Abstract: The recent global financial crisis brought to the center of international discussion the debate concerning the regulation of capital markets, including its many variances, as a factor responsible for the crisis. The focus of this paper is on the role of international cooperation in regard to regulation of capital markets by Brazil and India. As such, it provides a systematic analysis of regulatory initiatives taken by these countries between the years 2007 and 2011, and makes a comparison with those taken by the United States, the European Union, along with other international standards approved in the same period. The goal will be to verify the existence of shared patterns and specific models between these two countries. The topics of the regulatory initiatives pertinent to this project include: executive compensation, banning of short selling, and credit rating agencies. After verifying the existence of shared standards and models between these countries, the study concludes that the trajectory of the two countries have been determined more by events at the global level than by spontaneous or autonomous movements and motivations. In this sense, it can be confirmed that there does indeed exist a certain degree of regulatory cooperation driven by an interest to be associated with global finance.

Key words: regulatory cooperation; capital market regulation; cross border transactions; international standards; international political economy.

Section 1 – Introduction

The recent global financial crisis placed the spotlight on the topic of capital market regulation while also giving way to a great deal of indignation. To what extent was regulation or the lack there of responsible for the crisis? Is there some advantage to developing more extensive regulatory cooperation? Where does healthy and appropriate regulation end and the free exercise of legitimate economic activity begin? In the process of international harmonization, is there some mechanism to guarantee the pretense of domestic interests? To what extent are the interests of emerging economies reflected in the regulatory initiatives led by international standard setters? And how many of these standards are internalized by these same emerging economies?

In order to answer these questions, it is necessary to explore some important aspects, such as the existence of incentives, preferences, ideas, and institutions. Also of importance is the role of international cooperation with regard to capital markets. The following work involves a systematic analysis of recent regulatory initiatives in this area that were adopted by two emerging economies, Brazil and India. The inductive process of immersion in the structure of the content and specifications of the financial regulatory initiatives is carried out in order to verify the presence of standards, modalities, or variations in international regulatory cooperation.

In these initiatives and in the focus of this work the existence of the following items are clear to be seen:

- *domestic factors*, such as preferences, ideas, and institutions present in the domestic sphere, due to the fact that it is in this environment that the rules are formed;

- *International factors*, here there also exist institutions, such as those that are responsible for the formation of standards/recommendations. There are also private actors and states acting in transnational environments, either by means of their financial transactions, or via influence in international
negotiations.

It is the interaction of these factors that this paper intends to focus via the application of a systemic analysis. This work may be carried out by only looking at the domestic environment and by identifying and evaluating the international elements that affect the elaboration of rules: globalization, international negotiations, capital flows. But the chosen form of analysis also allows for the consideration of the international environment, either via initiatives approved in other jurisdictions, or via recommendations adopted at international forums.

By looking at all of these factors, both at the domestic level as well as at the international level, we are able to apply the two-level game theory introduced by Putnam (1988). This theory has served as inspiration for various theoretical and empirical constructions involving decisions reflecting domestic relations and international bargaining. In allowing for the examination of domestic conditions with relation to international norms and institutions, it has the analytical potential to treat questions involving ratification of international agreements or the internalization of international rules, such as was done by Milner (1997).

These aspects, amongst other, will be considered in this paper. In the end, the paper will aim at analyzing not just international initiatives (recommendations of forums or international discussion groups), but it will also look to analyze national initiatives (domestic regulations regarding specific topics related to the capital market). In this manner it may be possible to verify whether the elements present at the international level influence those present at the national level, as well as understand how they interact.

The analysis of domestic and international factors will be carried out in two dimension: (1) contents of the initiatives and (2) influences/pressure applied in the elaboration of rules.

Following this first introductory section, the paper presents an overview of the historic making of the debate, detailing what the literature has recognized as motivation or stimulating factors in order to assess regulation of the global economy. The third section provides a description, the results, and an analysis of the empirical study. And finally, the fourth section provides concluding observations and remarks as well as a future research agenda.
Section 2 – Historic context and bibliographical overview

2.1 History and some premises

The debate over international cooperation with regards to capital markets gained importance only recently. Of great importance was the intensification of international capital flows negotiated on these markets, as well as the impact this has caused for the macroeconomic stability of individual countries. This impact has been felt either through the trajectory of exchange rates, the interest rate, the level of international reserves, countries’ transformation of economic structures, or by means of the economic link created to the rest of the world by processes of economic opening and liberalization, the latter occurring both at the level of trade and finance. Furthermore, it should be noted that capital flows represent the very essence of the market that is the object of this study.

It is a fact that countries may no longer abstain capital flows originating in financial markets. At the same time, as a consequence of the recent financial crisis that took place in 2007/2008, there has been a large clamor for a new and more extensive regulation of this market (STIGLITZ, 2010). Nevertheless, this clamor for more regulation does not necessarily mean that it will be constructed in an environment of greater international cooperation and coordination (HELLEINER; PAGLIARI, 2011).

With the outbreak of the crisis, it was clear that effects emanating from the event had spread across the globe in a crushing and considerably extensive manner. In the case of capital markets, this came as no surprise. Especially due to the fact that cross border transactions, those with participants and structures registered in more than one jurisdiction, have risen in volume considerably since the beginning of the 1990s.\textsuperscript{2} In fact, the new possibilities available for the sharing of

\textsuperscript{2}Eatwell and Taylor (2000) affirmed that the present wave of capital market liberalization really began in the 1950s, with the opening of the Eurodollar markets. But it was only after the end of Bretton Woods, with the privatization of exchange risk, that there was a true explosion of exchange markets followed by the creation of a global bond market in the 1980s, and the creation of a global equities market in the beginning in the first part of the 1990s.
opinions and information by means of advanced technologies, with the potential for simultaneous and transnational communication, are enormous. The evolution of technology permitted investors to become participants in global markets and opened new opportunities for financial intermediaries. It also allowed companies to list their shares on the markets of various countries. Finally, due to its facilitating natures, becoming everyday more electronically based, global capital markets have been one of the principle poles of attraction for financial resources of investors emanating from a diverse array of countries.

Meanwhile, the legal frameworks pertinent to the environments in which the transactions occur continue to be constructed at the domestic level. This is a dichotomy of importance, the transnational character of the transactions and the domestic (or national) configuration of the applicable regulatory regime.

Additionally, it is well known that the legal framework is considered a risk factor and as such plays a preponderant role in the decision making process for the holders of capital. Investors value the predictability and stability of rules, and any sudden change or failure to abide by standing rules leads to a legal or regulatory risk. At the same time, these market participants compare the content of the rules of various jurisdictions, in a process known as arbitrage or regulatory competition. Their object is to eventually allocate their capital in the least costly environment. This attempt to diminish the cost or regulatory burden feeds pressure for greater deregulation, many times leading to scenarios known as ‘race to the bottom,’ as such pressure leads to the weakening of regulations that create compliance costs. It is necessary to note that not always will these deregulation movements be seen as good by the entire international community. In fact, such waves may devaluate traded securities and in some instances create greater risk in the market.

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3 Despite relationship taking place between similar economic agents (such as securities issuers, investors, and intermediary entities), these same actors are also located at the same time in more than one regulatory environment of more than one country. Depending on their particular situation they may involve international relations between numerous different countries (in this case they would be called either cross-border or transnational transactions or relations). An extreme example would be an Asian investor that could place his resources via a London manager, who would then make an investment in securities in Brazil through a New York broker.
As such, in this case we have two relevant premises that are considered by regulators when making regulatory decisions that are not necessarily antagonistic but related to international capital flows. These premises regard the predictability of rules and the posture to take with respect to regulatory competition.

Such premises, as well as the dilemma presented by the combination of the transnational nature of transactions and the domestic nature of regulation will permeate the whole of the debate contained in this paper. In this respect, these issues will be considered again as this paper is developed.

Another important premise is the definition given to ‘regulatory cooperation’, a topic that will also be considered in the confines of this paper. In fact, regulatory cooperation includes innumerable forces and activities that may include different dynamics or results, For example, there are many different identifiable modalities of regulatory cooperation within the following activities:

- The creation of international standards and recommendations
- Regulatory coordination
- Regulatory harmonization
- Regulatory convergence
- Regulatory compatibility
- Sharing of information
- Execution of reciprocal agreements between countries in order to permit the operational activity of foreign institutions (such as that which occurs when the concept of mutual recognition of institutions is applied)

Throughout this work, such expression/activities will be utilized, taking as a base the more specified focuses used by the literature, with a process and end that distinguishes each one. As such, this narrowing and distinction will not be applied to the expression ‘regulatory cooperation’, that as a central element of this research project will be used in a wider context, that is, as a result to be reached for. In this respect, ‘regulatory cooperation’ includes all of the forces and activities carried out, and also includes all of the modalities, levels, and various specifications already defined or that will be constructed within this paper.

2.2. Theoretical Approach
2.2.1 Where does regulatory cooperation come from?

In order to locate the main topic of this paper, it is first important to describe the discussion found in the literature regarding the motivating factors driving the international economic regulatory regime. Drezner (2007) refers to the existence of diverse explanations for how the world economy is regulated in an era of globalization and that identify the motivating factors that are the focus of the discussion. The author proposes a typology for these factors, indicating two dimensions. One of these dimensions suggests that the driving forces behind what he denominates as regulatory coordination\footnote{Although Drezner (2007) refers to the term ‘regulatory coordination’ in a more strict way, his categorization may be applied with ease to the more ample notion of regulatory cooperation used in this paper.} are: (1) economic or (2) ideational. According to the second dimension, the pressure for coordination comes from the forces of (1) responsible actors and (2) structures.

2.2.2 Theoretical focuses applicable to regulatory cooperation in capital markets

In order to certify the focal point of international regulatory cooperation with regards to capital markets, there are a few interesting explanations and theoretical diagnostics that should be highlighted: international diffusion, the power of large states, the role of institutions or international discussion forums, the influence of transnational firms, and the weakening of international regulatory standards. These focus points are better explained below.

2.2.2.1 International Diffusion

Simmons, Dobbin and Garrett (2008) begin with the political and economic changes that occurred during the 20th century with the intensification of international capital flows. They pay particular attention to the impact on the dynamic of countries in order to analyze the diffusion of liberalism and the
propagation of the liberal model of markets and democracy.\textsuperscript{5}

According to the authors, the international diffusion of this model is explained by the interdependency between the decisions made by states. In this context, interdependence of decision means that the decisions of states are not independent/autonomous, that their political choices are affected by the previous choices made by other states.

