



OICU-IOSCO

Enforcement and its Importance

Werner Bijkerk

Head of Research, IOSCO

BM&BOVESPA
Sao Paulo, 3 November 2014

Disclaimer

The views and opinions presented in this presentation are of the presenter only and do not necessarily reflect the views and opinions of IOSCO or its individual members.

Agenda

1. Introduction to IOSCO
2. Why does regulation matter?
3. Enforcement
4. How does society see us, regulators?

Agenda

1. Introduction to IOSCO
2. Why does regulation matter?
3. Enforcement
4. How does society see us, regulators?

IO스코's mission

IO스코 is the global standard setter for securities regulators, with members from 120 jurisdictions, and 85 self-regulators and other standard setters

It exists:

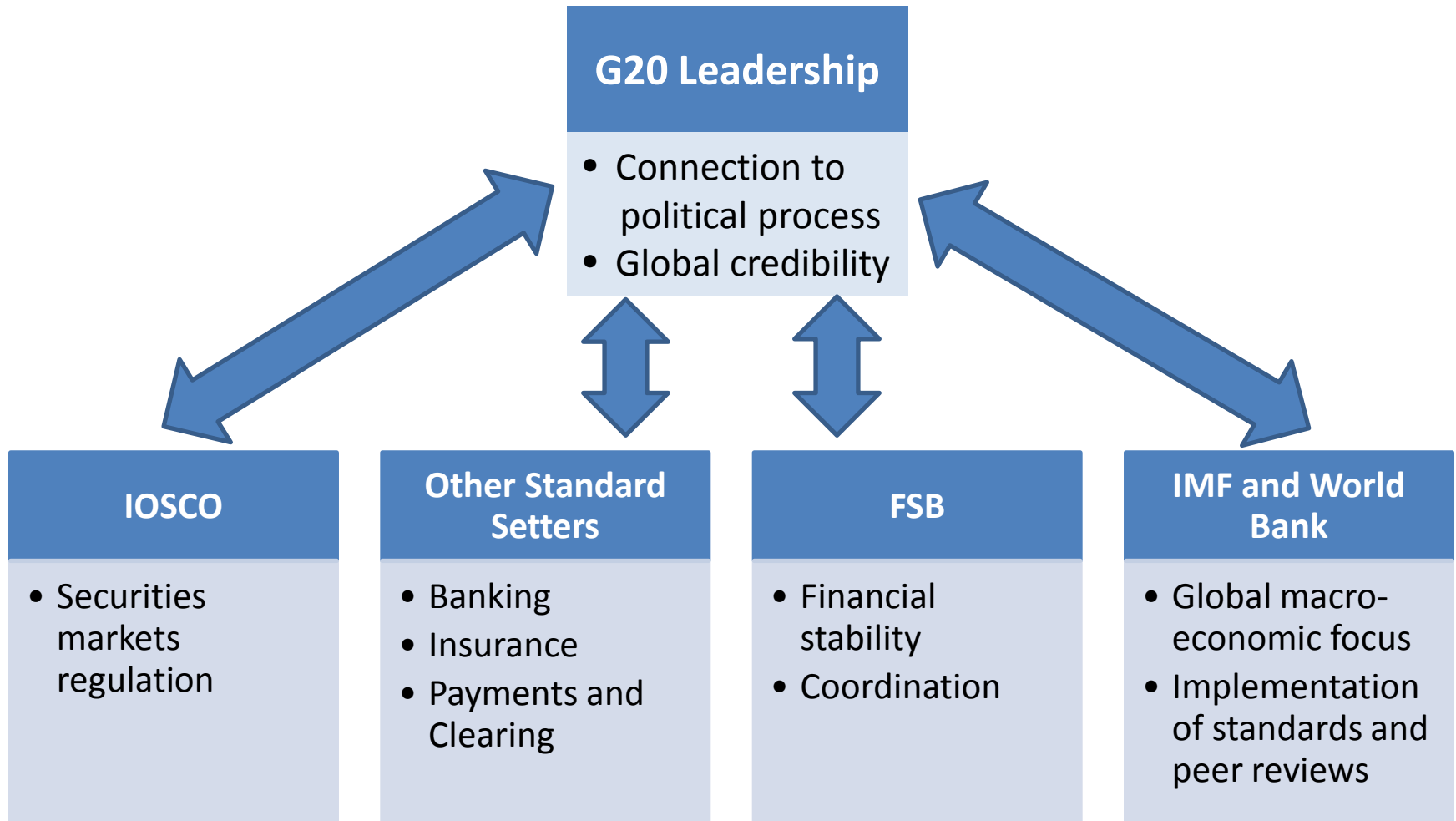
- To protect investors
- To ensure that markets are fair, efficient and transparent
- To reduce systemic risk

