



ASIC
Australian Securities &
Investments Commission

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Question No.	010
Topic	Performance measurement in the context of the FRAA review
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Committee member	Senator Deborah O'Neill

Question

I'll now go to another topic, prioritisation, which the FRAA dealt with. I think one of the things that ASIC need to improve, and I think we are improving, is communicating our priorities. Regulators often say, 'We can't be everywhere; we can't do everything,' which is obviously true. But then we have to say, 'Well, why are you doing what you are doing? Why are you prioritising this over something else?' One of the ways we confidently prioritise is by understanding our market and our community, and saying, 'We've chosen these issues to solve because we think they're the important ones.' I'm not saying they're the only ones, but we think they're the ones that are the most impactful. So I think it's a good thing for ASIC, in its latest corporate plan, to define these eight priorities. It's actually eight plus one. The 'plus one' is ASX.

CHAIR: A minor addition to the workload!

Mr Longo: We'll just leave that one at that. It's eight plus one. So prioritisation and how we communicate that is really important.

Now, early on, we set up a regulatory efficiency unit. One of the points Nicholas Moore made about surveillance, to try to answer the question 'what are you doing', is about this information gathering. We get a lot of feedback from the market that they want that information gathering to be more targeted and not duplicative. We've taken that on board. In connection with investigations, for example, we're doing more pre-investigation planning with entities, where we think that's appropriate. We're making it clear to them, 'You say you want to be cooperative; this is how you can be cooperative.' So we're doing more of that. I think engagement is a really significant part of what we do, but with it comes an understanding that that engagement will not undermine our independence.

CHAIR: It sounds like there's toing and froing. What I want to understand is how much value-adding you're giving to the considerations that FRAA have already indicated. We've looked at the report. Senator Scarr and I have indicated that we thought it was a very good one.

Senator SCARR: Yes.

CHAIR: Is it duplicative? Were you already doing all this good stuff? Or has the FRAA review driven responsive change from ASIC? I want to get to the nub of that.

Mr Longo: I think in fairness to FRAA and to ASIC, this is the first time FRAA's done a piece of work like this. In fact, FRAA as an institution is I think unique, globally. Mr Moore touched on this as well. They're looking for longitudinal—

CHAIR: Development.

Mr Longo: Over time, yes. This is just the beginning. This is not, to use a traders expression, digital. This is something that's going to evolve over time. Whether it's culture, technology, how we do surveillance or how we do engagement, this is a point in time. We did a lot of work together. There are elements of the data that we would say have been overstated or could have

been used differently. So, going to the final one, of performance measurement and benchmarking, the report itself says, 'The lack of globally accepted metrics reflects the difficulty of the task.' If we just pause on that, there are regulators, like the SEC, who have been out there since the 1930s, or the CFTC, some UK regulators or European regulators, who've been around longer than us, and globally, no-one has ever solved this problem. It's the Holy Grail of regulation and enforcement: how do you know that what you're doing works?

I've been interested in this topic for many, many years. ASIC, before FRAA came along, was already doing some work in this area. I might ask Greg Kirk, who is our head of strategy and policy, who has done a lot of work himself on this topic, to maybe spend a moment on it, because I think of all FRAA's recommendations, this is the most ambitious. I've had this discussion with FRAA. I think Mr Moore talked about multi-year. That's going to take several years to really reach a point where people can say, 'Yes, we can see a metric there that can really measure ASIC's enforcement impact—for example, we can count the number of cases and penalties.' There are all sorts of ways of doing that, but this is the one feature I think that will be very challenging for all of us. I don't know if you want Greg Kirk to expand on that last point.

CHAIR: We're only scheduled until five. Mr Kirk, could we get you to put something on notice with regard to that for us.

Mr Kirk: That would be fine.

Answer

ASIC combines quantitative and qualitative indicators to evaluate our performance. This approach, set out in our corporate plan and reported against in our annual report, provides a narrative about our achievements and informs our future work.

We have been developing and increasingly applying an impact assessment methodology for our key projects. Rather than focus on the global impact of our work overall, this approach focuses at the project level. It involves identifying at the outset the specific harm that the project seeks to address and identifying metrics which indicate the scale or prevalence of that harm. We undertake the project, intervening using one or more of our regulatory tools. We then reapply those metrics to determine whether there has been change, whether directly in terms of reduced levels of the identified harm or more indirectly, for example, through changes to the business practices identified as contributing to the level of harm.

We are also piloting efficiency measures for our ongoing regulatory work, comprising time and cost measures. This work will better inform operational and management decisions and increase transparency and accountability. Ultimately, and where appropriate, we intend to expand on our public reporting on the efficiency of our activities once we have established suitable baselines and targets.

We will pilot the FRAA's suggestion that we measure the quality of licensing decisions by assessing reports of misconduct on recently granted licences and AAT reviews. We will also consider the use of AFCA complaints and regulatory actions, including enforcement outcomes, bannings and surveillances. We note that use of this data would need to be accompanied by contextualisation to mitigate issues with attributing any subsequent compliance issues to a point in time licensing decision.

We are also continuing to engage with the Financial Regulator Assessment Authority (FRAA) Secretariat and APRA to develop measures of the performance of the Australian financial system, noting that the FRAA report acknowledges the difficulty of this task.