In attempting to explain that which makes these new policies diffuse across space over time, apart from the interdependence of states, the study carried out by Simmons, Dobbin, and Garrett (2008) points to four mechanisms, deduced from empirical analysis, through which the interdependent decision making process occurs: coercion, competition, learning, and emulation. In addition, the paper considers the process of diffusion to relate to those decisions that are neither rational nor well informed.

The existence of coercion, presupposes that the powerful states influence the less powerful states, causing them to adopt policies. This occurs, according to the authors, by manipulating opportunities and constraints, either directly, or through international organization/NGOs in which the more powerful countries maintain elevated influence.

Competition is a more decentralized mechanism than coercion. The authors highlight the differentiated adoption of certain policies geared toward the attraction of investors. This argument is applicable to economic policies through which governments compete for mobile capital and export markets. Examples include, the implication of regulatory requirements, the improvement of investment risk, and the reduction of taxes: together, these mechanisms make investing in local activities more attractive and the local economy more active.

The learning process involves a change in opinions and convictions that occurs through the observation of the experience of other states. The choices made by third parties are important as they generate new information that serves to better inform actors of casual relations. It does not represent a political decision, as

\textsuperscript{5} In the same respect Carothers (1998), who mentioned the political opening and the parallel processes of fiscal stabilization and economic liberalization that began in the 1980s. The author described the impact of these events as not always helping in the movement toward the rule of law.
in the cases of coercion and competition.

Finally, the acceptance by means of emulation includes diverse formats that include the following of examples provided by states, the influence caused by the opinion of epistemic communities, the influence of advocacy groups, and even the adoption of policies for symbolic reasons even if they are never put into practice.

This theoretical framework was tested and analyzed by the authors in areas such as fiscal policy, privatization programs, public budgeting, bilateral investment treaties, and also regarding democratic institutions, politics, and human rights. Although there is no case study directly focused on capital markets, the international diffusion approach is a constant reference in the works that look at regulatory cooperation and global financial regulation.

2.2.2.2. The power of the large states

With the object of presenting an explanation of the international regulatory regimes, Drezner (2007), reinforces this theoretical approach, especially with regards to the mechanism of coercion. In this respect Drezner defends the idea that ‘large states’, or ‘great powers’, retain a relevant influence in the adoption of decisions by other states.

The author bases his argument in the belief that the state is the central actor with respect to regulatory decisions, and he defends the idea that regulatory forces only occur with the backing or stimulus of large states. Due to this, these states have to be present so that any global regulatory initiative, referred to by Drezner as regulatory coordination, may take place. In this regard, the author highlights the role of the hegemon played by the great powers (United States and European Union), and indicates that the preferences of these countries are based on domestic considerations. As a consequence, coordination will only occur if the adjustment cost is not too high for domestic financial actors.

The principal argument developed by Drezner (2007) is that the great
powers continue making the important decision with respect the international regulation. In the case that they are not present, rival standards or ‘false-standards’ are created. Within his empirical analysis, the author examines the governance of the international financial system and the standards and financial codes developed after the Asian and Mexican financial crises during the 1990s. The study confirms that the design of the models of global economic governance is fragmented when there is not direct participation on part of the great powers.

The same conclusion – the influence of large powers – had indeed already been proposed by Simmons (2001), that via a presentation of a model of capital market regulatory policy coordination was able to analyze the processes of regulatory harmonization and the influence of market incentives, political pressures, and pressure emanating from multilateral institutions. By means of an empirical test, she demonstrated the processes of influence and the various interest groups involved.

### 2.2.2.3. The role of institutions or international discussion forums

International discussion forums have led the initiatives for the creation of international standards. These forums that have assumed the role of formulators of international standards and are usually constituted formally as international institutions or associations, such as intergovernmental networks or working groups of international entities. As such, Porter (2005) emphasizes the importance of the environment of these forums or institutions that beginning in the 1960s have been created with the mission of regulating global finance.

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6 The author considers large states the governments (or state agents) that supervise large domestic markets. With respect to principal actors, these actors are those that have written the rules that govern the global economy.

7 For Brummer (2012), the architecture of the global financial regulation consists of institutions that set the agenda of the international regulatory system, others that formulate standards or recommendations (where international discussion forums are located), and finally there are those that monitor compliance of the established standards. Implementation falls in the realm of the domestic regulatory authorities. For examples of capital market discussion forums see notes 18 and 33.
Those that have criticized the role of these institutions are numerous, but their arguments are centralized around the dependency of these bodies on the preferences and power of dominant actors. Singer (2007) points out as a cause of their skepticism a more formal aspect, the fact that they were not constituted by treaty and are not granted agency – legal or otherwise – to act in the international sphere.

According to Porter (2005), it is this informal mechanism, through which technocrats interact in a close manner, which explains the emergence of international standards, and helps to mold the role of regulators at the domestic level, in the sense that it is in the forums that understandings are shared and as a consequence the knowledge of the various actors becomes more homogenous. As a consequence, for this author the forums will continue to operate in an insulate manner, largely isolated from the domestic political context. As a result, they will remain outside of the diplomatic pressures applied between states.⁸

Still on this topic, it is worth pointing out that the international financial institutions, such as the IMF and the World Bank, have long attempted to verify conformity, on behalf of states, with the standards approved by those international discussion forums mentioned above. Such a posture by these institutions serves as a clear signal to market actors that conforming to certain standards is critical for financial development and stability. Apart from the influence of the international discussion forums, another group wielding significant influence is the very international financial institutions themselves. This influence is exercised in two ways: directly, by means of conditions placed on loans given to countries, and indirectly, by signaling to market actors the importance of the adoption of certain regulatory standards (SINGER, 2007)

The reputational factor associated with the international discussion forums and the recommendation that they produce should also be mentioned. These two factors represent an ‘impartial’ influence that is independent of specific bilateral

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⁸ Going against this vision, and in agreement with the analysis of Helleiner and Pagliari (2011), this was not the situation after the crisis due to a greater activism on the part of legislative bodies and the leaders of the G-20, both of which placed on the international agenda a great work designated for the international discussion forums.
pressures. Said another way, peripheral countries would feel more comfortable adopting proposals for new standards made by these forums than those made by specific countries, even though the standards emanating from the forums are often highly influenced (indirectly) by the larger states.

In this way, the dynamic of the discussion forums, and the recognition of the result that they produce, are important factors that in certain moments lead to domestic implementation of the international standards and recommendations that are formed in these very bodies.

### 2.2.2.4. The power of private transnational actors

Apart from the central role played by states, the international institutions, and discussion forums, private transnational actors are also assigned a significant role by the literature. This is especially true in analyses based on post crisis scenarios. These works are not exactly what could be denominated as part of the ‘literature of the crisis,’ as they do not direct their attention to the common causes and characteristics of such events. To the contrary, they often question and confirm hypotheses that were formulated and tested before the crisis occurred.

For example, Mügge (2012), is very emphatic about the relevance of private actors for type of cooperation in the realm of financial regulation. Mügge affirms that the transnational mobility of capital and financial services shapes the choices of those that set policy. Competition for mobile capital and services, and the tendency to set weaker or normative regulatory standards, are often counterbalanced by the risk for financial instability and contagion created by financial crises. As such, for this particular author, the negative externalities derived from financial crises will serve to stimulate global cooperation.

When looking at the conduct of private actors in Europe, this same author highlights that over the past two decades banks and market operators (asset managers and financial intermediaries) used all of their political leverage in order to mold market rules and the structure of the regulatory institutions to their own benefit (MÜGGE, 2010). His point is that with the opening of markets, private actors were able to influence the political institutions that elaborate market regulations,
most especially the body that oversees market competition rules. As such, the
equilibrium between competition and cooperation ends up being a determining
factor in any and all regulatory reform.

The argument put forth by Mügge (2010), when compared to other interest
groups the banks had their interests attended to in a disproportional manner. In
addition, the role of private actors was central to the alliances that obstructed and
later motivated the integration of the European market.\(^9\)

Also, Underhill and Zhang (2008) argue that financial globalization strongly
augmented the position of private action and created a situation in which regulators
became more dependent on the interests of the market\(^10\). According to the authors,
this even transformed the notion of public interest into the dominion of
international finance and created fundamental problems including exclusion and a
democratic deficit.

In this same line, Underhill (2011) suggests that as a result of financial
liberalization and the establishment of rules aimed at the market, private
preferences were favored and largely dominated in the formation of the new global
financial architecture. According to this author, the domination by private actors can
be verified in various ways: (1) in the close relationship between financial institutions
and regulatory agencies, (2) in the frequent delegation of supervisory activities to
the market itself, for example, self-regulation, (3) in the responsiveness of regulatory
agencies to the interests of private financiers via the adoption of policies that
promoted competitiveness of these institutions on international markets. The
arguments attempting to explain this situation are ample: it was a matter of
professional rules, the financial industry possessed a specialized and technical
knowledge in this sophisticated sector, and in addition there is a shared need to
maintain confidence in the national financial sector (UNDERHILL, 2011).

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\(^9\) In fact, the influence of the banks in the process of financial market integration has been verified in
Europe, where the governance of capital markets became super-national. This is especially the case
with respect to the bestowal of power to super-national entities (ESMA – European Securities Market
Authority and the EBA – European Banking Authority) for implementation of rules originating in the
European Union or in the European Commission.

\(^10\) Regarding this dispersion of power between state and societal agents, also see Cohen (2008),
where he analyzes the dynamics of power and regulation with respect to global finance.
In an analysis of the role of the American financial industry, Helleiner (2011) also puts forth this argument when suggesting that if in the past the standing incentives caused these actors to desire absolute elimination of any and all regulation, as regulation would affect the competiveness of American capital markets and American firms, today the financial sector encourages policy makers to participate in the coordination of international regulation. The aim in this change of course is to guarantee that they maintain a minimum playing field. In the opinion of this author, despite the enormous role of the state in the formation and coordination of new rules following the crisis, the influence and action of the private sector in the writing of policy is definitive and here to stay. According to the author this could even be seen in the delegation of regulatory tasks conceded by the G-20 (HELLEINER, 2011).