IOSCO's mission (2)

IOSCO members agree:

- To cooperate in developing, implementing and promoting adherence to *internationally recognized and consistent standards of regulation, oversight and enforcement* in order to protect investors, maintain fair, efficient and transparent markets, and seek to address systemic risk;
- *To enhance investor protection and promote investor confidence in the integrity of securities markets*, through strengthened information exchange and cooperation in enforcement against misconduct and in supervision of markets and market intermediaries; and
- To exchange information at both global and regional levels on their respective experiences in order to *assist the development of markets*, strengthen market infrastructure and implement appropriate regulation.

IOSCO in the global architecture of the reform agenda



IOSCO work process

Prioritization
and
inclusiveness

Prioritization
and
inclusiveness



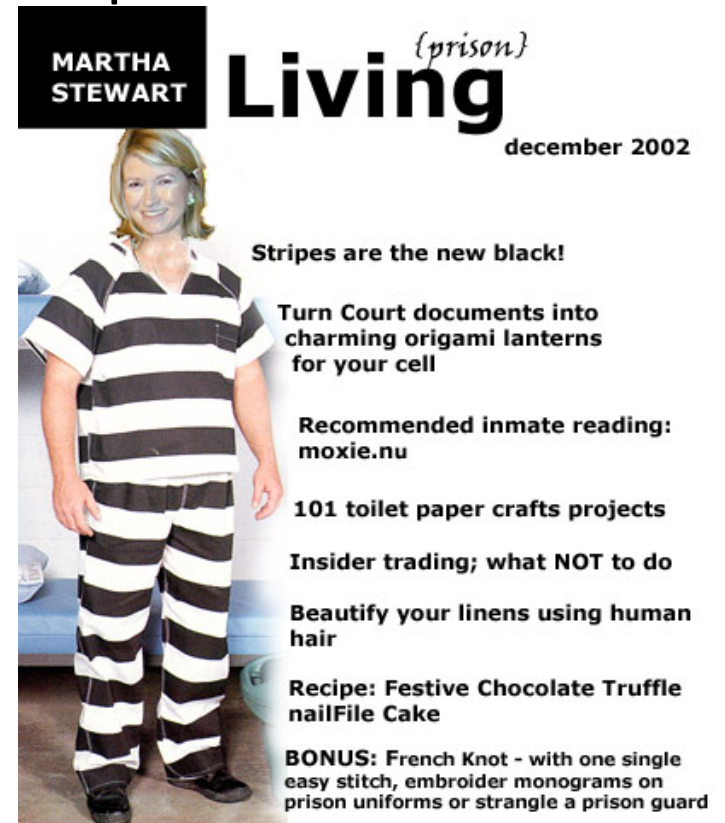
Feedback

Agenda

1. Introduction to IOSCO
2. Why does regulation matter?
3. Enforcement
4. How does society see us, regulators?

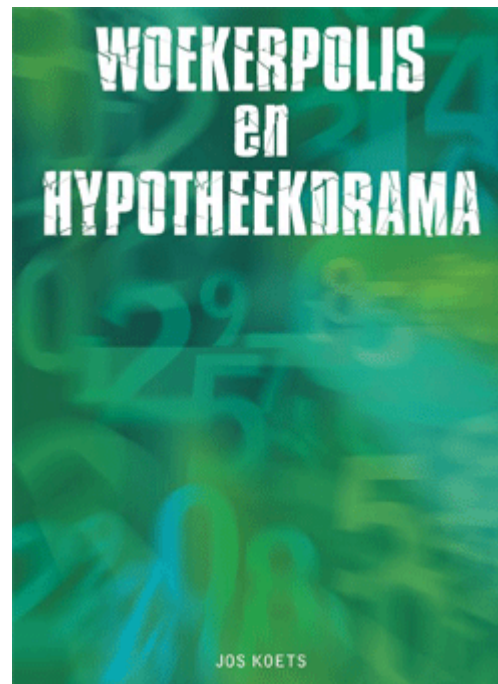
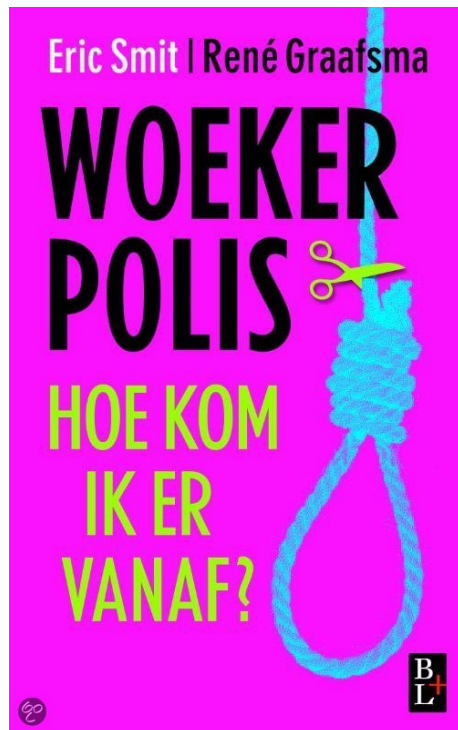
Why does regulation matter?

If you perform harmful activities, rules provide the basis for punitive action (enforcement):



Why does regulation matter?

...Or scandals...with billions of compensation, fines, class actions, and, consequently, shrinking profits and more rules and regulatory powers:



Why does regulation matter?

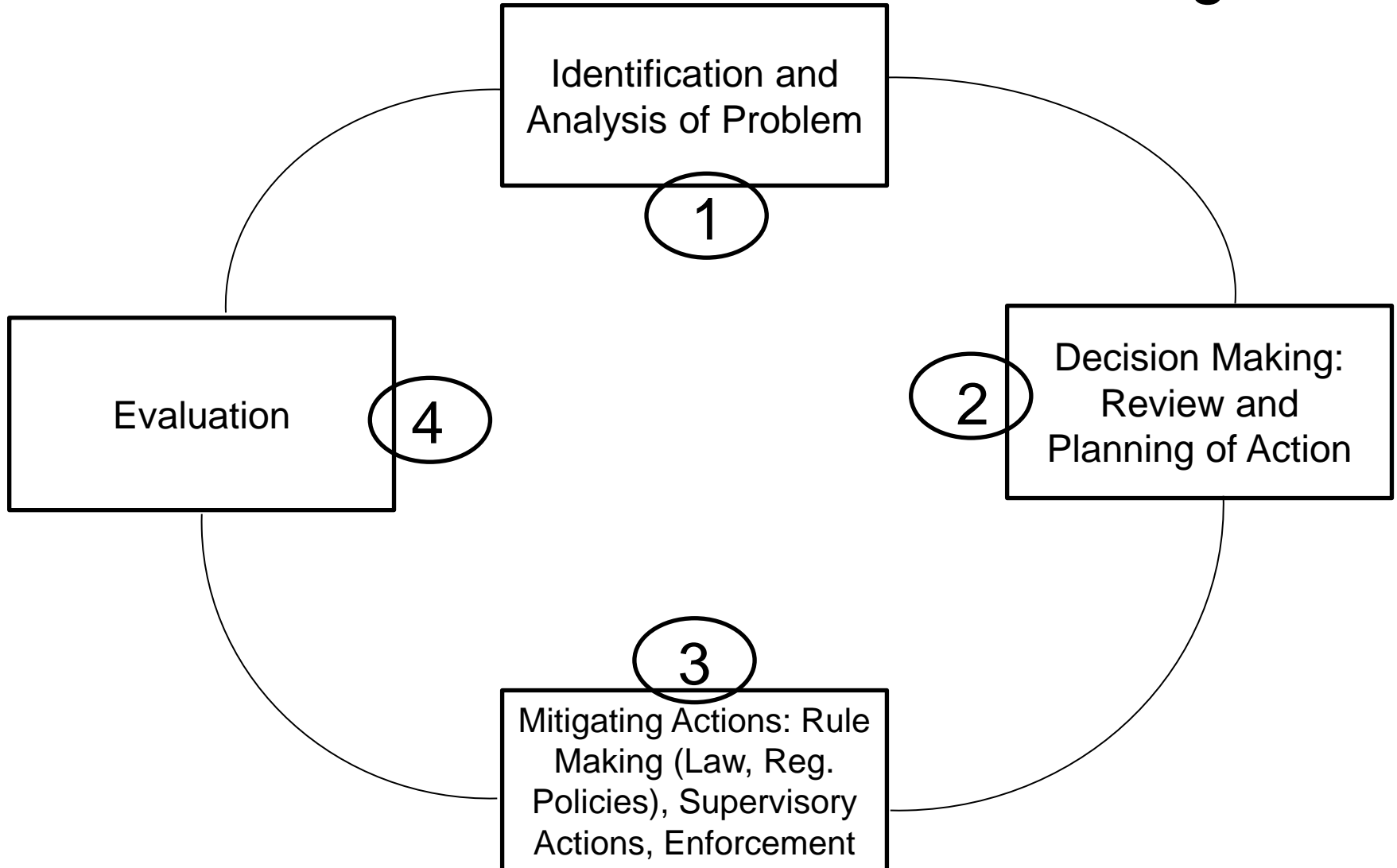
Interested stakeholders:

