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Comments by Shane Tregillis of ASIC on Paper by Professor Malcolm Sparrow.

Both in his comments today and in his forthcoming book Professor Sparrow has addressed a much neglected topic in regulation: the nitty gritty of what we as regulators actually do on a day-to-day basis.

In so doing he has also provided a timely reminder that regulators, while they share many similar characteristics with other public and private organisations, also have some significant differences. This does not remove the need to continue to look very hard at ways to improve our effectiveness. In fact just the the opposite as there are many pressures that continue to make this an imperative for all of us.

However, as a practical regulator, I have always struggled to apply concepts such as ‘delighting our customers’ or that every customer contact should be regarded as an “opportunity for repeat business” when it comes to a surveillance visit, an investigation, the conduct of an interview using our compulsory powers or the taking of regulatory action against market participants.

Somehow, I just cannot conjure up the picture of a happy “customer” wanting to come back for another compulsory examination under oath in one of our rather uninviting hearing rooms, or a market participant inviting the regulator to undertake another surveillance because they were so “delighted” with the last one.

In our case happy customers probably refers to someone who has escaped action regulatory action for some serious contravention of the law and repeat customer business (while unfortunately it does happen) is a regulatory failure rather than a success.

As Professor Sparrow has pointed out in his work what makes regulators different is that we are in the business *of imposing and ensuring compliance with obligations* on often unwilling, or at the very least, somewhat reluctant participants.

Like many public and private sector organisations, ASIC and its predecessors have embarked upon a variety of initiatives over the last few years in the search for improved organisational and regulatory effectiveness. In doing so

we have drawn upon the available business improvement models of process design, quality methods, and continuous improvement - to name but a few.

Some of these have resulted in important insights and initiatives in parts of ASIC's activities, such as our Public Information Program which deals with document and information lodgement (we are justifiably proud of the quality certification it has received over the years), but they have been less relevant in our regulation and enforcement activities.

This is because it has proved difficult to successfully transplant the customer service language and associated business process models into the regulation and enforcement part of the ASIC business.

This is not to say that we do not pay attention to service issues and the views of stake-holders about our interactions and processes. These issues remain very important to us. For example, ASIC undertakes a regular bench-marking survey of our performance every two years and we did a similar one-off exercise last year in relation to the implementation of the new managed investments regime.

Rather, we have not found the underlying customer service language and models all that helpful. It seems to me that they do not go to the heart of the practical organisational issues of what it means to be an effective regulatory agency.

We have found useful, however, some of the same types of ideas as those set out by Professor Sparrow in his talk and work. He summarises these as:

- a focus on results and impacts
- adopting a risk based compliance approach
- engaging in collaborative partnerships

While we consider the approach is relevant across all our activities, it is usefully illustrated in the area of our expanded consumer protection jurisdiction in financial services.

It is clear to us that only dealing with individual transactions, after the event as they come through the regulator's door as a complaint is not necessarily the best way to achieve our consumer protection regulatory outcomes. We have had to look for new approaches that focus on how best to achieve broad results across our new jurisdiction, on identifying emerging high risk areas, on trying to deal with conduct before it results in serious investor harm, and working with a variety of groups and other organisations to get maximum leverage and impact for our efforts.

We have recently set out our approach in this areas in more detail in a recent submission to a Senate Inquiry using this framework (available at our homepage at www.asic.gov.au).

We would agree with Professor Sparrow that adopting this approach does not mean going soft on enforcement.

Being an effective and credible enforcer remains the essential underpinning for success in all our other regulatory and compliance activities. This is the reason for using the language of “*an integrated compliance and enforcement approach*” in the quote Professor Sparrow referred to earlier, and why we continue to stress the need to continue to develop and refine our enforcement capabilities. For example, in response to emerging developments in e-commerce.

Why should such a simple proposition as “ pick important problems and fix them” be as difficult to implement as Professor Sparrow suggests? No doubt there are many organisational, structural and other reasons, but I would like to mention three that I consider important.

The first, in the words of an ex colleague of mine, is that “ the urgent always drives out the important”. All of us face the pressures of dealing with a myriad of regulatory and enforcement issues that confront us on a daily basis. There is no scarcity of urgent matters that demand our daily attention. In most cases we do not have a choice about whether or not we respond because of our legislative obligations or other pressures. Given these constraints, the difficulty is how to make space for newer, less familiar and imaginative responses to regulatory problems on a systematic rather than individual transaction-by-transaction basis.

The second is that many regulators such as ASIC cover a wide range of responsibilities and it is a challenge to identify, set and implement systematic “problem solving” responses across all those activities. We need to think and manage in terms of a complex portfolio of regulatory initiatives and projects across our organisation. This is very demanding of management reporting, information and analysis systems and especially senior management decision making processes.

Third, we still struggle to present a convincing set of broader performance measures accepted by key stakeholders who still tend to judge our performance as regulators only in terms of our high profile individual enforcement successes and failures.

Shifting away from this single and somewhat simplistic performance criterion as the way of judging regulatory performance is probably the biggest single challenge we face in moving forward in the directions suggested by Professor Sparrow.

In conclusion, I note that Professor Sparrow has the unusual academic title of *Professor of Practice* at the Kennedy School at Harvard University. The Australian Macquarie Dictionary gives us a number of meanings for this interesting word of ancient Greek derivation. These include:

- Habitual or customary performance : *normal business practice*
- repeated performance or systematic exercise for the purpose of acquiring skill or proficiency: *practice makes perfect*
- the action or process of performing or doing something (opposed to theory or speculation)

On this basis, the challenge ahead for those of us interested in creating effective regulatory organisations is very much *about doing rather than speculating* about the *acquiring of skill and proficiency* in newer approaches, and about ensuring that the search for imaginative regulatory response becomes part of our *normal business practice*.

And I certainly hope that *practice makes perfect*.