2.2.2.5. The weakening of international regulatory standards

Another focus – or diagnostic – for the topic of regulatory cooperation has been highlighted by Helleiner and Pagliari (2011). After having evaluated the discussion agenda following the financial crisis of 2007/2008, these authors concluded that the establishment of international regulatory standards was in fact weakened. With the focus of the ‘great powers’ turned toward the intrigue of the crisis, and a greater participation of the new emerging powers in the institutions discussion forums, such as the G-20 and the Financial Stability Board (FSB), both contributed to diminish the appetite for global regulatory harmonization. For these actors, the regulatory environment was heading for a model of greater fluidity with respect to the coordination of policy, in which there would be greater informal regulatory convergence as well as fragmentation. They even denominated this scenario as ‘cooperative decentralization’ driven by divergent regulatory standards. The latter being similar to what Drezner (2007) called rival standards or sham standards.

11 Such is the case, for example, of the endorsement and legitimacy of standards and codes of best practice related to accounting and auditing formulated by the International Accounting Standards Board – IASB.
According to the authors, as policy formulators, states were able to mitigate this problem. For instance they could use ‘weaker’ forms of cooperation, such as the promotion of principle-based international standards, information-sharing, research collaboration, international early alert systems (for future financial crises), and even capacity building. Another possibility would be to have network collaboration with regard to the different sectors or different financial activities. In a certain way, this vision coincides with that which recognizes the growing power of private transnational actors.

Though still exploratory, the diagnostic formulated by the authors suggests the need to look at the study of prudential international regulation with moderated bias, and in a more open and multidisciplinary way. This is to a great extent the approach of this paper.

2.2.3. Proposal for dialogue with the various focuses presented

The proposal of this paper is to add to the existing content a new vision with respect to the underlying question. In as much, this paper looks to make two effective contributions to the discussion regarding regulatory cooperation.

The first is to amplify the significance of what is understood by regulatory cooperation by confirming the presence of rules or evaluations that while having divergent content possess functions, objectives, and or similar/comparable substance. The differences between rules may be tenuous or more complex, but the most important thing is to infer that the topic of regulatory cooperation involves not only the adherence of states to models or practices, but also the effective alignment of domestic rules with the institutional and regulatory framework. In this sense, the application of principles or regulatory content that privileges the ‘substance in relation to the form’ is presented as one of the modalities that allows for the confirmation of the existence of regulatory cooperation.

The second contribution consists in the amplification of the discussion on regulatory cooperation going beyond the central role of the state in regulation. It is
necessary to look also at capital flows and at the bias of market participants\textsuperscript{12} that make their decisions within the regulatory environment and that are able to move their capital in a way to push for changes in the preferences of states.

\textbf{2.2.4. Relevance of the topic}

Why are these contributions important? To begin, they are relevant from a theoretical point of view. They complement, confirm, and refine the hypotheses discussed above using new empirical evidence. They are also important from a practical view, in the field of public policy formation as the method of analysis created for the empirical exercise (that applies a specialized questionnaire) allows for a better identification of existing regulatory cooperation. It can also help identify the motivating factors that led to the creation of new rules. What more, these contribution aide in the understanding of how the oscillation in regulation relates to increased capital flows and the search for better rules or ‘good regulation.’\textsuperscript{13} Apparently, these two parameters (good regulation and the increase in investment flows) are not inherent opposites: to the contrary, they often move together in the same direction, but with varying intensities in different jurisdictions.

In order to better understand these elements – increase in flows and better rules or good regulation – I represent some of the considerations formally previewed. First, regulatory activity conjoined with movements in capital flows. In the academic discussion on regulatory cooperation, various authors have looked to establish a group of explanatory variables. Of these attempts, perhaps the most important

\textsuperscript{12} This expression is utilized throughout the course of this paper, and refers to the holder of securities and other capital investments; it also includes investment fund managers. In addition, the expression covers the so-called market operators, usually known for their operation as intermediaries but that also hold securities for their own portfolio.

\textsuperscript{13} The use of the figure of the pendulum comes from an explanation put forward by Eatwell and Taylor (2000), in which the authors mention the balance that exist in regulatory activity: “The dividing line between the activities of the authorities and the unregulated activities of the market is not a fixed point, it is a pendulum. After a period in which the authorities fall behind developments in financial markets, the need to regulate becomes more pressing. But when fears subside, arguments promoting the advantages of financial innovation in a liberal environment become more persuasive. Moreover, the interrelationship between the financial markets and the authorities is always changing as the integration of markets proceeds domestically and internationally, and as technical innovation changes the speed at which markets operate and the product mix traded. Not only does the swing of the pendulum change, but the point from which the pendulum is suspended changes too.”
finding to highlight is the importance found for the economic onus that it represents. In this respect, the decision of government to cooperate is taken based on the cost involved in the necessary adjustments made unavoidable by the change in domestic standards (DREZNER, 2007). This could mean, to the contrary, that international capital flows will not be driven to countries that have not made these adjustments. In other words, the adoption of convergent rules will not be presented as an option for countries, but rather an obligation for them should they wish to be a part of the conglomerate of countries receiving capital inflows.

On the other hand, the basic evaluation of a regulatory system (or of a country) allows one to know if that system is good, adequate, acceptable, or if it needs reform. But, in the end, what are ‘better rules’? What are the criteria to determine whether a regulatory system is good?

According to Baldwin, Cave, and Lodge (2012) from a political point of view, good regulation is when in the exercise of its regulatory mission, the entity burdened with such task declares such criteria as proportionality, accountability, consistency, transparency, and objectivity.

Some time ago the standing international economic organizations also indicated the importance of this topic and presented their vision of what criteria and aspects would be considered adequate. They also adopted minimum principles for the maintenance of good regulatory policy (World Bank, 2004, OECD, 2005).

Apart from these procedural aspects of regulation, in matters of capital markets other elements should be evaluated. As, for example, if regulation will help maintain a transparent, just, and ordered market, with the goal of protecting investors and minimizing risks. In this way they would be serving to guarantee systemic stability (EATWELL; TAYLOR, 2000).

According to the economic perspective, good regulation will be efficient in the sense of maximizing wealth (POSNER, 1974). But the notion of efficiency may also include the aspects of morality and risk. In capital markets, the seminal necessity of regulation is generated by inherent market failures that occur when the market no longer produces efficient results, usually due to an externality such as sub-optimal competition, poor price formation, manipulation, and or asymmetrical information.
Based on the Coase Theorem, regulated markets reduce transaction costs. According to this theorem in order for market participants to achieve an efficient result they should have their property rights well defined and be well informed, both of which involve costs.\(^{14}\) From this reasoning, being in an organized market with regulation, apart from reducing so-called transaction costs, also serves to avoid systemic risk which is also a type of externality that adds costs to economic transactions (EATWELL; TAYLOR, 2000). According to these authors, this would be an adequate justification in itself for government to create authorities with strong regulatory powers.

In addition, it should be emphasized that the final objective of the regulation of capital markets, at least from the point of view of the regulator, may also provide opportunities for distinct preferences between countries. Could it be important, in the same sense, that a regulation (domestic or international) demands a minimal provision of information, equality of transactions, efficient price setting, and even perhaps the appropriation of risk by market participants? Apart from the distinct objectives of regulation, each country may have different interests, preferences, specifications, and legal systems in which these elements have been assigned varying importance.

This scenario is the focal point of this paper, and will be further developed via an empirical exercise to be explained in the following section.

**Section 3 – Empirical Exercise and Results**

**3.1. Description**

**3.1.1. Objective, focus, references**

The objective of this paper is to explore the regulatory cooperation between two emerging economies, Brazil and India\(^ {15}\), with regards to the capital market. The design of this research paper rests on the premise that regulatory cooperation

\(^{14}\) Respecting the origin of the term ‘transaction cost,’ see the referenced article of Coase (1960).

\(^{15}\) On the selection of countries, see item 3.1.4.
assumes various forms and that there are many different interests, preferences, and incentives involved in regulatory activity. This is true both at the domestic and international levels.

The more specific focus of the research paper is the comparison of the origins, functions, objectives, regulatory environments, and substantive contents of the initiatives regarding capital market regulation put together by Brazil and India between 2007 and 2011. The common elements within the structures and content of the initiatives stemming from the different jurisdictions allow one to answer the question as to whether or not certain parameters were followed. Were this to be the case, it would also be possible to ascertain the extent to which regulatory intensity may be balanced or adjusted in order to support regulatory cooperation.

In order to achieve such ends, this research paper leverages some essential factors that are both necessary and inherent to capital market regulatory cooperation, and that were presented early in this paper: the central role of the state, institutions, the formation of domestic preferences, the presence of information, and the influence of non-state actors. However, beyond these key factors, in order to produce an adequate analysis, a differentiated or more open and multidisciplinary lens was used when observing the phenomena in question.

The principle motivation for this paper was to expand the common knowledge related to this area of study, especially with respect to some explanations in the existing literature. Additionally, it is the aim of this paper to complement, confirm, and refine the various focuses early presented, in addition to providing new empirical evidence. From a practical point of view, this paper provides new light to the field of public policy formation, in that the structure of analysis created for the empirical exercise allows for a greater understanding of the oscillation in regulatory policy by considering the objectives pursued by the regulator itself.

### 3.1.2 Design of Study and Hypothesis

The design of this study considers the interaction between domestic and international factors with respect to capital market regulation. Within this study, always present is some sort of mechanism of pressure or constraint. These
mechanisms may be derived from domestic elements or they may find their origins outside national borders, as is the case of international standards or recommendations. The latter two usually pass the scrutiny of countries when they opt for or against their internalization. When this happens, it may be said that there exists some modality of regulatory cooperation in the form of domestic rules. This is the principal hypothesis of this study.

The paper further considers that there exist differences between countries in the implementation of standards due to differences in legal and institutional structure. In order to evaluate these differences and determine how regulatory cooperation functions in emerging market economies, two complementary hypotheses were formulated.

**H1**- Brazil and India have cooperated, adapting their domestic rules to international standards, and they did this in order to generate both domestic and international credibility.

**H2**- The principle forces driving regulatory cooperation between these countries are capital flows and the countries’ interest in showing a regulatory environment aligned with international standards and the largest markets.