- Firms
- Participants
- Investors
- The State
- Politicians
- Regulators
- Press
- All of us
- Capital at low cost, reputation
- Level playing field, no illegal players
- Understand and get good products
- Execution of laws, budget
- No scandals, cost
- Salary, social esteem
- Scandals, sleeping regulator
- It's our economy

Agenda

1. Introduction to IOSCO
2. Why does regulation matter?
3. Enforcement
4. How does society see us, regulators?

The Job of the Securities Markets Regulator

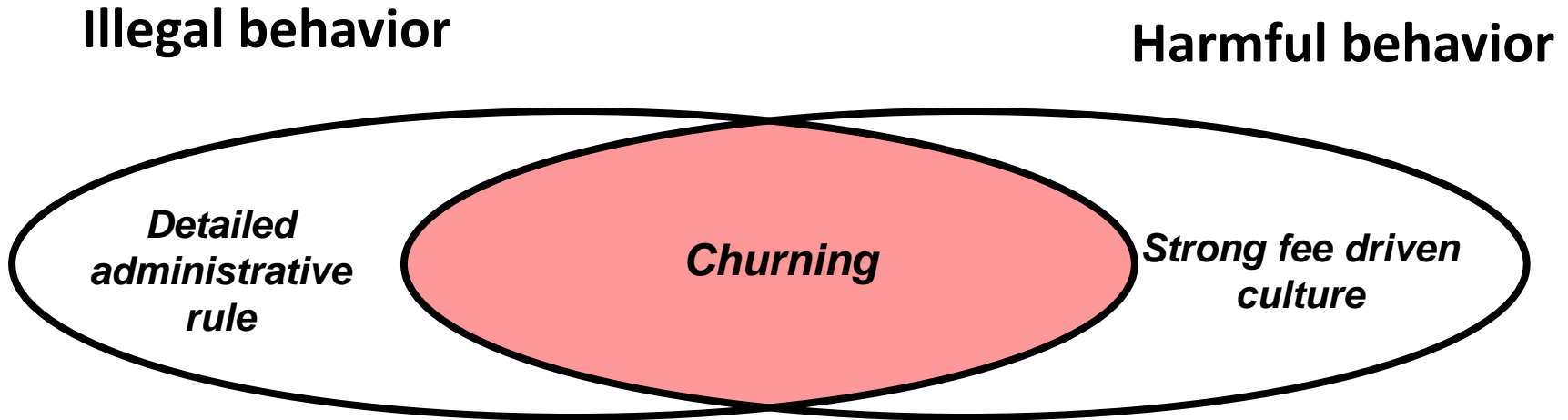


1. Identification and analysis of the problem

Getting the information

- Systematic use of supervisory information (surveillance, authorization, etc.)
- Systematic use of reports by compliance officers, internal auditors, and risk managers of firms
- Complaints by individuals, whistleblowers, etc.
- Market intelligence (e.g. gatekeepers)
- Undercover operations (e.g. mystery shopping)
- Surveys
- Risk analysis (top down, market, socio-cultural trends, etc.)
- Data mining and analysis

1. Identification and analysis of the problem



- Are all problems equal?
 - Fraud of *individuals*
 - Harmful/illegal practices of *groups* of individuals, firms, groups of firms
- What is the *level of damage* to society (investors, market integrity, financial stability)?

1. Identification and analysis of the problem

