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That which follows in the shadow of populism, etc.

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2. Overview of Development in Financial Regulations (Trends & Topics)

 # Development in cross-border financial regulation (Shiro Katsufuji, Director, Center for Risk Management Strategy at Deloitte Touche Tohmatsu LLC)

Consistency in financial regulation across different jurisdictions and cross-border application of such regulation have been an ongoing challenge for financial institutions and supervisory authorities. When the same kind of regulation is implemented differently in different countries, global financial institutions are required to take measures specific to each jurisdiction (e.g. the rules on OTC derivatives). Similarly, the burden is excessive for foreign entities when domestic regulations become applicable across borders (e.g. MiFID II).

In cross-border regulation, some regulators move toward relaxation while others expand the scope of application. In the US, the Commodity Futures Trading Commission (CFTC) released a white paper to revise cross-border application of the American swap regulations. The current regime demands non-US market participants comply with certain domestic regulation, such as swap dealer registration if the entity has the above-threshold amount of transaction with American organizations. The Trump administration has made its desire to alleviate regulation in order for growth in financial markets clear. The US regulations used to be more particular and rigid as compared to the international regime, but they are drawing closer to the global standards including the Basel Accords. From 2017 to 2018, a series of reports by the Treasury reviewed the existent US regulation and provided specific recommendations to relax stringent rules and converge with international standards. The CFTC’s revision of interest rate swap regulations aim to soften the cross-border application of domestic rules in order to avoid foreign players shying away from the restrictive US market.

To the contrary, European regulation is progressively affecting organizations outside of the jurisdiction, be it MiFID II or EU Benchmark Regulation (BMR). The BMR has begun its transition period in January 2018, and if a third country administrator (an exchange or other entity that administers indices) seeks to use their benchmarks such as stock or interest rate indices, they are subject to prior recognition from the relevant EU authorities. Further, Brexit poses more challenges. In case of no-deal Brexit, UK clearing houses including London Clearing House (LCH) would immediately lose its status as EU-recognized central counterparty clearing house (CCP), which would disable the use their services from the EU jurisdiction. Given the LCH is a large-scale clearing house servicing global clients, no-deal Brexit would have significant impact on derivatives and other transactions.

In the Basel III final document published in December 2017, the Basel Committee on Banking Supervision (BCBS) set January 2022 as the implementation date to ensure “an orderly and timely implementation.” However, it is uncertain whether member states will be able to respect this date. For instance, this is likely unachievable for the EU. The implementation in the EU jurisdiction requires legislative processes in the European Parliament and the Council of the European Union as well as all member states, which normally takes over a year. In order to legislate the early 2022 Basel III reform with two-year transition period, the process has to complete by early 2020. However, since the European Parliament is expecting a general election in 2019, the legislative procedures will be pushed back.

At the ISDA Japan Regional Conference in October 2018, Ryozo Himino (Vice Minister for International Affairs at the Japanese Financial Services Agency) spoke of four sources of regulatory fragmentation, namely discrepancies, overlaps, desynchronization, and competition. He stated that they have put “unnecessary or excessive burden on cross-border activities, increasing the risk of harmful market fragmentation and regulatory arbitrage.” As inconsistencies in financial regulation across jurisdictions can raise the compliance cost and hinder revitalization of financial markets, both public and private sectors will continue discussing the issue.
