

4. Partial harmonization through common standards and mutual recognition

To harmonize regulations and market practices in ASEAN+3, the dual approach was proposed in the previous sections. One approach is the bottom-up approach which harmonizes regulations in entire region one by one, step by step. To do so, we proposed to focus on secondary market because primary market, particularly of government bond market is not easy to harmonize as each government wants to maintain their preference in public financing. The other approach is the holistic and top-down approach to create common market practices in Asian offshore markets. The approach can avoid conflicts of national laws and regulations in ASEAN+3 countries as it is offshore. In addition, the market practices, guideline, and rules will be created by self-regulatory organizations. To begin with, it is proposed in the previous section to start considering a particular issuance program which can provide a new opportunity for Asian issuers and investors in comparison to the existing Eurobond program.

In addition to the dual approach, it is also possible to consider a gradual and partial harmonization approach which harmonizes and standardizes regulations and rules by establishing common standards and through mutual recognition among agreeable member states. This can be done if the member states share the same regulations or similar legal backgrounds. The process is gradual because there are large differences in legal systems and regulations in ASEAN+3. Besides, the stages of market developments are very much different from one country to another in the region. But, with the same ultimate goals in our mind, it is possible to start harmonization through mutual recognition and establishing common standards wherever possible. Notably, this approach has already been taken in ASEAN. ASEAN Capital Market Forum (ACMF), which is comprised of ASEAN capital market regulators, proposed common capital market disclosure standards for cross-border offerings of securities called ASEAN and Plus Standards Scheme. It is worth considering extension of the approach to the plus three countries.

It is also important to recognize that setting common standards in the region is a process to establish common goals among the member states. The common standards should provide a good guidance for the member states which need further market developments.

4.1 Setting sub-regional common standards to lead harmonization

As a leading case, ASEAN has already made a precedent to set common standards for their market integration. ASEAN Capital Market Forum (ACMF)³⁶, comprised of ten ASEAN capital market regulators, developed a common standard scheme called ASEAN and Plus Standards Scheme to facilitate cross-border offerings of securities within the ASEAN region. The Scheme is expected to reduce costs and facilitate cross-border issuance within ASEAN. The Scheme will benefit ASEAN and non-ASEAN issuers who make multi-jurisdiction offerings of plain equity and debt securities within ASEAN.

The Scheme has two levels of Standards, comprising a set of common ASEAN Standards, and a set of limited additional standards known as the Plus Standards. The ASEAN Standards are based on the standards on cross-border offerings set by the International Organization of Securities Commissions (IOSCO). However, the ASEAN Standards do exceed some of the IOSCO standards where appropriate. They also fully

³⁶ ACMF was established in 2004 under the auspices of the ASEAN Finance Ministers. The ACMF initially focused on harmonization of rules and regulations before shifting towards more strategic issues to achieve greater integration of the region's capital markets under the AEC Blueprint 2015.

adopt the accounting and auditing standards of the International Financial Reporting Standards (IFRS) and International Standards on Auditing (ISA). To date, ASEAN Equity Disclosure Standard and ASEAN Debt Securities Disclosure Standards have been published as the ASEAN Standards.

The Plus Standards contain additional standards that are required by some ASEAN jurisdictions due to their individual market practices, laws or regulations. For example, Malaysian issuers who consider cross-border offerings in Singapore and Thailand are required to comply with one common set of ASEAN Standards in their preparations of disclosure documents, together with some additional requirements in the Plus Standards of Singapore and Thailand.

The Plus Standards may create additional work, but in comparison to the current practices where issuers have to separately comply with each jurisdiction's disclosure requirements when they seek multi-jurisdiction offerings, it is expected to reduce issuers' documentation burden. It can also be said that the ASEAN and Plus Standards Scheme clarifies what are the same and what are different in regulations in respective countries. It is hoped that these improvements enable more flexible issuance within the region.

To improve the situation, the ACMF has agreed to reduce the number of Plus Standards through their periodic reviews. It is their goal to achieve greater harmonization over time to provide maximum benefits to issuers. It is expected that the ASEAN and Plus Standards Scheme will propel ASEAN capital markets towards greater convergence of the disclosure standards.

On 12 June 2009, Singapore, Thailand and Malaysia have announced the implementation of the Scheme under their respective jurisdictions. Other countries will join the Scheme when they are ready. The timeframe for the implementation of the Scheme throughout the region depends on the readiness of each ASEAN member.

4.2 Mutual recognition to support market integration

The ACMF recognizes mutual recognition is one very important way to harmonize the markets. Under the Implementation Plan by the ACMF endorsed by ASEAN Finance Ministers' Meeting in Pattaya, Thailand on April 9 2009, mutual recognition is placed as the core strategy of the Plan. In the Implementation Plan, mutual recognition process is expected to expand gradually in its scope and country coverage, supported by efforts to liberalize capital account restrictions and to reform tax system, the establishment of trading and settlement system alliances and infrastructure, and a strengthened coordination and monitoring processes at both regional and country levels to support implementation.

Given the differing levels of capital market development and readiness among ASEAN countries, the ACMF proposes gradual and stepwise approach. The mutual recognition initiatives should be implemented bilaterally first and then multilaterally as other countries become ready to join in. In addition, the mutual recognition should start from wholesale; it is often easier to relax restrictions on non-retail investors, who can look after themselves and need less protection than retail investors. Therefore, it may be feasible to make cross-border products and services available first to non-retail investors and then to retail investors when adequate protections are in place.

