

Conclusion and Areas for Future Research

There are differences in securities rules and approaches on both sides of the Atlantic:

- **Regarding the trading venues**, MiFID is not currently applied to dark pools, while in the United States, dark pools are considered as ATS and register as broker-dealers. They have to make their quotes available to the public above a certain trading volume threshold.
- **EU regulators have more discretion in authorizing investment firms and intervening in their management** since they can judge whether the managers of investment firms or Regulated Markets are sufficiently experienced and reputable, while the U.S. regulator can only control their reputation and competences. The EU regulations go one step further in allowing supervisors to control the integrity of ultimate controllers of Regulated Markets regardless of their ownership, while the U.S. rules generally base the notion of control on ownership.
- **Organizational requirements** are broader in scope for exchanges in the United States and focus on disciplinary powers. This is explained by the self-regulatory role of exchanges in the United States versus a more limited role in the EU.
- **Capital requirements** are risk-based in the EU and based on the concept of maintaining a highly liquid core of capital in the United States.
- **The mitigation of conflicts of interest** is a broad and general obligation for investment firms in Europe while it is focused on more specific situations in the United States.
- **Investor protection rules** in Europe are two-tiered between retail and professional investors (client categorization is binding), while the U.S. regulatory scheme protects all investors, with some carve-outs for institutional investors.
- **Best execution** in the United States covers a number of factors, with price being typically the most important; in Europe price is one factor among others to assess whether the client has obtained the best possible result for the execution of its trade. In addition, under MiFID, investment firms are responsible for the best execution of client orders, while in the United States, the responsibility rests with trading centers. This provision implies that

market centers in the United States need to link and route orders to one another.

- **Data consolidation on equity trades exists in the United States and not in the EU:** in the United States, quotes and transaction data reported by national exchanges and associations are consolidated into a single system and disseminated to market participants, whereas in Europe, quotes and trades are fragmented between multiple trading venues and no consolidation is required.

But the objectives of the two regulations are similar, and some outcomes are comparable:

- Both regulatory systems aim to maintain fair and orderly markets, protect investors, and provide price transparency.
- **Equity securities are subject to more scrutiny** and transparency requirements than bonds or derivatives. In the two regions, pre and post-trade transparency requirements apply to equities while there is currently no or limited transparency requirements for derivatives and bonds. Reg NMS only applies to equities. Internalization is regulated solely as regards equity trades in Europe (concept of Systematic Internalizer).
- **Investor protection regimes are broad** and offer better protection to individual investors, whether the rules to achieve such protection are strictly tiered or not.
- **Competition has increased in Europe.** New MTF entrants such as Chi-X, Turquoise and BATS Europe are estimated to hold about 16 percent of share trading.¹ There is a question as to whether MiFID has led to a situation which pre-existed before the implementation of Reg NMS since trading has become more fragmented and liquidity has moved from exchanges. In both regions, consolidation between exchanges stepped up (NYSE-Euronext, Nasdaq-OMX, and LSE-Borsa Italiana mergers), and dark pools have become more visible (either because their market share has increased over exchanges' in Europe or because dark ATS have gained market share over broker-dealer platforms in the United States²).
- **There are concerns on both sides regarding the fragmentation of oversight.** The U.S. SEC does not oversee futures and government bonds; it also shares supervisory responsibility with the banking supervisors, which supervise commercial banks dealing with securities. In Europe, MiFID is implemented by 27 national supervisors which may lead to different interpretations. For instance, a recent report by CESR emphasizes that pre-trade transparency waivers which exclude trading platforms from transparency requirements are interpreted differently across Europe; the report also hints at different interpretations of the concept of SI, given the few firms that have registered as SI (13 so far).³

A discussion on the outcomes cannot really be achieved without looking at the implementation of the securities regulations. Thus the study suggests some directions for future research:

- **Assess enforcement** on both sides, at the SEC and SRO level in the United States, and at the level of the 27 supervisors in the EU.
- **Deepen the knowledge of dark pools** on both sides and examine how to improve disclosure and price discovery.
- In Europe in particular, examine ways to achieve **quotes and trades consolidation**.

Notes

¹ Reuters, "IOSCO-EU Regulators Eye Shares Shuffling into the Dark," June 10, 2009.

² Securities and Exchange Commission, Keynote Speech by Erik Sirri, Director, Division of Trading and Markets, at the SIFMA 2008 Dark Pools Symposium, February 1, 2008.

³ CESR, "Impact of MiFID on Equity Secondary Markets Functioning," June 10, 2009.