### 3.1.3. Empirical Exercise

In the empirical exercise, the research project mapped the existence of regulatory cooperation, using as a base initiatives aimed at creating rules for capital markets. The present paper uses these observations to test the hypothesis delineated above.

The exercise was carried out by means of an examination of documents and complement with non-structured interviews that approached a diverse array of regulatory topics. These topics included but not limited to initiative content, regulatory format, and regulatory environments.

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16 Although they possess common elements, it is assumed that the nuances between the countries may come in varying degrees, and that they may be tenuous or complex, but that it is still possible to verify the occurrence of regulatory cooperation.
The cases selected for this study regard the following regulatory topics:

1) **Executive compensation**: requirements for the divulgence of information respecting benefits packages, including values.

2) **Short-selling**: rules restricting or prohibiting market participants from realizing this sort of transaction, or requiring these participants to divulge such transactions.

3) **Credit Rating agencies**: requirements to register as such an agency, steps taken to minimize conflicts of interest, requirements to divulge information regarding methodology, of administrative structure, and analysis.

Why were these topics chosen and not others? What more, why not analyze all of the regulatory initiatives relative to capital markets that took place after the crisis, independent of the selection of topics or specific matters?

To begin, that which was desired was to select cases that had differentiated regulatory goals. For example, a typical classification of regulatory objectives in the area of capital markets considers the market participants, and their conduct, or specific situations that demand regulation.

As such, between the various participants, the main focus of regulation is most often the companies that issue securities, and or the people that acquire and trade in these securities. With respect to the usually examined situations, these include the offering of securities to the public, transactions on secondary markets, and even the divulgence of relevant information on the part of the agents offering the security that is being traded.

Included within the topics selected to serve as case studies are all of these relevant situations. The first topic, executive compensation, reflects a rule pertinent to a particular category of capital market participants, the companies that issue and list securities and those related agents, or the executives. The second, the prohibition of short selling is focused on the regulation of market transactions, attempting to keep them from presenting risk to other participants. Finally, the last

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17 This is also known as short-selling, which refers to a market practice that consists in the selling of a financial security (or derivative) that the seller does not actually hold, in the hope that the price falls in order to then buy it back and make fun on the transaction.
topic, the regulation of credit rating agencies, is also a regulation of an activity that looks to establish systemic stability, the latter of which these entities are supposed to guarantee.

In addition, all of the selected topics are considered factors that contributed to the recent financial crisis, as they involve actors, activities, and transactions that were labeled as responsible for the destabilization of the global economy. This brings both advantages and disadvantages. As the study uses a time frame aligned with the crisis of 2007/2008, the idea was to maintain focus on the most controversial topics considering that the main object was to observe the process of cooperation and both the domestic and international dynamics following the great fallout.

In as much, it is necessary to make clear that the time period chosen for the analysis begins in January of 2007 and runs until December of 2011. Although the laps of time to be covered was pre-determined, it is important to mention that in the act of analysis a mapping of the standing initiatives prior to this period was carried out for each jurisdiction. This was done not only because it was necessary to better understand how these regulatory environments functioned but also in order to establish or exclude any casual mechanism related to international recommendations.

3.1.3. Utilized data

The data used for this study includes all of the approved regulatory initiatives, or those that had the possibility of being put into effect, such as laws passed by national parliaments, and rules approved by regulatory agencies. Included were both legislative bills and rules, whether or not the latter were subject to public comment. Not included were private regulations, even if they were formulated by private entities with self-regulation powers.

The study also includes the identification and consideration of regulatory initiatives in the United States and in the European Union during the same period, as well as recommendations adopted by international forums such as the International Organization of Securities Commissions (IOSCO) and the Financial Stability Board.
Also analyzed were the reports regarding requests for public comments on new regulatory initiatives with the goal of evaluating the declarations, interests, and preferences of the interested parties.

Neither is regulatory cooperation with regards to treaties and international agreements between countries the objective of this paper. The mechanisms of negotiation for these types of cooperation are different, as are the methods for evaluating interests, preferences, and the domestic environment.

Also excluded from this study are any initiative made within the realm of self-regulation. Although such initiatives are included in the regulatory framework, to include this type of regulation would involve an analysis of differentiate and specific delegation structures.

### 3.1.4. Selected countries

The countries selected for analysis were Brazil and India, two emerging economies, both of which have experienced intense development and growth with regard to their capital markets. Furthermore, these are markets that were only opened to foreign investors in the last decades and that have since received important capital inflows.

With respect to the movement of capital headed toward portfolio (or indirect) investments (which shows on the country’s balance of payments), these two countries demonstrated a remarkable evolution when compared to general global flows. In addition, it is necessary to highlight that the selected jurisdictions

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18 The IOSCO is an organization that brings together the regulatory agencies of more than 100 countries representing almost the totality of the capitalization of all the world’s real estate securities markets. Indeed, the IOSCO has become the principal international forum for discussions between security market regulatory authorities (see www.iosco.org). The FSB was created to coordinate, at the international level, between national financial authorities and international regulatory bodies. It was also create with an eye towards developing and promoting the implementation of efficient regulatory policies, oversight, as well as other policies related to the financial sector. The body brings together national authorities responsible for the financial stability of important international financial hubs, international financiers, regulatory and oversight authorities, and central bank specialist committees (www.financialstabilityboard.org).

19 Although capital flows to Brazil and India play different roles with respect to their respective GDPs, capital markets become a real alternative for the financing of companies in these countries over the past decade.
have widely recognized solid market\textsuperscript{20} administrative institutions that play active roles as self-regulatory authorities.

It is also important to note that both countries capital markets are very well capitalized, with their principal exchanges being amongst the world’s largest 20 when considering capitalization. Together they represent 7.71% of global capitalization and 6.64% in 2012.

Table 1. Size of principal exchanges as percentage of total global capitalization

<table>
<thead>
<tr>
<th>Country</th>
<th>2007</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>2.18</td>
<td>2.19</td>
</tr>
<tr>
<td>India</td>
<td>5.53</td>
<td>4.45</td>
</tr>
<tr>
<td>Total</td>
<td>7.71</td>
<td>6.64</td>
</tr>
</tbody>
</table>

Source: World Federation of Exchanges, Statistics

Table 2. Ranking of exchanges of selected countries in list of highest capitalized global exchanges

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Exchange</th>
<th>Market Capitalization US$ billions</th>
<th># of Listed Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>13\textsuperscript{th}</td>
<td>BSE India</td>
<td>1,077,849.1</td>
<td>5,241</td>
</tr>
<tr>
<td>14\textsuperscript{th}</td>
<td>National Stock Exchange India</td>
<td>1,051,483.7</td>
<td>1,673</td>
</tr>
<tr>
<td>16\textsuperscript{th}</td>
<td>BM&amp;FBOVESPA</td>
<td>1,018,640.3</td>
<td>365</td>
</tr>
</tbody>
</table>

Source: World Federation of Exchanges, Statistics

Another criterion considered in the selection of countries was the fact that both maintain a democratic political system. With respect to their legal systems, there is great diversity between them, as India adopted a common law system while Brazil instituted a civil law system.

In as much, the countries selected for analysis are ones in which the capital market serves a relatively important role, that have grown considerably in traded

\textsuperscript{20} Those entities that are considered as market administrative bodies are those institutions responsible for the centralization of trading and post-trading activities, such as stock exchanges and clearing houses.
volume over the past two decades, and as such are relevant destinations for investors. For these reasons the two countries’ respective governments are important interlocutors in discussion forums on international financial governance

3.1.5. Structure of analysis

In order to evaluate the content of each adopted rule, an analytical script was created. A certain questionnaire was applied to each initiative (see attached form-Annex 1), with the goal of identifying there common characteristics so as to allow for an ‘autopsy’ of the regulation/institution and more completely determine the compatibility of the final results

Within the questionnaire are delineated, in a detailed manner, a few very objective aspects that are meant to facilitate the diagnosis of the initiatives. These aspects include the identification of the type of the initiatives, primary objectives and justifications, content, along with domestic interests and preferences. In addition, also considered is the influence of international factors in the case the some type of international harmonization or other process occurred.

The study utilized a conglomerate of 14 regulatory initiatives adopted by Brazil and India, it also takes into consideration the regulatory framework already existent in each country prior to 2007 with respect to the already mentioned topics.

Apart from this, also analyzed were an additional 9 recommendations put forward by international standard setting authorities, and 21 initiatives adopted by the United States and the European Union regarding the same subject matters and in the same time period. The identification of all 14 initiatives can be found in Annex 2, 3, and 4. The details of the analyzed initiatives can be found in the following graph.

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21 In this context it is important to mention G20’s encouragement for making Brazil and India be invited in March 2009 as new members of the IOSCO’s Technical Committee, the Basel Committee and CPSS.

22 The idea of an institutional autopsy was inspired by Milhaupt and Pistor (2010). In this work the authors show that international corporate government standards take on their own profile when they are questioned in local institutions. As such, they perform an ‘institutional autopsy’ in cases where companies are headquartered in different countries.
It can be seen that Brazil and India, when compared to the United States, produced an inferior number of regulatory initiatives. 23

This conduct may stem from several reasons, including the fact that the countries were less exposed to the global financial crisis and that both countries’ capital markets are less sophisticated than that of the United States. Paradoxically, the reduced quantity of initiatives could also be due to the fact that both countries already possessed a solid regulatory structure with regards to the analyzed topics. This is most definitely the case of Brazil, for which the banking crisis experienced during the 1990s served to stimulate enhanced regulation for the market and its many institutions 24. They also led to a filling of the regulatory gap in relation to the various subject discussed following the global financial crisis. 25

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23 The exception is India, which produced an elevated number of initiatives regarding credit rating agencies during the period of analysis.

24 In this respect, see the study of Loyo and Azevedo (2010), in which the authors compare the reform program of the American financial system (released in 2009) with the cast of different measures existent in Brazil. The Brazilian regulatory standard appears as both coming before and being
The analysis of the environment in which these initiatives were created serves as a base for beginning to understand the motivation of each country in relation to the topics selected for this study. The next sections, which complement the broader scope of this analysis, evaluate the observed results, especially regarding the minimum parameters and common elements present in the initiatives.

3.2. Results

The results described in this section are divided into distinct categories in order to allow for a more exacting evaluation of the common elements present in the regulatory initiatives adopted by the two countries: (1) origin of the initiatives, (2) aim of the regulation, (3) regulatory environment, (4) harmonization with international recommendations, (5) regulatory improvement, (6) existence of requests for comments and participation of stakeholders, (7) form adopted by initiatives, and (8) certified conduct.

