
Financial Services Reform Act – The Regulator's Experience So Far
Questions & Answers

ROWAN RUSSELL: Rowan Russell from Mallesons Stephen Jaques in Sydney. My question is to Sean Hughes and it really follows up Joe Longo's first theme of benchmarking these 2100 pages of new legislation to test whether they are improving our financial system. I invite Sean to answer that question against the pyramid of relation that he put up on the screen. Should we be testing this regulation by reference to whether you are able to, as you said, whack more crooks that you know you can't whack at the moment? Is it primarily to put the opportunists back on track? Or is it to ensure that the compliers provide better service because, let's face it, most of the people represented in this room are compliers and they will do whatever it takes to comply with the law, even though that will be at considerable cost, or do you think this regulation is really intended to do all three of those things, and should we be benchmarking against each of those objectives?

SEAN HUGHES: It is a very good question and I will answer it in a Sir Humphrey fashion. I think you need to understand that the Commission recognises - and this is drawing in part on Joe's statement before - that simply reporting as we are mandated to do each year to Parliament by reference to the number of heads on sticks we achieve is one way of reporting but not possibly a clever way of reporting and what we are seeking to do is, I suppose, by reference to the pyramid, move more people out of the crooks category into those who we educate and those who we monitor compliance of.

In terms of the middle category, I think there will always be opportunists. There will be opportunists because they are either new to the industry, they are ignorant of the particular requirements or, by nature, they seek to take advantage where they can. Obviously, our preference is to ensure that the compliance pool is as large as possible.

But your question raises a very apposite issue for us at this time, as we are preparing our annual report to Parliament and, this year, it will report as it has traditionally has done on the number of regulatory and enforcement outcomes which we have achieved. But we are examining internally - and FSRA is one of the drivers for this - whether there are other ways in which we can measure our performance which meet both the needs of industry and government.

If I can give you one example. We anticipate that under the new regime we will receive a substantial increase in the number of relief applications than we have done in past years and our best experience for that would be in relation to managed investments where, for almost every new responsible entity we licensed, we received one relief application. So that was about 2000. Now, we are anticipating somewhere between 7000 and 8000 new licensees. If we receive 7000 to 8000 relief applications, I'm not sure we'll be able to cope.

But the measurement of our success in terms of providing better guidance to industry, clearer policy settings and more interpretive assistance in terms of the legislative requirements would be over a period of time for there to be a decrease in the number of relief applications.

So we want to get cleverer about the way we measure our performance. We don't actually have the benefit of being able to benchmark our performance against a like regulator either domestically or overseas and so, therefore, there is going to be a degree of trial and error, but it's a very good issue and I can assure you it is one that is occupying our mind.

SUSAN BROOKS: Just one other thing that's interesting. If you look at the objectives of the new law, really, the only two that you could remotely try and put a noose around is to promote confident informed decision-making while facilitating efficiency, and the other one being fairness, honesty and professionalism by those who provide services.

I think that you could probably do some performance assessments against those, but how on earth you do performance against the other objectives, flexibility and innovation in products, fair and orderly and transparent markets and reduction in systemic risk and the provision of effective services for clearing and settlement, I mean, they're so full of waffle that they are not tangible.

So I think as an organisation we're very conscious that we'll be able to, as a licensee, address the first two I mentioned, but God knows how you do the others because, I think, you know, it's nonsense. And I agree with Joe that you absolutely have to address this issue. Why do we need 2000 pages of legislation in a relatively simple thing that probably could have been handled in about 30 or 40. Mistrust? I think so.

ROGER DRUMMOND: Roger Drummond from Bell Gully, Wellington. A question to Sean Hughes. Could I ask him, perhaps, to look into a crystal ball. Given the appointment of Jane Diplock as Chairman of our New Zealand Securities Commission and the trend towards greater harmonisation of business law between Australia and New Zealand, I would just be interested in any thoughts as to whether we might see some similar legislation being implemented in New Zealand?

SEAN HUGHES: Thank you, Roger. Roger used to be one of the people I worked for. I think, obviously, Jane having been an Executive Director and former New South Wales Regional Commissioner for ASIC, you could assume that Jane will and has taken across the Tasman some of her own views in terms of how the New Zealand industry might be regulated. I think, though, there are some quite different practical issues in New Zealand from our perspective which might make it difficult to replicate the situation in New Zealand and, of course, we are also cognisant that there are many of the Australian operators who are operating in New Zealand and they, in terms of their compliance structures, would need to think about the expense and difficulty of operating two different or inconsistent compliance regimes.

Of course, we would see that situation ourselves in terms of foreign owned institutions, for instance, the American institutions, who have to comply with local US laws and, to the extent there is any inconsistency with Australia, they have to deal with those. But I think your question, Roger, is probably a good one for Jane when you meet up with her soon.

SPEAKER: Just as a footnote to that, if my memory serves me, weren't, I think, discussion papers released last week in New Zealand on market manipulation, insider trading, and I've forgotten the third one, but on the whole question of markets regulation. My understanding of the content of those papers is that New Zealand is looking very seriously at modelling any new legislation on the Australian regime for insider trading and market manipulation.

ANNA DAY: Anna Day from the Banking Ombudsman's Office. I've got a question for Susan. Susan, I was interested in your comments about the training requirements for staff and the extensive training that is going on within Westpac, and it suggested to me that there is really going to be a move away from the concept that a banker is not an adviser and so issues of duty of care, and there may well be a real shift in the law in that area of risk for banks.

SUSAN BROOKS: No, I don't see a shift. I see it actually of the bar's being lifted. The mere fact that you actually have to go through a needs-based advice giving process is fundamentally different to what happens now for a lot of front-line staff. So I think there are - I would anticipate that it will be a win-win. There won't be as many complaints as what we have now because there will be a better fit between what the customers needs are and their understanding, going through that sort of structured process, they will get the strong impression or understand that you're focusing on their needs, not on something that you've picked out of the air as the right product without asking a series of questions that deals with the needs of the individual. Risk, you know, how long they want to invest for, what sort of return are they looking for, are they interest based or capital growth - all these sorts of things will give a very strong comfort to the retail consumer.