



Enforcement Capacity and Measuring Effectiveness

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Law only or risk-based/problem solving

Executing law

- Case by case work
- Find illegal behavior
- Define enforcement measure
- Report input, throughput, output

Risk-based/problem solving

- Find problems
- Define, analyze and prioritize
- Form multi-skilled problem solving group
- Plan action (combination of enforcement and other actions) and measurements
- Act and monitor
- Report agenda and outcomes

The law

“Regulatory practice cannot wait for regulatory law to catch up. Legislatures will never fill all the gaps, or resolve all the conflicts, or provide adequate guidance on what takes priority, or pass laws that anticipate next year’s problems. The risk business is too dynamic for regulatory practitioners to wait: they have to step out.”

(Malcolm Sparrow, *The Regulatory Craft*, p.246)

Law only or risk-based/problem solving

Staffing requirements:

Executing law

- Supervisors
- Enforcement lawyers
- Research support (data mining, cost calculations)

Risk-based/problem solving

- Supervisors
- Enforcement lawyers
- Intelligence specialists
- Research/risk analysts
- Project managers
- Problem solvers

Intelligence and analysis

The role of intelligence and analysis is crucial to enhance enforcement capacity:

- The better one understands a risk, the less force will be needed to address it.
- The better the planning, the less force is necessary.
- We usually associate analysis with science (PhD focus) emphasizing formal knowledge and known methods of enquiry (the Greek alphabet) in separated research units.
- But it is an art: insight, perception and creativity.
- Analysis should produce **insight with a view to action.**

Measurement of effectiveness

Measurement is complicated: behavior!

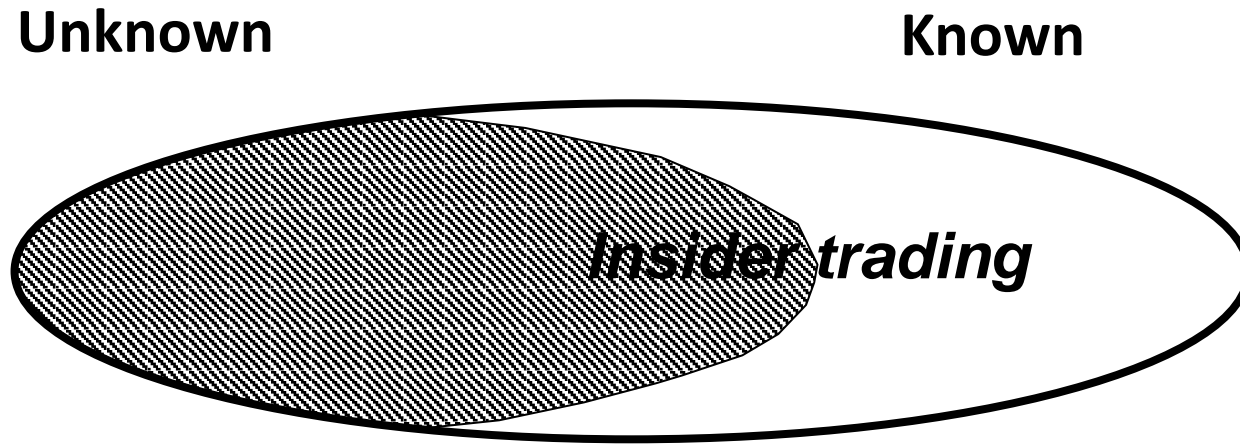
Executing law

- Commonly reported:
 - Inputs (x staff devoted)
 - Throughputs (x cases dealt with)
 - Outputs (x enforcement actions taken)

Risk-based/problem solving

- Commonly reported:
 - Outcomes (quantitative where possible, qualitative at least)

Measurement of effectiveness



- Dark figures (unknown size of the problem) are everywhere in regulation
- Reported figures do not show the entire problem
- Higher enforcement numbers can show more effectiveness, but also more insider trading!

Measurement of effectiveness

Why dark figures (invisible risks):

- Undetected:
 - fraud, insider trading: people not aware
- Unreported:
 - embarrassing for victim;
 - lack of trust in regulator;
 - fear of reprisals or victimization;
 - victim take law into own hands;
 - victim may not want to harm the offender (e.g., domestic violence and abuse)

Measurement of effectiveness

How to improve measurement:

Enhance intelligence function to better understand the problem:

- Study your internal supervisory reports and talk to the supervisors
- Include randomness and avoid circularity in inspections
- Talk to market participants
- Do undercover operations (e.g. mystery shopping)
- Form stakeholder focus groups
- Use surveys
- Use “information derivatives”: data mining, analyze behavioral patterns, study high risk areas, understand incentives

Measurement of effectiveness

- Present your regulatory agenda and explain priorities.
- Outcome measurement by collecting stories rather than hard figures (all cases are different).
- Causality is hard to show. Is for academia. Regulators should focus on risks.
- Assigning credit impossible to individuals, a group of actors.
- How can you measure prevention? Systemic risks that have not materialized?