3.2.1. Origin of initiatives: domestic or international pressure?

The following tables show the origin of the various initiatives based on different sources of pressure that were applied, whether these sources came in the form of international recommendations, domestic institutions, or rules.

Some regulatory initiatives do not mention either of the two, and other regulatory initiatives mention both, meaning they were influenced by both factor included in the hypothesis, international as well as domestic.\(^26\)

\(^25\)As an example, the securities holding systems that are existent in Brazil are cited. These examples identify the whole chain of investors up to the level of the final beneficiary. This structure allows for some controls that appear as a result of this model to include specific regulation prohibiting short selling.

\(^26\) As all of the results described in this section were derived from the content of the initiatives, this is an important piece of information as it may lead to an errant reading that there was no categorization of the results or that there were more observations than initiatives. It may also lead one to believe that the placement in one category may exclude placement into another. In order to avoid this
Table 3. Origin of initiatives/applied pressures

<table>
<thead>
<tr>
<th>Origin of initiatives</th>
<th>BRAZIL – Total number of initiatives: 4</th>
<th>INDIA – Total number of initiatives: 10</th>
<th>TOTAL: 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation/international body/ international scenario/ foreign rule</td>
<td>4 100%</td>
<td>3 30%</td>
<td>7 50%</td>
</tr>
<tr>
<td>Institution/other domestic rule</td>
<td>0 0%</td>
<td>3 30%</td>
<td>3 21%</td>
</tr>
</tbody>
</table>

This chart shows that the influence of recommendation formulated in international forums and or the following of foreign rules is low in India (30%), while quite a bit more significant in Brazil where an external influence is present in 100% of the initiatives. With respect to Brazil the drafting of rules with origin in some principle put forward by a domestic institution or passed in any other way at the domestic level is non existent, but is seen to have occurred in 30% of the initiatives brought about in India.

Comparing the frequency of the international element with that of the domestic element it can be see that the former takes precedence over the latter (50% against 21% of the total of all initiatives). This confirms that in this period regulation was influenced more by international features than by domestic political pressures. The ‘moralizing’ wave created by the global financial crisis of 2007/2008, along with the bank failures in the United States that had a global impact, may have generated a need for countries to show that they were aware of the casual factors even if they had not been affected by the occurrences. In addition, it became necessary for individual countries’ regulatory mechanism to be sufficiently strong to prevent new abuses.
What more, the chart also shows that India was influenced less by international recommendations (30%). This diminished adherence may be explained by a more closed capital account or by the extreme caution concerning financial liberalization and economic alignment with other countries.\footnote{With regards to the history of financial reforms in India and future prospects, including the country's regulatory architecture, see Patnaik and Shah (2011).}

On the other hand, it can also be seen that the international element exercised significant influence in Brazil (100% of total cases). This would appear to confirm the idea of international diffusion, according to which countries get to know the regulations adopted by other countries before making a decision about how to treat the issue at home (SIMMONS; DOBBIN; GARRETT, 2008).

### 3.2.2. The aim of regulation: market participants or market supervision?

Another aspect observed in this survey of regulatory initiatives is in regard to the selection made by regulatory authorities on the aim of regulation. Using these results, it is possible to discern whether the individual initiatives are directed at the conduct of market participants or are additionally concerned with methods of supervising this conduct. The latter, supervision, is fairly common. An example would be when a new regulation clearly indicates the methods or format that will be used by the supervisory bodies. Another would be when a new regulation states when it is necessary to provide specific information in order that supervisory activities by the responsible bodies shall be carried out.

#### Table 4. The aim of regulation

<table>
<thead>
<tr>
<th>The aim of regulation</th>
<th>BRAZIL – Total number of initiatives: 4</th>
<th>INDIA – Total number of initiatives: 10</th>
<th>TOTAL: 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market Participants/ issuers/investors</td>
<td>4 100%</td>
<td>10 100%</td>
<td>14 100%</td>
</tr>
<tr>
<td>Market supervision/ supervision of market participants</td>
<td>1 25%</td>
<td>4 40%</td>
<td>5 35%</td>
</tr>
</tbody>
</table>
It should be noted that the aim of regulation of the two countries was completely turned towards market participants (100%). This was largely to be expected. However, market supervision or supervision of market participants appear to be weaker amongst the many initiatives: in India the focus of supervision is only present in under half of all regulatory initiatives, or 40%, and in Brazil that number is only 25%. This may be due to the influence of domestic aspects on the regulatory authority. This influence may serve to deter broader supervisory powers. This result may also stem from the degree of collaboration within the two jurisdictions between regulators and self-regulating entities that often play supervisory roles.  

As market supervision becomes inserted into regulatory initiatives it becomes necessary to verify this influence, since it in some way represents an advance in terms of international cooperation. It is well known that there exists a diverse array of agreements between regulatory authorities whose objective is to share information regarding market participant supervision. In as much, the insertion of this category (supervision) onto the regulatory agenda could represent a consecration, or at least an act of recognition of these agreements.

3.2.3. Regulatory evolution 2007-2011 – how was it and what changed after the elaboration of the new initiatives

In order to analyze the regulatory environment in a specific time frame, and to know whether certain initiatives are in conformity with international recommendations, it is not enough classify the initiatives based on the date that the international recommendation was put forth. It is also necessary to completely map the regulation that existed before those initiatives took force in order to understand

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28 The presence of healthy and efficient collaboration between these entities may make rational the regulatory demands made by the larger supervisor.

29 The agreements of cooperation made between regulatory authorities follow the model of the Bilateral Understanding Memorandums, or that of the Multilateral Understanding Memorandum put forth by the IOSCO (MMoU). The MMoU established a standard format for cooperation and the interchange of information between capital market regulatory authorities in different countries, especially for investigatory purposes. The IOSCO has a process for analysis and approval of authorities interested in signing the MMoU, and today counts with adhesion of more than 82% of the IOSCO’s member regulatory authorities.
if the regulatory intervention was completely innovative, or if it was only representative of a change in the standing regulation. The knowledge of the prior regulatory environment may also allow for the determination of whether the initiatives represented the adoption of some more rigid regulatory standard. It is important to highlight that, although these two inquiries are together in the same table this does not mean that one (already regulated areas) be the cause of the other (more rigid rules).

**Table 5. Increase in regulation**

<table>
<thead>
<tr>
<th>Regulatory Environment</th>
<th>BRAZIL – Total number of initiatives: 4*</th>
<th>INDIA – Total number of initiatives: 10*</th>
<th>TOTAL: 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject matter previously regulated at the domestic level</td>
<td>2 50%</td>
<td>8 80%</td>
<td>8 57%</td>
</tr>
<tr>
<td>More strict regulatory standard</td>
<td>3 75%</td>
<td>9 90%</td>
<td>12 86%</td>
</tr>
</tbody>
</table>

*Note: The total quantity of initiatives is indicated by the absolute numbers. As such, in the case of Brazil, 75% of the initiatives had a more rigid regulatory standard than before. That number was 90% in India. In other words, in both countries only one initiative did not contain rules that were stricter than the previous measure with regards to the specific subject matter.

Concerning the results defined by country, it should be mentioned that in Brazil the subject matter that was the aim of the new initiatives had already been subject to some regulation in 50% of all cases, which means that 50% of all Brazilianian measures were fruit of regulatory innovation. In India, 80% of the initiatives were directed toward already regulated subject areas. When comparing the two countries, these numbers suggest a greater movement and willingness by the part of Brazil to alter its regulatory framework.

Additionally, an important verdict was the initiatives contained a more rigid regulatory framework in almost all cases (75% of all cases in Brazil and 90% of those in India). This certainly reflects a moral sentiment felt in the moment directly following the crisis, a sentiment that one could argue was common to most all countries. Under these circumstances regulation was often presented as the
panacea of all that was wrong and was implement incontinently. This common sentiment, regarding the need for greater rigidness, reflects international diffusion as preconceived by Simmons, Dobbin, and Garrett (2008).

3.2.4. Harmonization with international recommendations

Still respecting the regulatory environment, it is worth evaluating whether or not there was harmonization between the initiatives and the international recommendations. It is important to have a precise understanding of the relation between the initiatives and the respective international recommendations, if for nothing else to confirm or exclude the casual hypothesis. As a premise, it was necessary to verify the existence of a recommendation or regulatory standard during the period of the composition of the initiative, and in the case that there was determine whether the initiative followed partially or wholly the principles contained in the recommendation.

Table 6. Harmonization with international recommendations

<table>
<thead>
<tr>
<th>Harmonization of rules</th>
<th>BRAZIL – Total number of initiatives: 4</th>
<th>INDIA – Total number of initiatives: 10</th>
<th>TOTAL: 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of initiative is after international recommendation</td>
<td>3 75%</td>
<td>7 70%</td>
<td>10 71%</td>
</tr>
<tr>
<td>There was harmonization between initiative and international recommendation</td>
<td>4 100%</td>
<td>6 60%</td>
<td>10 71%</td>
</tr>
</tbody>
</table>

The initiatives of both Brazil and India were nearly wholly put forward after the respective international recommendations. In India, 70% of the initiatives were composed after the release of the respective international recommendations, and in Brazil this number was 75%. This temporal alignment appears to indicate that a great part of the initiatives were drafted in order to attend to the international clamor extenuating or motivated by the standing recommendations with respect to the
subject matter at hand. Building on the aspects pointed out earlier, these results confirm the existence of effective regulatory cooperation between countries, motivated by a reputational factor that the international discussion forums were able to preserve.

The existence of international cooperation is also verified in the harmonization of domestic rules with the content of international recommendation (even in situations in which the new rules were made before the release of the recommendation). Harmonization with international standards can be seen in 60% of the initiatives elaborated by India and in 100% of those elaborated by Brazil.

The data appears to confirm the existence of a casual link between the international recommendations and the elaborated initiatives. This result makes evident the relevance of this study, however, on the other hand it would seem as though these results were predictable as adherence to an international recommendation usually comes from a movement very similar to a ‘wave of harmonization’. This reflects the combined force of the individual community members that participated in the discussion concerning the formulation of recommendations, and as a result has an individual interest in diffusing and acting on these recommendations.