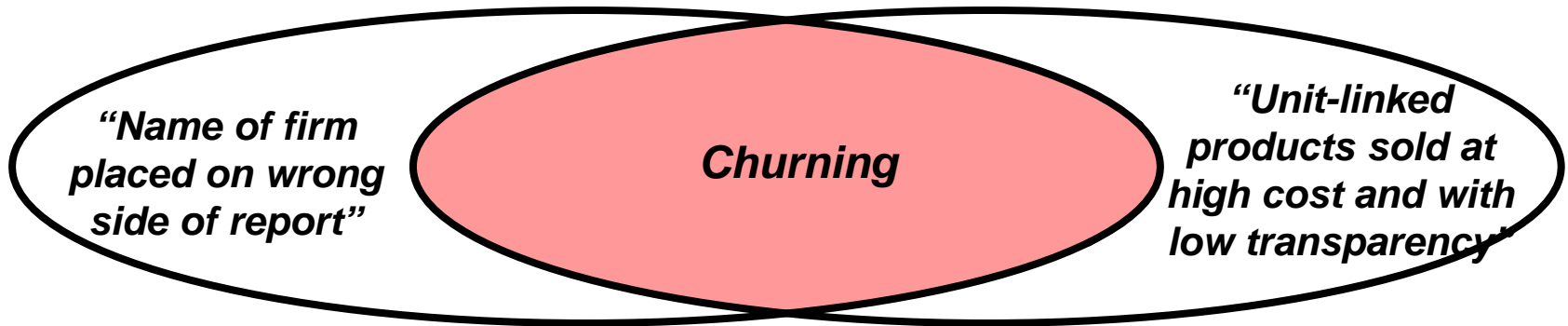
Analyzing the information

- Patterns or trends of risks/non-compliant behavior
- Invisible and underreported problems (dark figures)

2. Decision making: What to focus on?

Illegal behavior

Harmful behavior



Advantages and disadvantages of focus on
illegal behavior

- + Law is precise basis for enforcement
- + Accountability relatively simple in short run
- Law is slow and fallible instrument
- Do you attack big problems?

Advantages and disadvantages of focus on
harmful behavior

- + Regulation focused on fixing big problems
- + Better accountability in long run
- What are the applicable rules?
- How to enforce?
- Risk of getting too far away from the law

2. Decision making: What to focus on?

“Acknowledge the constant need to make choices. Make them rationally, analytically and democratically. Take responsibility for the choices you make. Correct, by using judgment, deficiencies of law. Organize yourself to deliver important results. Choose specific goals of public value, and focus on them. Devise methods that are economical with respect to the use of state authority, the resources of the regulated community, and the resources of the agency. And as you pick and choose what to do and how to do it, reconcile your pursuit of effectiveness with the values of justice and equity.”

