Unintended Consequences of Global Regulation

• GFMA -“Principles for Achieving Consistent Regulatory Regimes & Supervisory Practices”
• Calls for regulators to design regulatory cooperation agreements that are:
  • Forward–looking
  • Enhance cross-border investment and market integrity
  • Supportive of similar outcomes
  • Predictable
  • Transparent
  • Evidence based
  • Proportionate
  • Enhance market certainty
  • Strengthen supervisory coordination
  • Supportive of conflict mitigation
Unintended Consequences of Global Regulation

- Examples of foreign regulation with unintended consequences
  - European Union Benchmark Regulation - EC
  - Margining of non-cleared derivatives – US, CFTC
  - MiFID II - EC
  - Foreign Service Providers Licensing Regime - ASIC
  - GDPR - EC
EU Benchmark Regulation - Impact

- Third country implications
- 60% of IRS derivative counterparties are EU regulated – BKBM captured
- 40% of NZ bank funding sourced and hedged via EU regulated entities
- EU BMR recognition via ‘Equivalence’ pathway requires:
  - Benchmark Administration licensing regime
  - External audit assessment of compliance to BMR regulation
  - Development of a fall-back benchmark even though BKBM ‘fit for purpose’
  - Significant increase in resource commitments by NZFMA
  - Annual compliance obligations
Margining of Uncleared Derivatives - Impact

• US regulation to reduce systemic risk
• Requires initial margin to be posted for uncleared swaps
• Phase 5 in Sep 2020 - notional turnover threshold reduced to 8 billion
• Large documentation (CSA) exercise for over a 1000 buy & sell side entities
• However many entities will not need to post IM due to deal size thresholds
• Large cost for little reduction in systemic risk
• ISDA is lobbying to increase the notional turnover threshold to 100 billion
• NZ regulators forced to amend security/collateral legislation to remove legal uncertainty
• NZ banks forced to fund via Aus parent temporarily
MiFID II - Impact

• Regulates authorization & supervision of investment firms
• MiFID II represented an enhancement post GFC, effective Jan 2018
• Unintended consequences:
  • Consolidation of smaller investment management firms
    • inability to internalize research costs
    • the option to charge clients for research drives customers away
  • Consolidation of smaller brokerage/research firms
    • with research budgets under pressure = research price war
    • Larger research houses provide full cover and cross subsidise services offered
ASIC – Revised Foreign Service Providers Regime

• Aimed at wholesale market participants & designed to regulate bucket shops
• NZ banks currently enjoy an exemption
• All foreign service providers would be required to be licensed
• Onerous registration requirements and significant compliance costs
• May drive existing counterparties from market, reducing liquidity
• May result in increased transaction costs & concentration risk