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30 See Section 3.2.1 – Origin of initiatives.
31 See Section 2.2.2.3 – Role of international discussion forums.
32 It is worth taking repeating that the current work did not make a detailed evaluation of the effective convergence of the studied countries to the international recommendation regarding the selected topics. For such an analysis, it would have been necessary to verify the occurrence of partial or total harmonization of content and interpret the level of harmonization achieved. Although this paper does not develop such a detailed analysis, the indication in the initiatives of the following of international standards was sufficient to propose the existence of regulatory cooperation.
33 The waves of harmonization may be verified in diverse international organization, and their implementation of regulatory models and structures are well known, most especially with regard to topics inherent to post trading activities. Some of these topics are the Centralized Payment System, the existence of a central counterparty for the clearing and settlement of securities (CCP), the delivery of securities versus payment (DVP), the settlement of trades within 3 days of the trade (D+3). The history of the global implementation of these recommendations, that also passes for public consultation processes and discussions may be found on the website of the CPSS – Committee on Payment and Settlement Systems, http://www.bis.org/cpss/, and on the website of the Group of Thirty, http://www.group30.org/.
3.2.5. Regulatory improvement

To know whether the initiatives brought with them improvements to the domestic regulatory structure is not a trivial task. There are diverse sets of variables that may be taken into consideration in order to make this determination. However, the stance taken by the regulator that is attached to the initiative is an interesting parameter, at least in order to know whether this was the entity’s intention when deciding to opt for the chosen regulatory format.

Table 7. Regulatory objectives

<table>
<thead>
<tr>
<th>Justification of regulation</th>
<th>BRAZIL – Total number of initiatives: 4</th>
<th>INDIA – Total number of initiatives:</th>
<th>TOTAL: 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>To improve the quality of regulation</td>
<td>3 75%</td>
<td>10 100%</td>
<td>10 71%</td>
</tr>
<tr>
<td>To protect the investor</td>
<td>2 50%</td>
<td>9 90%</td>
<td>11 78%</td>
</tr>
<tr>
<td>To minimize the risk to market participants/to guarantee market stability</td>
<td>4 100%</td>
<td>7 70%</td>
<td>11 78%</td>
</tr>
<tr>
<td>To maintain the financial health of companies / regulated institutions</td>
<td>2 50%</td>
<td>1 10%</td>
<td>3 21%</td>
</tr>
</tbody>
</table>

While the improvement in regulation was a constant between countries (from 75% to 100%), as well as the minimization of risk (from 70% to 100%), it can be seen that there was greater divergence in the objective of protecting investors, which served as a justification only 50% of the cases in Brazil compared to 90% of the cases in India. With respect to the maintenance of financial health, this justification was used even less, with a tendency to be evoked at just 10% in India and 50% in Brazil.

In as much, it may be seen that the justification of regulatory improvement and the minimization of risk were commonly implored in the analyzed initiatives. These two justifications are associated with the global economic crisis that demanded more regulation (or a more rigid and quality regulatory framework),
driving an amply diffusion of this type of justification. In fact, many catalysts for the approval of initiatives were linked to this argument. This is reflected in the great majority of surveyed initiatives.

With respect to the other parameters indicating good regulation (investor protection and maintenance of the financial health of companies), the results were not so linear.

3.2.6. Existence of public outreach in the elaboration of initiatives and the participation of stakeholders

The participation of domestic private agents is of fundamental importance, especially in the case of initiatives that are aimed at internalizing international standards or recommendations. To hear the interested parties is an effective manner of guaranteeing the participation of those actors that will be subject to the new rules. This ‘hearing’ usually occurs by means of public hearings, or in the case of rules from the legislative power by means of specific thematic commissions. The explanation of the justification of the initiatives is a preponderant factor used to show openness and boost the participation of all interest parties. This is why it is important to evaluate these proceeding as well as any eventual modification made to the regulatory proposals after the end of the referred to process.

Table 8. Domestic initiative procedures

<table>
<thead>
<tr>
<th>Domestic procedures</th>
<th>BRAZIL – Total number of initiatives: 4</th>
<th>INDIA – Total number of initiatives: 10</th>
<th>TOTAL: 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>With process of consultation/public hearing before final ruling</td>
<td>3 75%</td>
<td>5 50%</td>
<td>8 57%</td>
</tr>
<tr>
<td>Alteration to content occurred during consultation</td>
<td>2 50%</td>
<td>3 30%</td>
<td>5 36%</td>
</tr>
<tr>
<td>Provided justification</td>
<td>4 100%</td>
<td>4 40%</td>
<td>8 57%</td>
</tr>
</tbody>
</table>
The evaluation of the data showed varied, although homogenous, results between countries.

The carrying out of public hearings, both receiving and hearing stakeholder, appears in 75% of the Brazilian cases. To the extreme opposite, we have India, with only half (50%) of its elaborated initiatives including public consulting.

Furthermore, in the case of India very few alterations were made as a result of this process (30%) and infrequently were a justification provided (40%, compared to 100% for Brazil). There is not objective data to explain this divergence. Perhaps this was a result of the specific content of the regulatory topics, a result of the more cautious tendencies of the Indian regulator, or perhaps it had to do with a less traditional and less open market that has become more and more consolidated in recent years. Or perhaps, this lesser intensity can be explained by domestic factors that deserve greater elucidation.

The participation of stakeholders in these transmission procedures demonstrates the existence of some domestic interaction between the regulators and the market participants, or the regulated entities. This guarantees some space for the expression of domestic preferences and interests. The variation in this participation between countries demonstrates that this is not a common element that can by marked for analysis.

### 3.2.7. Format of elaborated initiatives

Observing the typology of initiatives allows one to evaluate an eventual coordination in the format of the rules that have the same aim. The survey looked to determine if the initiatives had established a cogent application of the rules, linking them to an action or omission of the market participants (regulation format), or if

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34 In the case of Brazil, the lack of public consultation, or any other similar process, in all of the initiatives is possibly due to the fact that some were merely releases or interpretations on the part of the regulatory. This would effectively negate any sort of consultative process. This is the cases in the footnote 40.


36 The expression ‘cogent rule’ is used to refer to an absolutely definitive measure, setting a requirement, that must be abided by no matter the willingness of the party to whom it applies.
instead, the initiatives object was to provide more general guidelines (guidance format).

**Table 9. Format of the elaborated initiative**

<table>
<thead>
<tr>
<th>Elaborated initiative</th>
<th>BRAZIL – Total number of initiatives: 4</th>
<th>INDIA – Total number of initiatives: 10</th>
<th>TOTAL: 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>The initiative represents a rule/norm (or rule/norm proposal) of a cogent application (regulation)?</td>
<td>3 75%</td>
<td>8 80%</td>
<td>11 78%</td>
</tr>
<tr>
<td>The initiative is more of a recommendation/guideline for market participants (guidance)?</td>
<td>1 25%</td>
<td>3 30%</td>
<td>4 28%</td>
</tr>
</tbody>
</table>

*Note: On this issue, the same observation made in table 10 should be made. That is this table refers to absolute numbers. This is important, especially when reading the 25% referring to the cases of Brazil, which might at first seem rather high but that truthfully refers to a single initiative. Though it may appear close to the Indian number of 30%, in India the number reflects 3 independent cases.

The format adopted by the initiatives most often (78%) applied rules with a cogent or mandatory application (regulation). The establishment of guidelines (guidance) occurred at a much lower percentage (28%). It is possible that the interest of the regulator was to confer greater legal certainty by avoiding the adoption of guidelines, a step that could weaken the message that it wish to transmit.

However, apart from being understood as a weaker regulatory standard, the use of the guidelines format could also indicate a gradual regulatory adaptation. As such, to begin, the guideline would be meant to signal the need to follow a non-mandatory procedure, but in the long run, it may become a cogent rule.  

The adopted regulatory format also signals what the countries hope to obtain with respect to the enforcement of the rules. Brazil and India adopted both models, regulation and guidance.

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37 In this sense, the success of regulatory cooperation may also been seen as a gradual process, serving as a sign to the regulated entities as to what is occurring at the international level. And in as much, offering them the opportunity to voluntarily adapt to the subject matter relevant to the regulator.
The regulatory decision is derived from various factors. Countries may make use of all of the possible prerogatives in different times or with respect to different subject matter. With respect to the format of guidelines, countries may adopt this format because they believe that some matters need to be tested before the final rules are established and become mandatory. 38 In such case, market participants could still ignore the guidelines; as such it would be more conducive for utilization by international discussion forums, and not by domestic regulatory authorities. Whatever the case, it would appear that this selection has more to do with domestic priorities than with anything else.

3.2.8. Conduct verified by the content of initiatives

Although they are concerned predominantly with the conduct of market participants, various rules also demand the release of information that is also a type of obligatory conduct as well as a tool used in the regulation of capital markets.

It is known that the analyzed initiatives are endowed with strong prudential content, in that they look to regulate conduct and avoid practices that are considered to lead to instability in capital markets.

Table 10. Content of the elaborated initiatives

<table>
<thead>
<tr>
<th>Content of initiatives</th>
<th>BRAZIL – Total number of initiatives: 4</th>
<th>INDIA – Total number of initiatives: 10</th>
<th>TOTAL: 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement for disclosure</td>
<td>4 100%</td>
<td>5 50%</td>
<td>9 64%</td>
</tr>
<tr>
<td>Requirements for certain conduct</td>
<td>3 75%</td>
<td>9 90%</td>
<td>12 86%</td>
</tr>
</tbody>
</table>

Another common element found in the initiatives was the great quantity of required behaviors or conduct, which is not surprising in the least. In fact, this type

38 The adoption of the guidance format followed the suggestion by a portion of the literature that errantly evoked the weakening of regulatory standards when predominantly principal based rules are elaborated – see section 1.2.2.5.
of requirement was present in a great majority of the initiatives (86%). This points to an unequivocal message from the regulator regarding the expected behavior of market participants or regulated entities.

The requirements for disclosure occurred with less frequency, but they were still relevant (64% of the total of all initiatives). This type of requirements tends to be prioritized by the regulator, as investors make most of their decisions, if not all, based on the available information. Brazil used more of this type of format of regulation (100% of all initiatives) than India (50%). Again, the appear to confirm that the regulatory choice denotes a message that is meant to be heard by those that are being regulated, and in this specific case, it is made by considering domestic factors with the greatest influence on the regulatory authority.

