

Review Article

Benefits and constraints associated with the harmonization of financial regulations: An overview.

Abstract:

The harmonization of financial regulations offers numerous benefits but also poses constraints and challenges. Cross-border derivative traffic has been on the rise, highlighting the need for a more coordinated, global approach to regulatory frameworks. Extraterritoriality, where regulatory reach extends beyond national borders, leads to duplicated efforts and compliance challenges for financial institutions engaged in cross-border transactions. Double reporting, discrepancies in data alignment and lack of standardized identifiers create complexities and increase costs for reporting to multiple regulatory authorities. Variations in asset pricing and market valuation standards further complicate compliance and reporting. The lack of harmonization between regulatory bodies results in inconsistencies and the need for greater coordination.

Introduction:

According to a report by the Bank of International Settlements ^[1], cross-border derivative traffic witnessed a notable upswing of USD 515 million in the second quarter of 2022^[2]. However, it is crucial to consider the impact of various factors that may obscure the true magnitude of this increase. For instance, the appreciation of the US dollar against several major currencies during that period, such as a 7% increase against the euro and 12% against the yen, could have diminished the transaction values when expressed in those currencies. Additionally, seasonal influences tend to elevate cross-border transaction volumes in the first quarter of the year while dampening them in the subsequent quarter, further complicating the analysis of this upward trend. These contextual factors highlight the need for a comprehensive assessment of cross-border derivative activity to accurately interpret its implications in the financial markets.

Investment banking is a global industry, operating across different borders and jurisdictions. Unfortunately, regulatory frameworks in various countries tend to define rules that govern the industry solely within their own borders, without taking into account the international dimension of the business. This fragmented approach often leads to duplicated efforts and inconsistencies, resulting in significant compliance challenges, increased cost of software

application developments & maintenance for financial institutions engaging in cross-border transactions. A more coordinated, global approach to regulatory frameworks can streamline compliance efforts and promote greater efficiency in the investment banking industry, while ensuring that financial stability is maintained across borders

Regulators for major financial markets in Europe and the United States extend their reach beyond their borders, resulting in what is known as extra-territoriality^[3] in financial regulations. There are two types of extra-territoriality:

1. Regulations that apply to foreign-based branches or wholly-owned subsidiaries of home-based firms or to the head offices of financial institutions with branches or subsidiaries based in the regulator's jurisdiction. For instance, the foreign operations of US banks are subject to Dodd-Frank Title VII reporting^[4], and foreign banks with operations in the US must report US-related business to the US regulator.
2. Financial institutions based outside a regulator's jurisdiction may be subject to its rules by doing business with a firm based in that regulator's jurisdiction. For example, a Hong Kong-based bank trading derivatives with a bank in Germany is technically subject to EMIR reporting because both counterparties must report the transaction. The Hong Kong-based bank can delegate its side of the reporting to the German bank.

This extension of regulatory reach is intended to ensure the stability of the global financial system. However, it also results in duplicated efforts and creates problems for financial institutions engaging in cross-border transactions. As such, there is a need for greater coordination among regulators worldwide to create a more coherent and harmonized regulatory framework that accounts for the global nature of the industry.

The issues arising from the absence of harmonization:

Double reporting, where both counterparties to a transaction are required to report the same transaction, adds complexity to cross-border deals, particularly when parties are obligated to report to multiple regulatory authorities. For instance, under the EMIR regulation, derivative transactions must be reported to a transaction repository using EMIR standard formats, even if one of the parties is based outside the EU. This necessitates reporting the transaction to both EU regulatory bodies and the local regulatory authorities of the foreign entity, resulting in additional compliance efforts and reporting to more than one authority. However, some regulatory bodies have eased this requirement. Notably, the Monetary Authority of Singapore and the Hong Kong Monetary Authority are satisfied with the foreign counterparty reporting to their respective local competent authorities, provided that the foreign region is among the approved jurisdictions.

