

THE UNIVERSITY OF THE WESTERN CAPE
FACULTY OF LAW

THE ROLE OF CROSS-LISTINGS IN ESTABLISHING A
SADC REGIONAL STOCK EXCHANGE

A mini thesis submitted in partial fulfilment of the requirements for the LL.M Degree,
University of the Western Cape



STUDENT: Moses W Chisadza

STUDENT NO. 3280601

DEGREE: LL.M (International Trade, Investment and Business Law)

SUPERVISOR: Professor MS Wandrag

DECLARATION

I, **Moses Wisdom Chisadza**, declare that **The Role of Cross-Listings in Establishing a SADC Regional Stock Exchange** is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references’.

Signed: _____

Moses Wisdom Chisadza

May 2013



Signed: _____

Prof. M S Wandrag

May 2013

ACKNOWLEDGEMENT

In a work of this kind, it is not without difficulty to record my full indebtedness to all the people who assisted me in one way or another to prepare this LLM dissertation: To the Almighty God without whose help, providence, wisdom and instruction in all things, this work would not have seen the light of day.

My primary debt is owed to my supervisor Prof M S Wandrag who tirelessly read through various drafts of this LLM dissertation and provided insightful and invaluable guidance. Professor KK Mwenda's unfailing and untiring support and his great mentoring skills have always won my admiration and respect. My sincere thanks also go to Mr Brian Carlson, who kindly devoted a lot of time to assist me with the language and overall structure of this dissertation. I also thank Pearl Moatshe for providing me with material for my research.

I am also grateful to Professor Patrick Osode, Edward Kwakwa, Daniel Bradlow and Dr Edwini Kessie, for encouragement and support. I also offer my profound gratitude to my dear parents, the late Mr K Z Chisadza and Ms Erica Tayengwa, for their moral, financial and inspiration support whilst I was working on this project. I would be failing in my duty if I should forget to record my thanks to the AUSAID who granted me the scholarship to undertake the LLM at the University of the Western Cape, and to the University community that availed me of the study opportunity

To my closest friends, Yvonne Musonza, Ian Chakawata, Clarence Siziba, Zwelithemba Tini and Michael Dibela, thank you so much for being there for me and for being the best friends anyone could have. Special thanks go to Godfrey, Olwethu Xako and my LLM colleagues for their support during the course of study.

Finally, to the Chisadza and Tayengwa families, thank you so much for having given me the opportunity to further my education. I do appreciate all your support and willingness whenever I needed it and thank you so much for being there for me.

God bless you all.

KEYWORDS

SADC regional stock exchange

CoSSE- Committee of Southern Africa Development Community Exchanges

Cross-listings

Regional stock exchange

Capital markets

Financial markets integration

Johannesburg Stock Exchange

Regional integration

SADC- Southern Africa Development Community

National stock exchanges



ACRONYMS

ASEA	African Stock Exchanges Association
BCEAO	Banque Centrale des Etats de l' Afrique de l' Ouest
BRS	Banque Regionale de Solidarite
BRVM	Bourse Régionale de Valeurs Mobilières
BSE	Botswana Stock Exchange
CCBG	Committee of Central Bank Governors
CISNA	Committee of Insurance, Securities and Non-Banking Financial Authorities
CMDC	Capital Markets Development Committee
COMESA	Common Market for Eastern and Southern Africa
CoSSE	Committee of SADC Stock Exchanges
CREPMF	Conseil Régional de l'Epargne Publique et de Marchés Financiers
DSE	Dar-es-Salaam Stock Exchange
EAC	East African Community
EASBA	East African Stock Exchange Brokers Association
EASEA	East Africa Stock Exchanges Association
EASRA	East African Member States Securities Regulatory Authority
EBA	European Banking Authority
EC	European Community
EEA	European Economic Area
EEC	European Economic Community
EIB	European Investment Bank
EIOPA	European Insurance and Occupational Pensions Authority
ESA	European Supervisory Authority
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board

EU	European Union
FIP	Finance and Investment Protocol
GSE	Ghana Stock Exchange
IMF	International Monetary Fund
ISD	Investment Service Directives
JSE	Johannesburg Stock Exchange
LIFFE	London International Financial Futures and Options Exchange
LSE	London Stock Exchange
LuSE	Lusaka Stock Exchange
MiFID	Markets in Financial Instruments Directive
MoU	Memorandum of Understanding
NiSE	Nigerian Stock Exchange
NSC	Nouveau System Cotation
NSE	Nairobi Stock Exchange
NSX	National Stock Exchange
NYSE	New York Stock Exchange
OHADA	Organisation for the Harmonisation of Business Law in Africa
PARMEC	Projet d' Appui a la Reglementationsur le Mutuellesd'Epargne et de Credit
PSE	Paris Stock Exchange
REC	Regional Economic Community
SACU	Southern Africa Customs Union
SADC	Southern African Development Community
UMOEA	Union Monétaire et Économique de l'Afrique de l'Ouest
USE	Uganda Stock Exchange
WAEMU	West African Economic and Monetary Union
WAMU	West African Monetary Union
WTO	World Trade Organisation

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND

It has been established that African stock markets are confronted with a multitude of problems which include, inadequate liquidity, low capitalisation, few market participants, a small number of listed companies and low trading volumes.¹ As a result, their broader economic impact has so far been limited.² The Southern Africa Development Community (SADC) stock markets with the exception of South Africa are small, both in terms of the number of listed companies and market capitalisation, and they display considerable illiquidity.³ In general, the SADC region has shallow and underdeveloped financial markets. Their development has been hampered by a number of factors which include; political and economic uncertainty, fiscal dominance, weak judicial institutions, limited investment opportunities in the private sector, technological constraints, and the shortage of skilled personnel with expertise in banking and finance.⁴

It is contended that all these problems could be eased through regional financial integration. The integration of African stock markets and the introduction of regional stock exchanges will promote cross-border listings and thus stimulate increased liquidity across markets.⁵ Thus, it is suggested that the integration of SADC's stock markets and the creation of a regional stock exchange is one of the panaceas to overcome Africa's stock market problems.⁶ A regional stock exchange has the potential for tremendous benefits for both local and foreign investors, as well as for business enterprises in the region.⁷ The term "regional stock exchange" refers to a stock exchange which would stimulate not only cross-border trading in securities of companies within the region, but would also attract securities investment from

¹Department of Economic Affairs *Report of the Feasibility study on the establishment of the Pan African stock exchange* (2008) para 199.

