Australian Securities and Investments Commission Annual Forum 2014

Plenary session 2: Think global, act local

Ashley Alder
Securities and Futures Commission

24 March 2014

[redacted]

how they should deal with each other across borders when their rules collide.

The problem is that capital markets are also under pressure. And again this is in part due to national regulatory approaches that are close to those of the bank regulators. Just one recent example will do. The sharp end of cross-border conflicts between securities regulators is in the obscure but vast world of over-the-counter (OTC) derivatives. Reforms in this area were a key part of the 2009 G20 global reform agenda because derivatives were at the heart of the bailout of US-based American International Group (AIG).

A recent study from the International Swaps and Derivatives Association (ISDA), which is the trade association for derivatives dealers, showed that cross-border rules issued last year by the Commodity Futures Trading Commission (CFTC), a US regulator , had resulted in a 77% drop in volumes of cleared euro interest rate derivatives between EU and US dealers because they caused European dealers to stop transacting with their US counterparts. This comes to financial regulation. And on top of that we lack any global financial institutions that have real authority to drive a harmonised, tough global reform agenda from the top down - whether at the Financial Stability Board (FSB) or at the global standard setters.

I know that this assessment seems a bit provocative. But we should judge people by their actions rather than their words, and the actions that have accelerated regulatory fragmentation speak for themselves. Global multilateral agencies without any firm basis in public international law - which basically re

First, there is no such thing as global financial regulation implemented through networks of cooperating multinational institutions applying broad principles of soft law - and nor can there be anytime soon.

Second, only the US and the EU have the right incentives to properly curb systemic risk, because only they are the most exposed to it. No one else really cares.

Third, big financial institutions are extremely mobile and can easily park their higher risk operations abroad and beyond the regulatory reach of the US. This is the US take on the AIG's failure.

Fourth, some nations find it in their interest to profit from regulatory arbitrage by operating as financial casinos to attract these risky operations, which then rebound on the home country when things go wrong.

Fifth, it's not good enough just to regulate the operations of domestic financial institutions overseas, but also foreigners who transact with them abroad, as they are not only too big to fail but also too interconnected to fail.

Sixth, the financial industry and foreign financial casinos will pursue aspirational and distant soft law standards at an international level, seemingly in tune with G20 aspirations, hoping that this will blunt real regulation in national laws and delay implementation, giving more time to lobby around the growth agenda.

Finally, the only way to get adequate international standards is for the EU and the US to assert extraterritorial authority to gain the leverage necessary to embed their own solutions at the international level. Otherwise international bodies will be slow to act as they will never achieve high levels of consensus. He also remarks that the EU is pursuing an extraterritorial agenda which is just as aggressive as the US.

I just want to quote one statement from Coffee's paper:

"Less regulated jurisdictions are essentially free-riders, who are expecting (perhaps shrewdly) other nations to bear the costs (including costs of massive bailouts) of preserving economic stability from systemic risk. These free-riders may be aided and abetted in their resistance to the need for stronger regulation by precisely those financial institutions that most want to escape stronger regulation. In a globalized world, market participants ....can escape

This is also where the IOSCO task force I am chairing comes in. Rather than pursue the elusive multilateralism, it will acknowledge the mainly national regulatory responses to the crisis I have described. It will then seek to identify better ways in which regulators can assess foreign regulatory and enforcement regimes as being of sufficient quality to enable them to rely on them instead of exporting their own laws. I mentioned earlier that the Balkanisation of finance was a symptom of a lack of trust between different national regulatory systems. The work of the task force aims to restore some of that trust by encouraging ways for one system to get to know another one thoroughly, then deferring to it and eventually sharing supervision. We also hope to encourage some benchmarking to international standards adopted by IOSCO.

Some see this as another way in which the financial industry might focus lobbying pressure. This is because it's an obscure process which could lead to degraded regulation if, push comes to shove, a country is reluctant to refuse recognition of another's system for fear of embarrassing the country failing the test. All I can say at the moment is that we are aware of this issue and will do our best to deal with it.

Finally, it is important that we resist the notion that a one size fits all approach exported from the EU and the US to Asia is remotely a good idea. It rather assumes that Asian countries are regulatory and political vacuums with no different priorities to the west. Nothing could be further from the truth. The Atlantic Council report I mentioned earlier did at least acknowledge that growth in Asia and the accompanying rise in demand for capital will be accompanied by a decline in EU and US regulatory power, as more deals are done in Asia. It also admitted that Asian policy preferences will differ from the EU and the US because of different histories and stages of development.

So, one of the most important projects is to ensure that Asia embeds the right type of

I am confident that we regulators will never forget either -