Firms affected by the extraterritorial reach of a foreign regulator must endure the burden of reporting a transaction twice, once to their own regulator and again to the foreign regulator.

This process would be significantly less burdensome if there were some degree of harmonization between the two sets of regulations. Unfortunately, this is not always the case.

Discrepancies in data alignment exist, even within different regulations established by the same regulatory body. For example, ESMA ^[5], EMIR ^[6], and SFTR ^[7] regulations lack harmonization. ESMA mandates a specific set of one-character action types (e.g., "N" for a new transaction ^[8]), whereas SFTR employs a set of four alphanumeric characters for action types (e.g., "NEWT" for a new transaction ^[9]). Although this may seem like a rudimentary example, financial firms impacted by both regulations must manage two distinct code sets to represent the same concept (action type). Implementing rules crafted by distinct regulators may necessitate duplicating certain information.

There is a lack of universally agreed-upon standardized identifiers. For instance, there is no unique code established to identify a financial transaction. The European Union and the United Kingdom employ the UTI (Unique Transaction Identifier), a 52-character alphanumeric code, while the United States employs the USI (Unique Swap Identifier), a 40-character alphanumeric code. Consequently, a financial transaction between a European Union-based firm and a US-based financial institution necessitates two separate sets of reports—one to comply with EMIR and another to comply with Dodd-Frank. This imposes the requirement of using both identifiers, leading to unnecessary duplication, elevated technology application capability build budgets, increased cost of data maintenance & oversight, unless a firm delegates one of the two reports to the counterparty. While initiatives like the LEI (Legal Entity Identifier) have mitigated some of these issues, implementation across all financial markets remains inconsistent.

Variations in asset pricing and market valuation standards among regulatory agencies present challenges for multinational companies, investors, and financial institutions operating across multiple jurisdictions. It requires financial institutions to navigate diverse regulatory requirements and reconcile divergent valuation practices to ensure compliance and accurate financial reporting. Additionally, these variations can create conflicts of interest when reporting market-to-market positions among trading desks within the same financial institution. For instance, the Securities and Exchange Commission (SEC) provides guidance on how bid, mid, and ask prices or stale prices should be applied for marking open positions to market valuation. However, certain emerging jurisdictions in Central & Eastern EMEA or African regions may lack clearly defined pricing policies, sometimes relying on mid prices for fixed income products. Managing these discrepancies requires careful interpretation and adaptation to different regulatory frameworks, which will result in increase costs in maintaining multiple versions of market valuation reports for each reporting , and increased costs & complexities in managing region specific pricing policy logics & hierarchies at each asset class level, resulting in high operational & technological costs, which could have otherwise been avoided had there been consistent pricing policies across regions.

A typical starting point acquires different details:

Regulations are often agreed upon at intergovernmental level; for instance, both EMIR and Dodd-Frank Title VII stem from a decision taken during a G20 meeting in Pittsburgh in 2009. The leaders of the largest financial markets in the world decided to introduce regulations in the derivatives markets to increase transparency and prevent the banking crisis of 2008 from happening again. They tasked the Bank of International Settlement in Basel to produce a standard called the "Principle of Financial Market Infrastructure (PFMI)", aimed to *"ensure that the infrastructure supporting global financial markets is more robust and thus well placed to withstand financial shocks."*^[10]

By considering each market in isolation, there is a tendency to overlook the management of extraterritorial reach and restrict it to situations that directly impact the domestic market. For example, the inclusion of foreign subsidiaries of both US and non-US banks under the purview of Dodd-Frank regulations reflects a regulator's intent to prevent financial institutions from evading domestic transaction regulations by providing services to local clients through foreign branches or subsidiaries.

