing democracy and stability in Europe – including former Soviet Union countries in eastern Europe and western Balkans – the EU has increased the potential for trade and growth across the continent.”

The EU seeks close cooperation with NATO (North Atlantic Treaty Organization); 19 member countries of the EU are also members of NATO.

Years of negotiation

In the context of the world in the late fifties, the European Union was a visionary organization based on the idea of sovereign nations sharing a common destiny. “This is remarkable given the history of Europe,” said Widmer.

While the first condition of membership is an easy one – the applicant must be a European country – the rest of the process involves meeting requirements specified in the EU’s 35 acquis (chapters of law) relating to the stability of a prospect's democratic, political, economic and legal institutions as well as any human rights concerns and corruption issues that may exist.

In addition, there must be a functioning market economy in the country as well as the capacity to cope with competitive pressures and market forces within the EU. Meeting these requirements can take years of negotiation. Hoping to accede to membership are Turkey, Croatia, and Serbia.

With growth has come challenges. If a sign were to be posted at the entrance of EU headquarters in Brussels, it might read: 23 official languages spoken here. While English and French are usually preferred for verbal communications, documents have to be generated in the written language of the member state to facilitate comprehension. This makes for an “unwieldy, labor-intensive organization,” and is a weakness in Widmer’s view.

The EU’s rapid expansion has led to growing pains and, in some cases, dissatisfaction with how the organization is run. According to Widmer, citizens feel left

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FCPA jurisdiction

The FCPA has territorial jurisdiction over foreign companies and nationals. Briefly, this includes:

■ Any company doing business abroad, whether foreign or domestic, that has traded on any exchange in the US;

■ Any foreign or domestic company doing business in the US whether or not it’s publicly traded;

■ US residents working for a foreign company. Said Schwartz, “Even if you’re working for a company that is organized and existing under the laws of France and doesn’t do business in the US or have any trades in the US, you’re still subject to the FCPA.”
Opportunities abound despite global economic woes

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out of the democratic process and smaller members feel underrepresented. “This is what led to the rejection of the constitution in 2005 by France, Holland and Ireland.”

The Treaty of Lisbon, the successor to the rejected constitution, would improve administrative efficiency and democratic transparency and implement a host of reforms, one of which would allow majority rule in many cases rather than the unanimous decisions now required. However, the treaty has yet to be ratified by all 27 members (as of this writing).

Then there is the issue of national egos. It is hard for 27 countries to take a single position on world affairs when nationalism rears its intractable head. Small wonder “the EU rarely speaks with one voice,” said Widmer. “An exception is the recent financial crisis” in which the European Commission agreed on a bold plan to boost business and consumer confidence.

“It is a serious crisis such as this that brings out the best in the EU,” Widmer said.

The internal workings of the EU must be addressed going forward. Externally, the EU is grappling with issues exacerbated by global economic woes and tensions.

■ Energy. Russia is the EU’s major supplier of energy. In 2007, 38% of the EU’s gas and 33% of its oil imports came from Russia. These figures can climb to 100% for some European countries – especially former Soviet republics and satellites – which rely on Russia for virtually all their energy. “Russia is quite ready to use its energy resources as a threat to the EU,” said Widmer. In what was considered a courageous action, all 27 members of the EU held an emergency meeting on Sept. 1, and agreed to condemn Russia’s aggression in Georgia.

■ Expansion. “The EU has to decide on the limits of expansion in terms of geography, politics, culture.” Turkey, which has been negotiating with the EU for years, has most of its territory in Asia and is only minimally in Europe. Consequently, there is some opposition to approving membership for this large and predominately Muslim country. “EU expansion philosophy depends on the outcome of negotiations.”

■ Globalization. Depending on where one stands, globalization is a desirable challenge to improve competitiveness or a threat to workers at risk of having their jobs outsourced. The European Commission has made a clear choice in embracing globalization and rejecting protectionist policies.

The euro vs. the dollar

The euro has been strengthening against the dollar as a reserve currency. Already, 25 percent of the currencies held by governments and institutions worldwide is in euros and this makes the US “financially vulnerable,” said Widmer.

Introduced in 1999, the euro is the official currency of the EU. Of the 27 member states, 15 have adopted the euro as their single currency after meeting criteria such as a budget deficit of less than 3 percent of its GDP, a debt ratio of less than 60 percent of GDP, low inflation, and interest rates close to the EU average. Slovakia has been approved to replace its national currency with the euro in 2009.

The European Central Bank (ECB) is responsible for implementation of monetary policy for the euro area. Unlike the US Federal Reserve Bank which has a larger mission relating to interest rates and the overall health of the economy, the ECB is concerned primarily with maintaining the euro’s purchasing power and price stability.

Both the European Union and the United States are in recession. “It’s the first financial crisis in a globalized and integrated world.” Widmer believes the recession will be sort-lived, but in the aftermath, “there may be serious inflation because of the enormous injections of cash into the world’s financial system.”

How are the dollar and euro faring in this downturn? “The dollar benefits initially in world crises, but it is a fundamentally weak currency whereas the euro’s fundamentals are strong.

“Despite the continuing weakness of the dollar since 1971, there has been no improvement in the US trade balance,” said Widmer. “Europe is an attractive market for US manufactured products, but much of that manufacturing has been lost to foreign producers.” The result? Reduced exports and a higher trade deficit. Meanwhile, “the US borrows from China to buy the products that China makes.” One solution, he said, may be in emulating Switzerland’s focus on high value-added and innovative businesses that can be grown at home.

“The US is in a difficult position because its competitiveness is diminishing as its dependence on foreign financing is increasing,” said Widmer, pointing out that “the US is the world’s largest debtor. In 2007, Europe was responsible for half the $280 billion in foreign direct investment (FDI) into the US as the economy then was considered to be productive and innovative in certain industries.” However, there are only 6 triple-A companies left in the US compared to 30 in 1980.”

With the collapse of the Soviet Union in 1991, the US became the world’s sole superpower. “But a new pattern is emerging and the trend is away from one superpower to two and three. The European Union and China have become strong contenders for this designation.”

Widmer stressed that opportunities still exist for US companies in all areas where there is technological leadership, excluding industrial products and finance.” Mid-market companies should be especially well-positioned to succeed in the downturn provided they have experienced management and sound business models.

“By 2010 we will see growth coming back. Environmental issues will create a big market and companies that are solution-oriented will do well,” advised Widmer. •

European Union Institutions

The EU, said Peter Widmer, is best described as a decision-making triangle:

Council of European Union. Also known as Council of Ministers or Council. Comprised of one representative per member state — either its head of state or head of government — the Council is the main decision-making body and defines the general political guidelines of the EU. The presidency is held by each member state, in rotation, for a period of six months. (Not to be confused with the Council of Europe, a non-EU organization.)

European Parliament. The 785 Members of the European Parliament (MEPs) are elected every five years by citizens in their respective countries. MEPs sit according to political groups rather than nationality. “It is well balanced between left/right parties,” said Widmer. The Parliament has legislative and budgetary powers.

European Commission. The EU’s administrative and executive body, the Commission is headed by twenty-seven commissioners, one from each member state, who are nominated by national governments and approved by the European Parliament to serve five-year terms.