3.3. Data analysis

The three regulatory topics that were analyzed (executive remuneration, short selling, and credit rating agencies) present an illustration and an opportunity to confirm the hypotheses presented above. After observing in a detailed manner these regulatory initiatives, it is possible to make some specific affirmations.

3.3.1 The existence of regulatory cooperation between Brazil and India

To begin an evaluation of the proposed theme of this section it should be stated that both countries approved initiatives on all of the topics of this research project, which demonstrate that they have followed the same guidelines in their regulatory agendas. Apart from a common regulatory agenda, there are two other common factors to be taken into consideration: on one hand we have the presence of common elements identified in the analysis of the initiatives, and on the other hand there is the harmonization of content based on the international recommendations.

The common elements that can be found in the analyzed initiatives are as follow:
1) There is a relevant international pressure applied to the elaboration of the rules on specific subjects related to capital markets. This reflects the alignment of the two countries in the sense that the selected topics were on the regulatory agenda.

2) Innovation in respect to already regulated matters make up the great part of all initiatives. This makes one believe that there is not any space for ‘regulatory vacuums’. In this regard, there appear to have been a certain value given by countries to the necessity for predictability in their regulatory environments. This calls for a minimization of risk for market participants.

3) The great part of all initiatives created a more rigid standard or format than the those previously in vigor The two countries presented a common response to the event that affected the whole world, the financial crisis. This event presented a moralizing message that the countries wanted to transmit in a coordinated manner.

4) The principle objectives pursued by the initiatives were the improvement in the quality of regulation and the minimization of risk. There is evidence that market participants came to give greater value to a healthier regulatory environment, and that countries had an interest in being considered as a destination for investments.

5) The most adopted type of initiative was that of regulation, this is in contrast to the other possibility of guidance that depends on the willingness of market participants to abide voluntarily. This shows that these countries interpreted in similar ways the convenience of the regulatory format.

6) The content of rules of conduct and rules concerning disclosure are to be found in a balanced amount throughout the total of initiatives. This suggests a case-by-case interpretation on the part of the regulators respecting the most adequate content for the specific subjects material in question.

With respect to harmonization of content processed via international recommendations, this affirmation can be made by referencing statements made in the respective initiatives.

But are these common elements and references to harmonization enough to evaluate if there effectively exists regulatory cooperation between Brazil and India?
In this case, how could this cooperation be qualified? Within the common elements, it can be seen that various domestic factors were the cause of this alignment between the two countries. This is largely because the specific definitions of how and how much to cooperate are a result of decisions made by the local regulator. This affirmation could make one believe that cooperation occurred spontaneously, not driven purely by international factors, such as coercion and other forms of pressure for regulatory reforms. Nevertheless, in order to conclude the discussion on this topic, the data resulting from the empirical exercise should be more extensively explored. This is done in the following sections.

3.3.2. What are the specific characteristics of regulatory cooperation

The regulatory cooperation verified in the initiatives has specific characteristics. On one hand, there is the presence of recommendations stemming from international discussion forums, the single instance of the global financial crisis, basically the conjunction of external factors making their impact. On the other hand, domestic priorities must be figured in. These factors interact with the international elements, either through full convergence with international standards or simply by making domestic structures and institutions adequate with regards to the realm of possible regulatory changes. The latter falls more in the category of regulatory alignment. These international and domestic characteristics clearly interact.

To begin, as has already been mentioned, it would seem to have become evident that the regulatory agendas of the two countries of this research project have been extensively aligned, both with respect to content as well as the form taken by the elaborated initiatives. But could it possibly be different? Various countries may close their borders via regulatory initiatives in order to protect both their markets as well as their domestic market participants. Selecting this option would lead to great pressure on the part of market participants for greater transnational mobility for capital and financial services. The result derived from this work in consistent on this point. That which ended up being verified, in the case

39 In this sense Mügge (2012).
of the initiatives adopted by Brazil and India, was the existence of more uniform and open standards. This suggests that there is a greater priority given to the inflow of capital and to market participants, the latter seeking predictability. ⁴⁰

Apart from the value given to the interests of market participants, another particular characteristic found in the evaluation of the initiatives was the various references to international recommendations. With this in mind, it is important to remember how these recommendations are elaborated. In this process the power of the central states (coercion) is known to be transmitted via the discussions that occur in the standard setter forums. In this case, the voluntary adherence to these standards by peripheral states, as is the case of Brazil and India, appears to happen simply via emulation of those standards, usually with the aim of avoiding any sort of regulatory competition.

In fact, the history and level of development, or depth of country specific capital markets, have all contributed to country level decisions to follow the models of international recommendations. Here it should be restated that various nuances in harmonization were observed. For example, there were situations in which countries approved or already had different regulatory content, or content that did not converge with that of the international recommendation. In this case, the countries opted to release statements explaining what the differences consisted of and how these differences did not create a differentiated regulatory environment. In a certain way, to scrutinize the international rules and standards, and to divulge the result ⁴¹, simply means to show compatibility of the domestic regulatory environment. This situation could also be understood as regulatory cooperation, in the sense that the countries have demonstrated interest in being associated with global finance.

From these descriptions, it may be verified that the initiatives received differentiated pressure from external and domestic elements, although both were present in all instances. It is the interaction of these elements that permits an

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⁴⁰ In this was it was possible to confirm the influence of transnational non-state actors, as foreseen by Underhill (2011). Also see section 2.2.2.4.

⁴¹ An example of a realized scrutiny that was not a result of a specific requirement is the elaboration of an initiative on the part of Brazil not banning short selling operations after the IOSCO released a communication on the issue. The Brazilian initiative explained how it dealt with the problems presented by these sorts of transaction without banning or altering its own regulatory model.
improved understanding of the trajectory adopted by these two countries, whether it is more spontaneous or more directed. In fact, such elements are the stimulants that lead to the proposition, formation, discussion of, and approval of the initiatives.

As such, in order to provide a more precise diagnostic of the trajectory taken by Brazil and India it would appear convenient to move to the motivating factors/motor forces of regulatory cooperation. These items are presented in the next section.

### 3.3.3. What are the causes of regulatory cooperation?

To begin, a few general observations should be made, observations that not only apply to Brazil and India but also to other countries that regulate their capital markets. The interpenetration of markets and the presence of transnational actors has created an evident interest in capital flows on the part of states. This appears to be the principle motor of regulatory cooperation. At the same time, there exist a reciprocal relation between international capital flows and regulatory cooperation, in the sense that the latter also is a necessary and driving condition of capital flows.

Following this same reasoning, the aspects of better regulation and predictability of rules may be seen as motivating factors for regulatory cooperation. With more or better regulation, the world will be subject to less risk.

Finally, the origin of regulatory cooperation demonstrates that the latter emanates from international pressures, domestic pressures, and in general derives from a movement of the diffusion of rules and conduct. The principle actors that influence regulatory cooperation are states, but other market participants are also relevant, non-state actors. This configuration of factors, influences, and priorities make the element of credibility/reputation be the central or guiding light in the decision to cooperate.

Moving to the case of the empirical exercise, although the Brazilian and Indian initiatives that were analyzed did not refer explicitly to the raise in capital flows, this approved content reflects topics typically linked to the standing of the investor. This market actor will make decisions based on the regulatory environment that he/she expects to find. The propagation of a healthier regulatory environment
may be verified by the justifications presented for the various initiatives, justification such as improved regulation and the minimization of risk.

It was also possible to affirm the adoption of standards with similar content, a phenomena cause both by the interest of states (the desire for greater capital inflows) as well as the interest of non-state actors.

The utilization of minimum parameters or common elements in the format of initiatives denotes theoretical approaches that explain the causes of regulatory cooperation: the influence of great powers, international diffusion, the interests of non-state actors, in addition to the following of recommendations and principles approved by international forums. All of these causes are suggestive of an element of credibility or reputation as a guiding light in the decision to cooperate.

Incidentally, it is important to emphasize that the established interest not be out of alignment with the international standard may indeed be a domestic interest. Meaning it may be a domestic interest if it would maintain the competitiveness of the country, even if it does create a competitive advantage.

As such, it may be said that in the exercise of regulatory activities in Brazil and India, with respect to capital markets, there occurred a certain interaction between domestic and international elements. The international elements were present in the elaboration of diverse initiatives, but it is evident that the utilization of these elements had the aim of generating greater credibility for the countries in question. This is in respect to the so-called reputational factor. As this is also an interest of the domestic regulator, it may be said that the international pressure mechanisms played a relevant role. In this respect, although domestic priorities have prevailed in various ways, the trajectory of the two countries’ regulatory policies has been determined at the global level, rather than being the result of spontaneous or autonomous movements and motivations.

Section 4 – Conclusion

4.1. Synthesis of concluding comments and more relevant arguments

This study proposed to identify different forms of standards, modalities, or
variations in capital market regulatory cooperation, all while looking to discuss the role of cooperation in the international sphere by two emerging economies, Brazil and India. This discussion was carried out via an analysis of the interaction of domestic and international factors and their impact in terms of economic and political outcomes.

By means of a presentation of the historic context, it was shown that there exist two premises that are considered by countries in the elaboration of regulatory policy. The first is the predictability of rules that is aimed at diminishing the so-called legal risk. Second it regulatory competition, which eventually provide for known legal and regulatory burdens. In addition, it is also important to know how the regulatory pendulum is balanced as it oscillates between stimulating increased capital flows and searching for good regulation. Although these parameters at first appear to be antagonistic, in practice they are in fact complementary.

This project searched for elements present in regulatory initiatives regarding capital markets between the years 2007 and 2011, and brought them together in an inductive process in order to then categorize them as explanatory factors resulting in regulatory cooperation between Brazil and India. From this categorization it was determined that effective cooperation indeed occurred, be it through various forms. Furthermore, it was shown that this cooperation was derived largely from factors at the international level rather than autonomous or spontaneous movements on the part of either of the two countries.

An important contribution of this paper is the discussion regarding the theoretical implication of the results. It was demonstrated that many of the adopted initiatives presented common elements, a phenomena that provides important conceptual perspectives for the frameworks that attempt to explain the decision to cooperate.

