

**Session 3** - States as Laboratories:  
Articulating Steps for Moving Forward

PROACTIVE RISK BASED REGULATION WORKSHOP  
DENVER, CO, MAY 30, 2015

Slides collectively generated  
by the moderators & participants

**Session 1 Posed This Question:**

- Are we being the best regulators we can be?
  - Are we doing our jobs?

## Plan for this Session

- **The Overarching Question:** Do you believe that it is appropriate for your jurisdiction to focus on preventing problems and responding to problems?
- Step 1: Developing Your Jurisdiction's Agenda & Action Plan to have a more proactive system
- Step 2: Implementing your Agenda & Action Plan
- Step 3: How can we collaborate & share Info
- Step 4: Recap & Missing Info

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## Step 1: Creating Your Action Plan

- **Ask yourself:** Is my jurisdiction doing the best job it can in regulating lawyers in the public interest?
- Many jurisdictions have aspects of proactive regulation tools that try to prevent problems.
  - BUT.... These tools seem to have been developed on a rather ad hoc, piecemeal basis.
- Would I like it if my jurisdiction viewed itself as BOTH trying to PREVENT problems and responding to problems?
- **If so.. How could my jurisdiction go about building a more systematic approach to proactive regulation and trying to prevent problems?**

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## Creating an Action Plan that Takes Proactive Regulation from an *Ad Hoc* System to a *Systemic Approach*

- Develop a commitment to a systemic approach
- Regulate proactive *and* responsively

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## Top Ideas That Emerged Before Lunch: **BIG IDEAS** if you want a more Comprehensive Approach to Proactive (Preventative Regulation)

- Build on what you have, e.g. Rule 5.1
- Build trust
- Be jurisdiction specific
- It isn't a one-size fits all
- Talk to and work with your stakeholders
- Know where your problems are (top 10 risks)
- Entity regulation can help but may not be necessary
- It helps to know what you want to achieve – i.e. regulatory objectives or your “purpose”

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## **Top Ideas That Emerged Before Lunch: to Develop More Systematic Proactive Regulation (cont.)**

- Evaluating metrics and cost
- Educating two ways:
  - regulator – others and
  - Lawyers to regulators
  - Be able to sell it
- Build a plan
- Do we need a separate entity that lawyers can call equivalent to a firm general counsel? – logistics of how it works (cf. an ethics hotline)
- Data driven Framework and mining what we have
- Regarding one size not fitting all – think solos
- It's about changing the conversation and relationships – emphasize helping

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## **Some specifics:**

- Change your organization
- Change your name; your structure; your thoughts?
- Change the relationship with lawyers and the public in your Jurisdiction
  - Use a “cradle to grave” approach; resources
- Consider the value of self-assessments as a preventative tool
- Consider entity regulation
- Identify a firm “Compliance Officer” or point of contact
- Create “objectives of sound legal practice”
- Develop packets for new law firm
- Have expanded diversion programs
- Be a resource to the public and lawyers

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## Remember...

- It will be easier if you...
  - **build from what you have!**

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## Step 2: Implementing your Action Plan

- Educate yourself
- Establish your goals (with a feedback loop)
- Engage your stakeholders
- Consider the following:
  - Authorization issues
  - Operation issues
  - Funding issues
  - Education, outreach & accountability
- **OVERARCHING ISSUE:** *How do we build trust as we try to implement a more comprehensive systematic approach to proactive (preventative) regulation*

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## Costs to Build a New System in NSW

- 2 one-day stakeholder sessions to develop the top 10 risk problem areas
- Designed to minimize costs since they had no extra resources
- 5,000 firms got a letter; there were no audits if the firm completed a self-assessment
- Implemented with 1 person
- Built a portal with \$90K

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## Step 2: Implementing your Action Plan (continued)

- Find out what data and help you need
  - Consultants?
- Figure out what is going on in your jurisdiction that you could hitch your wagon to
- Sharing info among jurisdictions
- Don't forget the public as a stakeholder – more public protection
- Learn from your stakeholders and collaborate
  - power of interest matrix and timing; social media
- Know why you are talking to stakeholders

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## **Step 3: Collaboration to Consider**

- What can the ABA do for us?
- Consolidating existing information
- Getting new information
  - e.g. cost effectiveness of preventative work
- Building coalitions (within a jurisdiction and across jurisdictions)
- Educational steps (avoid reinventing the wheel)

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## **Possible Future Steps**

- ABA CPR clearinghouse role (along with NOBC)
- Develop a list of experts to call upon
- Develop an ongoing workshop
- Have an ICLR Toronto workshop breakfast
- Aggregate information about other resources
  - any consulting available?
- Sharing post-workshop plans
- Develop an ABA Model Framework for Proactive Regulation?
- Have the high court Chiefs educate each other<sub>14</sub>