Regulatory bodies of the major financial markets used the principles set out in the PFMI to define their regulations; EMIR and Dodd-Frank Title VII derive from that document. They did it at their own pace, monitored by IOSCO, the International Organisation of Securities Commission, *"the international body that brings together the world's securities regulators and is recognised as the global standard setter for the securities sector"*.^[11] Each regulator stayed within the framework of the PFMI suggestions for central counterparties, trade repositories, and standards for clearing and settlement systems. They defined details based on their market characteristics without necessarily coordinating with other regulators. They considered an environment wholly contained in their jurisdiction; a mindset contradicted by reality. This process gave rise to the need for harmonisation. As a result, the lack of coordination and harmonization between regulatory bodies led to inconsistencies in regulatory frameworks, highlighting the importance of harmonizing and standardizing regulations across jurisdictions.

Advantages of harmonisation:

Harnessing the power of harmonized data structures simplifies data management within organizations, eliminating duplication, streamlining reference data management, and promoting consistency. However, there are other realms where further harmonization would be advantageous, in the following areas as well:

Streamlined Compliance: The harmonization and standardization of regulations within the financial sector have emerged as crucial strategies for financial institutions operating across multiple jurisdictions. By aligning diverse regulatory frameworks into a coherent set of rules and requirements, organizations can benefit from streamlined compliance processes, enabling them to navigate the complex regulatory landscape more effectively and efficiently.

The advantages of streamlined compliance are widely recognized in the industry. A study by Deloitte (2021) highlights how harmonizing regulatory requirements simplifies compliance operations, reduces duplicative efforts, and enhances regulatory transparency and oversight [12]. The Basel Committee on Banking Supervision emphasizes the importance of harmonizing regulatory frameworks to facilitate international cooperation, enhance the effectiveness of prudential regulation, and promote financial stability [13].

The European Union's General Data Protection Regulation (GDPR) serves as an exemplar of streamlined compliance. By standardizing data protection laws across member states, the GDPR has provided organizations with a unified framework for handling personal data, simplifying compliance efforts and fostering cross-border data flows.

The benefits of streamlined compliance extend beyond operational efficiency. By creating a level playing field for financial institutions, harmonization and standardization reduce regulatory arbitrage and promote fair competition. They also enhance consumer protection by ensuring consistent standards of conduct and risk management across jurisdictions.

Cost Efficiency: Regulatory harmonization and standardization not only promote streamlined compliance but also provide financial institutions with substantial cost-saving opportunities. The elimination of duplicative compliance procedures and the need for separate systems and protocols in each jurisdiction allows organizations to allocate their resources more efficiently. By reducing redundant efforts and minimizing the complexity of compliance operations, financial institutions can realize significant cost efficiencies.

A report by the International Monetary Fund (IMF) highlights the potential cost benefits of regulatory harmonization, emphasizing that standardizing regulations across borders can lead to substantial cost savings for both financial institutions and regulatory authorities. Additionally, a study by the Institute of International Finance (IIF) reveals that the alignment of regulatory requirements can reduce compliance costs by simplifying processes, improving data management practices, and enhancing reporting consistency.

The cost efficiency gained from regulatory harmonization enables financial institutions to redirect their investments towards strategic areas such as innovation, research, and customer-centric initiatives. By freeing up financial resources, organizations can allocate them to projects that drive sustainable growth, enhance operational capabilities, and foster a competitive edge in the industry.

Moreover, cost efficiency in compliance operations allows financial institutions to allocate more resources to enhance customer experiences, develop innovative products and services, and invest in emerging technologies. This strategic allocation of resources not only drives

operational efficiencies but also enables organizations to stay ahead of market trends, meet evolving customer expectations, and remain competitive in the ever-changing financial landscape.

Cross-Border Market Access: Regulatory harmonization and alignment play a crucial role in facilitating cross-border market access for financial institutions. When regulations are harmonized, barriers to entry and market fragmentation are reduced, creating a more open and seamless environment for organizations to expand their operations and access new markets with greater confidence.

The implementation of regulatory harmonization initiatives, such as the Markets in Financial Instruments Directive (MiFID II) in the European Union, has had a profound impact on cross-border market access. MiFID II aims to create a single market for investment services and products across EU member states, promoting competition, efficiency, and integration. By harmonizing regulations related to investor protection, transparency, and market structure, MiFID II has facilitated easier access to financial markets within the EU.