(Malcolm Sparrow, *The Regulatory Craft*, p.244)

3. Mitigating actions. Are you relying on:

Rules

or

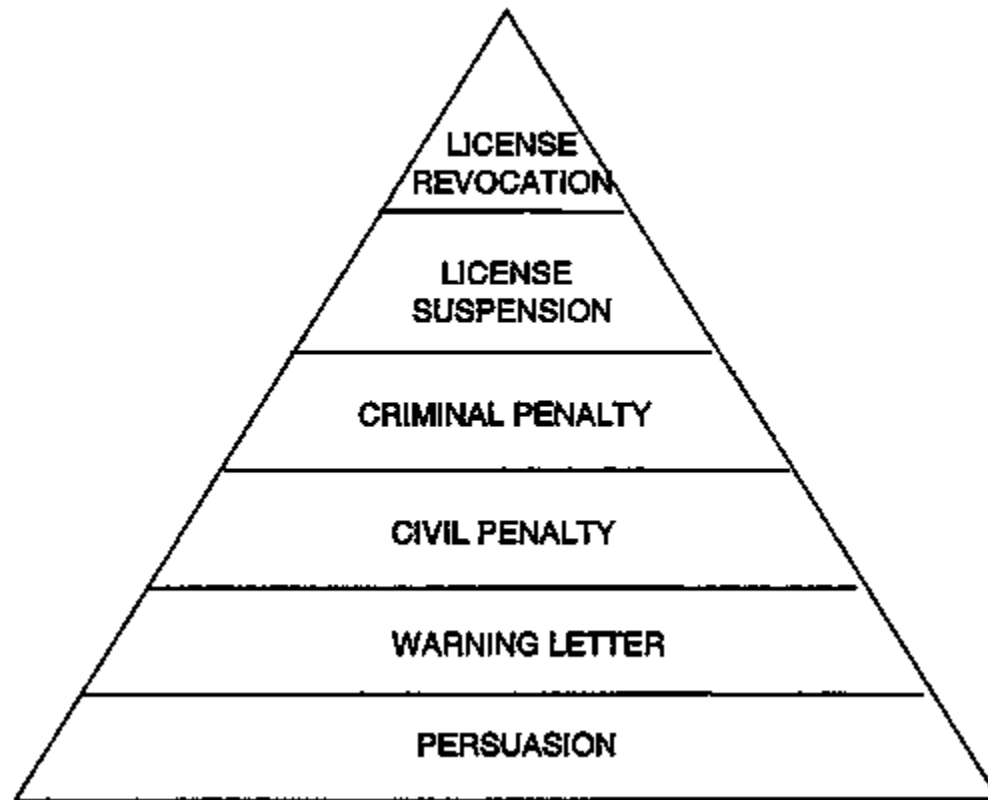
Principles



- Immediate compliance
- Strong defence against litigation
- Strong base and sense of mission
- Internal cohesion
- Consistent
- Prevention of reg capture
- Punishes benefits by competitive advantages of non-compliance
- Scale effects in case of huge number of regulated entities

- Minimize opposition in long term
- Reduces compliance burden allowing tailored responses
- Reaches further with fewer resources
- Allows for innovation

3. Mitigating actions. Enforcement pyramid



3. Mitigating actions. Solving problems using enforcement and other tools

- When problem is properly defined, generate possible solutions and analyze pros and cons, costs, legality, side effects etc.
- Selection of remedy or combination of remedies.
- Implement the plan with periodic monitoring.

3. Mitigating actions. Enforcement cooperation

- Within jurisdiction:
 - other agencies
 - stakeholders
- Outside jurisdiction:
 - other regulators
 - Multilateral Memorandum of Understanding of IOSCO

4. Evaluation. Enforcement effectiveness measurement

- Very complicated to measure
- Common measurements:
 - Inputs (x staff devoted)
 - Throughputs (x cases dealt with)
 - Outputs (x enforcement actions taken)
- But did you solve the problem? Did you reduce harmful behavior? Is compliance better now?
- Outcome measurement in figures and stories.
- Causality is hard to show.
- Trends can be described and shown.

4. Evaluation. Enforcement communication

Problem solved?

Risk reduced?

Non-compliance reduced?

Were the actions successful?

Was enforcement deterrent (enough)?

Have we changed the behavior so that when we take our eyes off the participants keep behaving well, i.e. has ethics changed?

Agenda

1. Introduction to IOSCO
2. Why does regulation matter?
3. Enforcement
4. How does society see us, regulators?

How does society see us, regulators?

