In fact, the recognition of common elements amongst the various initiatives allows for the identification of the focal point of international diffusion with its diverse mechanisms. Furthermore, it brings to attention the central role-played by large states. The results of the analysis, which confirm a movement towards international recommendations, demonstrates the importance given to the international discussion forums and how the principles of these bodies serve as a
strong source of influence in the domestic sphere.

In a more general way, it was possible to verify that the common elements in contributing to the formation of the decision to cooperate may be largely contributed to economic rationality, considering the desire of countries to maintain international credibility. With this credibility they will be associated with the image of investment targets or the benefactors of capital inflows. However, at the same time, they are also suggestive of a political rationality, in that countries look to meet and participate at the level of global finance in order to protect their interests and advance the preferences of their domestic economic agents. This scenario is not different for those countries that find themselves in a position of greater power and have outsized economic weight.

4.2. Contributions and a future agenda for further research

The results of this project are supported by all causes and characteristics determined from the relevant empirical exercise. In as much, an interpretative explanation of the derived results, inspired by an economic and political rationality, will be advanced.

Only lacking is an evaluation to determine if, following the same method of argument, there would also be space for a normative interpretation of the topic. This would certainly open a path for a new research agenda. In this normative perspective, it would be of value to analyze, in greater depth, the international debate in which international recommendations are first formulated. Whether that be a study of the context of how countries participate and are represented, a study of protected interests or objectives pursued, a study of the influence of the larger markets, or a study of how the balance of power between states and the market should be.

In a hypothetical work to be elaborated using this lens, there are many points that deserve more reflection. How should regulatory cooperation be thought about with respect to the future of global finance? For those countries that wish to continue receiving capital inflows, is it possible to adopt another regulatory path that is not one of cooperation?
From this perspective it would appear that the future trajectory of regulatory cooperation will depend on the development of the various aspects concerning the arena in which the formulation of recommendations is carried out. The foundation and how cooperation will be interpreted should continue to be debated by the literature and by the regulators, as well as by those that ultimately construct public policy. Meanwhile, there does appear to exist a certain consensus between the participants of this debate: the global financial crisis reinforced the necessity of maintaining the premises of good regulation and minimizing risk, two factors which may or may not be associated with cooperation. A future research agenda would also look to determine if this understanding has come to stay, or if on a greater scale regulatory cooperation is necessarily associated with economic cycles.

***

REFERENCES


## ANNEX 1 – QUESTIONNAIRE REGARDING REGULATORY INITIATIVES

<table>
<thead>
<tr>
<th><strong>Perspective 1: improvement in quality of regulations</strong></th>
<th><strong>Value / Classification:</strong> Yes=1; No=0</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Query 1: Objective declared in the rule</strong></td>
<td></td>
</tr>
<tr>
<td>Is the initiative principal justification a regulatory improvement?</td>
<td></td>
</tr>
<tr>
<td>The objective expressed in the initiative (or implied) was to protect the investor (ex. release of information, equity between operations, price setting)?</td>
<td></td>
</tr>
<tr>
<td>The objective of the initiative was to minimize risks for market participants or guarantee systemic stability in order to avoid risks?</td>
<td></td>
</tr>
<tr>
<td>The initiative presents justifications relating to the maintenance of the financial health of the companies/institutions being regulated?</td>
<td></td>
</tr>
<tr>
<td><strong>Query 2: Stiffer standard</strong></td>
<td></td>
</tr>
<tr>
<td>Was the subject matter already regulated at the domestic level prior to the initiative?</td>
<td></td>
</tr>
<tr>
<td>If the subject matter was already regulated, did the initiative attempt to alter or revoke existing rules?</td>
<td></td>
</tr>
<tr>
<td>Is the new rule stiffer than the old rule? Or, in the case that there was no previous rule, does that initiative provide a stiffer standard?</td>
<td></td>
</tr>
<tr>
<td><strong>Perspective 2: Domestic and international pressures</strong></td>
<td></td>
</tr>
<tr>
<td>Does the justification for the regulatory initiative demand / mention a recommendation/international body or anything regarding the international environment/rule from another country?</td>
<td></td>
</tr>
<tr>
<td>Did the regulatory initiative/demand originate in a domestic institution or other domestic rule?</td>
<td></td>
</tr>
<tr>
<td><strong>Perspective 3: Rule harmonization</strong></td>
<td></td>
</tr>
<tr>
<td>Did the initiative take place after the international recommendation regarding this subject matter?</td>
<td></td>
</tr>
<tr>
<td>Is the initiative harmonized to some extent (either totally or partially) with the international recommendation on this subject matter?</td>
<td></td>
</tr>
</tbody>
</table>
### ANNEX 1 – cont.

<table>
<thead>
<tr>
<th>Perspective 4: Aim of regulation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Was the objective of the initiative to regulate market participants/issuers/investors?</td>
<td></td>
</tr>
<tr>
<td>Was the objective of the initiative to regulate transactions carried out or situations that occurred in the domestic market?</td>
<td></td>
</tr>
<tr>
<td>Did the initiative present rules regarding supervising the market/its participants?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Perspective 5: transmission of initiative to domestic environment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Did the initiative pass through parliamentary commissions before being approved? In the case of rules created by regulatory agencies, was the initiative subject to public or private consultation/hearing?</td>
<td></td>
</tr>
<tr>
<td>Was the content of the initiative changed at some point in this process?</td>
<td></td>
</tr>
<tr>
<td>Was a reason/justification for the initiatives produced?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Perspective 6: Type of initiative</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the initiative some type of rule/norm (or proposal for rule/norm) that is an actual cogent regulation?</td>
<td></td>
</tr>
<tr>
<td>Is the initiative a recommendation/guidelines?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Perspective 7: Content of initiatives</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Do the rules create disclosure requirements?</td>
<td></td>
</tr>
<tr>
<td>Do the rules create requirements for certain conduct?</td>
<td></td>
</tr>
</tbody>
</table>
### ANNEX 2 – LIST OF THE REGULATORY INITIATIVES: EXECUTIVE COMPENSATION

<table>
<thead>
<tr>
<th>Country</th>
<th>Brazil</th>
<th>Brazil</th>
<th>India</th>
<th>India</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name of Initiative</strong></td>
<td>INSTRUCTION CVM n. 480</td>
<td>RESOLUTION CMN 3921</td>
<td>Corporate Governance Voluntary Guidelines</td>
<td>Guidelines on Compensation</td>
</tr>
<tr>
<td><strong>Date of initiative</strong></td>
<td>09/Dec/2009</td>
<td>25/Nov/2010</td>
<td>01/Dec/2009</td>
<td>01/Jul/2010</td>
</tr>
<tr>
<td><strong>Issuing body / regulator</strong></td>
<td>CVM – Brazilian Securities Commission</td>
<td>BCB – Central Bank of Brazil</td>
<td>Ministry of Corporate Affairs</td>
<td>RBI – Reserve Bank of India</td>
</tr>
</tbody>
</table>
ANNEX 3 – LIST OF REGULATORY INITIATIVES: SHORT SELLING

<table>
<thead>
<tr>
<th>Country</th>
<th>Brazil</th>
<th>India</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name of Initiative</strong></td>
<td>CVM Release on short selling</td>
<td>Circular SEBI permitting Short selling by institutional investors</td>
</tr>
<tr>
<td><strong>Data of initiative</strong></td>
<td>30/Jun/2008</td>
<td>20/Dec/2007</td>
</tr>
<tr>
<td><strong>Review of content</strong></td>
<td>Describes the condition for short selling on the Brazilian stock market</td>
<td>Allows short selling for institutional investors</td>
</tr>
<tr>
<td><strong>Issuing body / regulator</strong></td>
<td>CVM – Brazilian Securities Commission</td>
<td>SEBI – Indian Securities Commission</td>
</tr>
</tbody>
</table>
## ANNEX 4 – LIST OF REGULATORY INITIATIVES: CREDIT RATING AGENCIES (CRA)

<table>
<thead>
<tr>
<th>Country</th>
<th>Brazil</th>
<th>India</th>
<th>India</th>
<th>India</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name of initiative</strong></td>
<td>Release of request for public hearing SDM 16/11</td>
<td>SEBI (Intermediaries) Regulations 2008</td>
<td>Report of the Committee on comprehensive regulation for CRA – Credit Rating Agencies</td>
<td>CRA (Amendment) Regulations</td>
</tr>
<tr>
<td><strong>Date of Initiative</strong></td>
<td>22/Dec/2011</td>
<td>26/May/2008</td>
<td>21/Dec/2009</td>
<td>19/Mar/2010</td>
</tr>
</tbody>
</table>

### Review of content
- **Brazil**: Regulates the activity of risk classification in CRAs by SEBI. Determined common criteria for the registry of CRAs and rules determining the assigning of responsibility for acts taken by CRAs.
- **India**: Change in the regulation of CRAs by SEBI. Formulates recommendations for new regulation.
- **India**: Revises the role of CRAs in India and formulates recommendations for new regulation.
- **India**: Rules for previous approval by the SEBI of corporate reorganization at CRAs.

### Issuing body / regulator
- **Brazil**: CVM - Brazilian Securities Commission
- **India**: SEBI – Indian Securities Commission
- **India**: RBI – Reserve Bank of India
- **India**: SEBI
**ANNEX 4 – cont.**

<table>
<thead>
<tr>
<th>Country</th>
<th>Name of Initiative</th>
<th>Guidelines for CRAs</th>
<th>SEBI (Change in Conditions of Registration of Certain Intermediaries) (Amendment) Regulations 2011</th>
<th>CRA (Amendment) Regulations</th>
<th>CRA (Amendment) Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Initiative</td>
<td>03/May/2010</td>
<td>13/Apr/2011</td>
<td>05/Jul/2011</td>
<td>27/Dec/2011</td>
<td></td>
</tr>
<tr>
<td>Review of content</td>
<td>Prescribes transparency rules for the rating process, rules pertaining to conflict of interest, relating to conduct in the act of lending services, and requirements for minimum release of information, including CRA adherence to IOSCO rules of conduct.</td>
<td>Alters rules for CRAs: dispenses with prior approval of SEBI in the case of constitution or status change of CRAs, and maintains the prior approval in the case of change of control with a new definition of this term.</td>
<td>Rules for CRAs: process for registering as CRA</td>
<td>Rules for CRAs: need for the agreement of clients for assigning of rating for bonds</td>
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