The benefits of harmonization and the removal of market access barriers are evident in the success of organizations operating in the EU under the provisions of MiFID II. Financial institutions can now offer their services and products to a broader customer base, expand their geographic reach, and tap into new business opportunities. This increased access to cross-border markets fosters competition, drives innovation, and encourages the efficient allocation of resources.

A study conducted by the European Securities and Markets Authority (ESMA) demonstrates the positive impact of MiFID II on cross-border market access, highlighting that the harmonization of regulatory requirements has led to increased investor protection, improved competition, and enhanced market efficiency. The removal of barriers and the creation of a unified regulatory framework have also attracted international investors and boosted cross-border investments within the EU.

Beyond the European context, regulatory harmonization efforts in other regions and countries have also yielded similar benefits. For instance, the Association of Southeast Asian Nations (ASEAN) has been working towards the harmonization of financial regulations to promote cross-border market access and integration in the ASEAN Economic Community. These efforts aim to facilitate the seamless movement of capital, goods, services, and investments across the member states, fostering economic growth and regional development.

In conclusion, regulatory harmonization plays a pivotal role in enabling cross-border market access for financial institutions. By reducing barriers to entry and fostering a unified regulatory environment, organizations can expand their operations, reach new markets, and seize growth

opportunities with greater confidence. Initiatives such as MiFID II in the EU and regional harmonization efforts worldwide have demonstrated the positive impact of regulatory alignment on competition, efficiency, and integration in the financial markets.

Enhanced Risk Management & Mitigation: Consistent regulatory standards enable organizations to establish robust risk management frameworks, ensuring a comprehensive understanding of risks and effective mitigation strategies. The International Organization of Securities Commissions (IOSCO) plays a pivotal role in promoting global harmonization of securities regulations, providing a platform for cooperation and the exchange of best practices among regulators. By aligning regulatory approaches, information sharing, and collaborative supervision become more effective. This fosters early detection and mitigation of risks, thereby strengthening the resilience of the global financial system. The Financial Stability Board (FSB) serves as a key platform for international collaboration and coordination, facilitating the development of globally consistent regulatory and supervisory policies.

Investor Protection and Market Confidence: The harmonization of regulations across jurisdictions plays a pivotal role in ensuring a level playing field and fostering comparable levels of investor protection. This convergence of regulatory standards enhances market integrity, cultivates investor trust, and contributes to the overall stability of financial markets. Prominent international bodies such as the International Organization of Securities Commissions (IOSCO) exemplify the commitment to promoting investor protection through the development of robust and globally recognized standards for securities regulation. These standards aim to uphold the principles of fairness, efficiency, and transparency, thereby providing a solid framework for bolstering investor confidence. Moreover, regulatory authorities such as the U.S. Securities and Exchange Commission (SEC) and the Financial Conduct Authority (FCA) in the UK play instrumental roles in enforcing regulatory compliance and safeguarding the interests of investors.

Technological advancements have enabled investment banking to transcend geographical boundaries. In today's interconnected world, there are clear advantages from collaboration, standardization, and acknowledgement among reputable regulatory bodies. A notable example is the Monetary Authority of Singapore (MAS) acknowledges that foreign counterparties under the supervision of 'equivalent' or acceptable regulators are exempted from reporting their side of a cross-border transaction executed with a Singapore-based counterparty to the MAS. In this scenario, only the Singapore-based firm is obligated to report to the MAS, fostering efficient and trusted cross-border collaboration.

Harmonization would not eliminate the need to report to two different regulators, but the problem is not generating the report, but the rules behind the report and the availability of data to be reported represent the vast majority of the complexity. Every time a new regulation is announced, data analysts or business system analysts question whether the company data

environment captures specific information in the way required by the regulator. Potentially expensive updates to the IT capability enhancement & support may be needed if it doesn't. Harmonising rules and data would simplify reporting to multiple regulators and eliminate unnecessary duplication of efforts for financial institutions engaged in cross-border financial transactions. It would be easier for smaller firms that do not specialise in international transactions to expand their business with clients from different jurisdictions.