Under the Implementation Plan, the mutual recognition and harmonization framework for ASEAN is expected to cover the following four areas of cross-border activities.

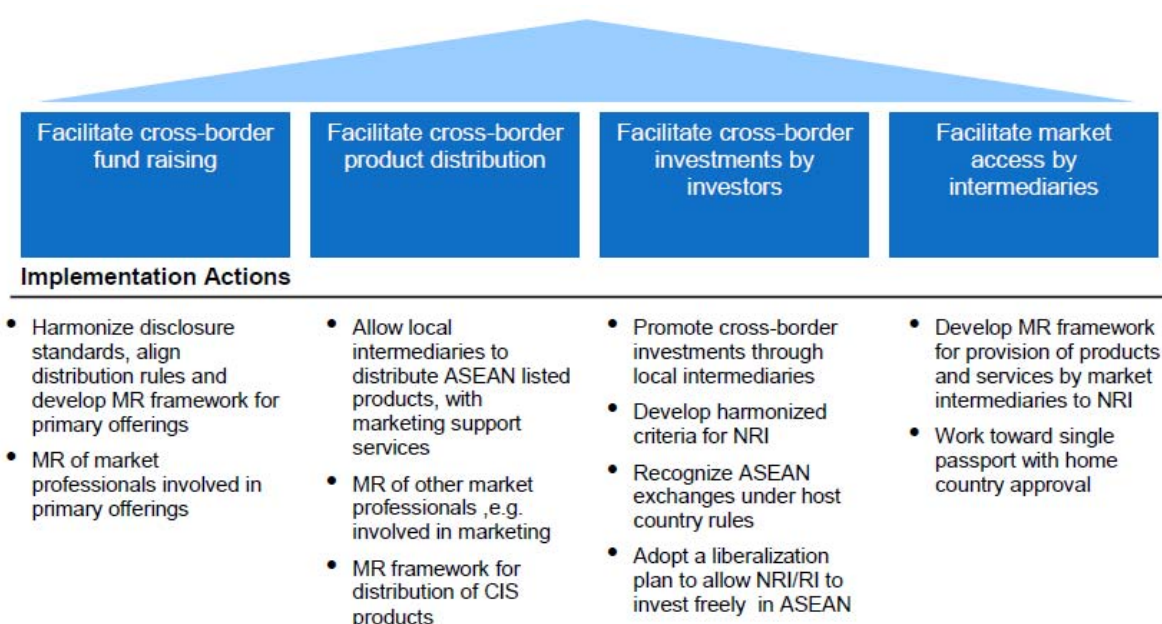
First, to facilitate cross-border fundraising activities, it is proposed to harmonize disclosure standards, align distribution rules and develop mutual recognition framework for primary offerings. In addition, it is proposed to have mutual recognition of market professionals involved in primary offerings.

Second, to facilitate cross-border distribution of products, such as those listed on ASEAN exchanges, Islamic products and collective investment schemes (CIS), it is proposed to allow local intermediaries to distribute ASEAN listed products, with marketing support services. In addition, mutual recognition of other market professionals involved in marketing and mutual recognition framework for distribution of CIS products are proposed.

Third, to facilitate investments by investors in ASEAN, it is proposed to promote cross-border investments through local intermediaries by (i) developing harmonized criteria for non-retail investors, (ii) recognizing ASEAN exchanges under host country rules, and (iii) adopting a liberalization plan to allow non-retail and retail investors to invest freely in ASEAN.

Finally, to facilitate market access by market intermediaries, it is proposed to have mutual recognition framework for provision of products and services by market intermediaries to non-retail investors. In addition, work toward single passport with home country approval is proposed.

Table 4-35: Mutual Recognition and Harmonization Framework



Source: The Implementation Plan (2008) by ASEAN Capital Markets Forum (ACMF)

4.3 Obstacles and problems to be cleared

Although ASEAN has started their initiative, it is not easy to introduce the same approach in entire ASEAN+3 region. While ASEAN is moving towards ASEAN Economic Community in 2015 and policy makers are considering market integration seriously, the momentum for market integration in ASEAN+3 is not acute as ASEAN. The stages of market

developments are different and priorities for policy makers are more diverse.

Even in ASEAN, the proposed approach is gradual and stepwise. The mutual recognition initiatives should be implemented bilaterally first and then multilaterally as other countries become ready to join in. The common standards will be introduced wherever possible, and other countries will join the Scheme when they are ready.

Having said, however, the partial harmonization through establishing common standards and mutual recognition is a plausible approach. If ASEAN can successfully integrate their markets, it is very likely for the plus three countries to consider joining the same framework. Although the area of regulations which can be agreed as common standards may be limited, it will lead further harmonization. Even if there are large national differences in ASEAN+3 countries, the approach by ASEAN and Plus Standards Scheme can be introduced in ASEAN+3. The approach can reduce documentation burden by having the common format. At least, the approach will clarify similarity and differences in offering rules of ASEAN+3 countries.

To start, it is necessary to have clear and comprehensive mapping of regulations and market rules, then, we can start discussion of partial harmonization. At this stage, it is not clear which regulations and rules can be mutually recognized or what needs to be changed to make common standards. After successful mapping of regulations, we should be able to prioritize and consider sequencing of harmonization.

In addition, it is necessary to establish common ultimate goals of the region. The goals and ultimate image of market integration must be shared by the all members. Otherwise, partial harmonization would create additional hurdles for entire harmonization of regulations in ASEAN+3.