

Financial markets regulation in Europe and the US: more in common than meets the eye

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Good afternoon to all of you,

I am delighted to be with you today to share the European Securities and Markets Authority's perspective ahead of a panel that will discuss how to navigate the New Regulatory Landscape.

At this juncture, a time of major change for financial markets, a time marked by heightened economic uncertainty and elevated risks, a time of transformation with an increasing use of new technologies and data, significant reforms are being discussed in different parts of the world which could have a material impact on the way equities are traded.

While market participants tend to focus on divergences and the risk of fragmentation, today, I would like to look at the bright side, and acknowledge what should not be taken for granted: the convergence of financial markets regulation in the EU, the UK and the US.

In the face of these macroeconomic uncertainties, on both sides of the Atlantic, we are leading efforts to promote fair and effective markets and ensure investor protection; in many areas our objectives are quite aligned.

The benefits of global regulatory convergence

As we have experienced in the past years, our economies are strongly integrated at global level. This is particularly the case for financial markets in Europe and in the US, with investment firms, asset managers and infrastructures extending their activities across both continents.

In this context, extensive interactions between regulators, both formal and informal, close cooperation on risk assessment and priority setting, as well as coordination on specific policy actions, is paramount to ensure effective regulation, both at regional and international level. At ESMA we strongly believe in international cooperation. We have regular discussions with our fellow regulators and actively contribute to the important work led by the International Organisation of Securities Commissions (IOSCO) and the Financial Stability Board (FSB).

Of course, each jurisdiction tailors its path to its regulatory framework, its toolbox and to the specificities of local markets.

Of course we cannot agree on everything and there will be issues where we go different routes.

Of course, in a post-Brexit world, regulatory divergence is looming in Europe with potential ripple effects on alignment or misalignment with the US.

Of course, as much as possible a level playing field should be maintained to prevent distorted competition between entities operating globally.

So far, we have collectively managed the risks posed by regulatory divergence with agility. We have maintained an open dialogue to ensure mutual understanding of the main market and regulatory developments and we've used international fora to define common goals and the priorities we wish to tackle.

Recent examples of convergence in financial markets regulation

At present, some of the fundamental elements underpinning the structure of global financial markets are being debated in each jurisdiction : in the EU – with the MiFIR review and related ESMA workstreams – in the UK – with the Financial Services and Markets Bill, and the Wholesale Markets Review – and in the US – with the SEC Rule Proposal on Equity Market Structure.

Rather than providing a detailed gap analysis across these moving pieces, I would like to highlight similarities in the topics that are debated, and the envisaged way forward.

Let me take a few examples directly relevant to your trading desks where initiatives – while not necessarily fully aligned go in the same direction.

The SEC push for a more harmonised regime on **tick sizes** echoes the existing approach in Europe. At the same time, discussions on the calibration of tick sizes for “third-country” shares are progressing in parallel both in the EU and the UK. These initiatives illustrate our common objective: ensuring the orderly functioning of markets and a level playing field.

We can also notice a common focus on **retail order flow**, be it in the US, with the SEC’s proposed rule on mandatory order-by-order competition for marketable retail orders, or in the EU with the on-going debate on restrictions to payment for order flow at the heart of the MIFIR review. On all sides, we are aiming to incentivise the best outcome for the end investor, and address the risk of inherent conflicts of interest between a firm directing order flow and its clients.

Likewise, initiatives from regulators on **trading venue perimeter** have shown a large degree of convergence. In parallel efforts to capture all relevant multilateral systems in the regulatory scope, we are increasing the scope of on-venue transactions, and in turn improving market transparency.

In an Opinion published this February, ESMA has clarified the border between what constitutes a trading venue and what doesn't. It provides guidance on the criteria to consider to determine whether a system qualifies as a multilateral system and requires adequate authorisation, e.g. how trading interests are brought together and how the system makes them interact. In particular, we have specified examples of the practical application of the Opinion, including for technology providers such bulletin boards, Order Management Systems (OMS) and Execution Management Systems (EMS).

While the ESMA opinion goes a long way in providing more certainty on the boundaries of what is a trading venue, we are aware that this is not the end of the discussion. We will continue to work closely with National Competent Authorities on concrete cases to ensure that systems meeting the criteria of a multilateral system are authorised as trading venues. Moreover, we intend to issue further guidance in the coming months on some aspects, notably on the hedging exemption and the challenges it may represent for corporates.

On this topic of trading venue perimeter, the jury is still out in the UK and in the US, as evidenced by the adoption of an additional request for comments by the SEC just this Friday. We do believe though we are ultimately trying to achieve the same goal.

But the best example of regulatory convergence across the Atlantic is the on-going discussions on **Consolidated Tapes**. In the EU and in the UK, the debate is focused on establishing Consolidated Tapes, notably for equities (both shares and ETFs) and for bonds, and in the US on improving the functioning of the existing equity consolidated tape.

The specifics of the future consolidated tapes are still being discussed, for example on the process to select Consolidated Tape Providers – for which ESMA will play a leading role in the EU – and on the level of ambition, in particular for pre-trade data on equities. However, I strongly believe that well-functioning consolidated tapes, inspired from precedents in the US, and in Canada, will become strong assets for the EU and UK markets going forward.

What is more, this common focus on the consolidated tapes should also support ESMA and NCAs in our efforts on limiting the **cost of market data**, and for our actions to improve the **market transparency requirements**, notably on the post-trade side.

In this respect, we still hope that the MiFIR review might maintain an appropriate level of transparency in EU markets, both for market participants and regulators. We have a strong preference for a more homogeneous and less complex system for non-equity instruments, as it has been in place in the US for years, and continue our exchanges with EU co-legislators to this end. Looking at the ongoing discussion on the impact of single name credit default swaps in the broader market, we favour more rather than less transparency.

As further evidence of our agile cooperation, also in the non-equity world, you may have seen our recent statement on the **application of Derivatives Trading Obligation (DTO)** in the context of the migration of CDS contracts out of ICE Europe. Our strong coordination with the UK FCA and the US CFTC on this topic showcases once again our common willingness to adopt consistent approaches in tackling global regulatory challenges.

At the same time, global regulators do not all have the same tools at their disposal. ESMA still lacks the means to either temporarily suspend the DTO or to issue proper no-action relief letters. We will hence continue asking the Commission and co-legislators to provide us with legally sound tools to be able to react to similar challenges in the future.

Conclusion

Optimism is not customary when assessing the regulatory landscape.

Today I wanted us all to take a step back and realise how much convergence we can witness in financial markets regulation in Europe and in the US.

It takes commitment, communication and cooperation. It should not be taken for granted. It is our strength and responsibility in facing global challenges together.

We will continue to promote this spirit as we look ahead to data-driven supervision and the impact on technological innovation on markets functioning as new areas of convergence and regulatory dialogue. We know we can count on our colleagues in the US and UK, and on the broader international regulatory community through our bilateral contacts and via the work at IOSCO to further these efforts.

I look forward to hearing the panel discussion, hearing what is top of your mind, hopefully with the same positive tone!

Thank you very much