Constraints and Challenges:

Harmonization undeniably offers numerous advantages, yet challenges arise when it comes to implementation due to variations in the charter objectives of independent regulators and the distinct characteristics of local market conditions in different jurisdictions.

Unique Market Conditions & Needs: Each regulator is primarily responsible for the health of the financial market and the protection of investors in a specific jurisdiction. Each market has its characteristics, given the diverse nature of markets, it necessitates different measures to ensure stability and protect investors, especially those with the lowest level of experience & expertise on money management, function of financial markets and its investment vehicles.

For instance, in the past ten years, in the United States, strict regulations on proprietary trading have been imposed, with limited exceptions such as IPOs, while short selling is closely monitored. In contrast, Europe focuses on regulating short selling while promoting transparency in proprietary trading without imposing an outright ban. These differences stem from regulators' attempts to manage market access that may pose excessive risk or prove detrimental to investors. These differences will always exist, resulting from the regulator's attempt to constrain some market access that may prove too risky, if not wholly unfavourable, to an investor.

Implementation challenges: Intergovernmental bodies like IOSCO, the FSB, or the Bank of International Settlement in Basel lack direct enforcement powers. Their role primarily involves monitoring the adherence to rules agreed upon during a G20 or other intergovernmental meeting. Bilateral agreements would be cumbersome and slow to negotiate; for instance, an arrangement between the US and UK supervisors would cover the majority of cross-border derivative transactions, but firms based in Singapore, Shanghai or Tokyo would not necessarily have to comply with it. Even if we restrict the scope of Harmonization to the major financial markets, we are still talking about a large number of bilateral agreements too large to monitor effectively.

Financial institutions exhibit high mobility, aided by technology. It is now feasible to be physically located in one country while virtually operating from another. An intergovernmental

agreement at the G20 level would still leave the question of supervision unresolved. It is unrealistic to expect uniform global implementation of gentlemen's agreements. Financial regulations are politically sensitive matters, and financial centres significantly contribute to a country's GDP and tax base.

Conclusion

The harmonization of financial regulations offers significant advantages, but it also presents challenges. Regulatory harmonization promotes streamlined compliance, cost efficiency, cross-border market access, enhanced risk management, and investor protection. However, challenges arise due to variations in regulators' objectives and unique market conditions in different jurisdictions. Implementation hurdles, such as the lack of direct enforcement powers of intergovernmental bodies and the political sensitivity of financial regulations, need to be addressed. Despite these challenges, coordinated efforts to address extraterritoriality, standardize data alignment and identifiers, harmonize asset pricing and valuation standards, and overcome implementation obstacles are crucial for the stability and growth of the global financial industry. By working towards harmonization, regulatory bodies and financial institutions can achieve a more efficient, transparent, and resilient financial system that benefits both market participants and investors

References

[1] Bank of International Settlements – is an international institution based in Basel, Switzerland, that aims to support central banks' pursuit of monetary and financial stability through international cooperation and to act as a bank for central banks.

[2] <https://www.bis.org/statistics/rppb2210.pdf>

[3] Extra-territoriality means that institutions based outside the jurisdiction of a specific regulator may have to report to that regulator depending on their activities.

[4] Dodd-Frank Title VII – Swap Data record keeping and reporting requirements - <https://www.cftc.gov/sites/default/files/2020/11/2020-21569a.pdf>

[5] ESMA – European Securities and Markets Authority

[6] European Market Infrastructure Regulation, the derivative trading regulation

[7] Securities Financing Transactions Regulation, regulation covering Securities Lending, Repurchase Agreements, Sell Buy Back agreements and Collateral Reuse

[8] EMIR implementation technical standards - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1247>

[9] SFTR implementation technical standards - <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0363&from=EN>

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