²Jefferis K & Mbekeani K *New forms of integration in emerging Africa laws, Institutions and Capital Markets Integration* (2000) 1.

³Senbet L & Otchere I 'African stock markets' (2008) 1 *International Monetary Fund*.

⁴Linn J & Wagh S 'Regional Financial Integration: Its Potential Contribution to Financial Sector Growth and Development in Sub-Saharan Africa' (2008) IV *International Monetary Fund Institute* 5.

⁵Mlamblo C & Biekpe N 'Investment Basics XLIV. Review of African stock markets' (2001) 54 *Investment Analysts Journal* 62.

⁶Bradley E 'A regional stock exchange: Hope for Sub-Saharan Africa stock markets' (1999) 305 *Michigan State University-DCL Journal of International Law* Summer 1.

⁷Bradley E (1999) 2.

abroad.⁸ Also, a regional stock exchange would belong to a region and such an exchange would be located in one of the countries in the region.⁹

It is in light of this that in 1997 a Committee of SADC Stock Exchanges¹⁰ (CoSSE) was set up and is a collective body of the stock exchanges in SADC.¹¹ The main goal of CoSSE is fostering cooperation and collaboration between member stock exchanges.¹² Although it is essentially a private-sector association, CoSSE works under the ambit of the draft SADC Finance and Investment Protocol¹³ (FIP) which seeks to contribute to the establishment of a regional stock market by facilitating regional integration between member states in the finance and investment field.¹⁴ In 1999 CoSSE members agreed to harmonise their listings based on the Johannesburg Stock Exchange (JSE) rules as the basic framework, structure and format.¹⁵ However, SADC's vision to establish an integrated, regional stock exchange by 2006 was not realised.¹⁶ Therefore, currently there is no regional stock exchange within SADC, but discussions are underway as to how the SADC stock exchanges can be integrated.

1.1.1 Aims of the Research

This study aims to evaluate the importance of cross-listings in establishing a SADC regional stock exchange and in solving the problems of SADC's stock markets. Furthermore, the study seeks to identify important lessons from the East African Community (EAC), Francophone West Africa and the European Union that are crucial for pursuance of regional cross-listings integration within SADC.

⁸Mwenda KK *Legal Aspects of Corporate Finance: The Case for an emerging stock market* (published PH.D thesis, Warwick University, 2000) 131.

⁹Mwenda KK *Legal Aspects of Corporate Finance* (2001) 132.

¹⁰CoSSE members are Botswana Stock Exchange, Malawi Stock Exchange, Stock Exchange of Mauritius, Bolsa de Valores de Mozambique, Namibian Stock Exchange, South Africa's JSE Ltd, Swaziland Stock Exchange, Dar es Salaam Stock Exchange of Tanzania, Zambia's Lusaka Stock Exchange, and the Zimbabwe Stock Exchange.

¹¹Committee of SADC Stock Exchanges available at <http://www.cossesadc.org> (accessed 20 September 2012).

¹²Salami I 'Financial regulation in African frontier markets: can the EU approach work?' (2011) *Law and Financial Markets Review* 382.

¹³SADC Finance and Investment Protocol, Annex 1 (2006).

¹⁴Mensah S *Harmonisation Initiative for SADC Stock Exchanges: Southern Africa Global Competitiveness Hub* (2007) 2.

¹⁵Mensah S (2007) 3.

¹⁶Salami I (2011) 382.

1.2 RESEARCH STATEMENT

In 2008, CoSSE developed a framework for dual and cross-listings on regional stock exchanges. Thus, the issue under examination is how might cross-listings assist in establishing a SADC regional stock exchange?

1.3 RESEARCH QUESTIONS

The research seeks to provide the answers to the following questions:

- (i) What are cross-listings?
- (ii) Can cross-listings improve liquidity and facilitate stock market deepening?
- (iii) How should the regional cross-listing integration scheme be regulated, structured and implemented?
- (iv) What are the legal implications for the establishment of a SADC regional stock exchange by cross-listings?
- (v) What are the constraints/benefits/lessons from other regions?

1.4 SIGNIFICANCE OF THE RESEARCH

The importance of this study is that it comes at a time when many African countries are reviewing policy options including the benefits of wider market participation through increased regional financial integration. In the SADC region, CoSSE is supporting increased financial market integration and leading the SADC countries towards a fully integrated stock market through cross-listings.

Furthermore, the research will provide information to CoSSE by giving enhanced insight and knowledge that will help to shed light on the role of cross-listings in establishing a SADC regional stock exchange.

The study will also be useful to the exchanges in Ghana, Nigeria and Cote d'Ivoire who are also seeking to integrate by 2014,¹⁷ and to the JSE which is engaged in serious discussions with Ghana, Namibia, Zambia and Zimbabwe stock exchanges with the main aim of

¹⁷Minney T 'West African stock markets talking integration-will they walk the talk?'(2012) available at <http://www.africacapitalmarketnews.com/1687> (accessed 22 September 2012).

establishing a Pan-African stock exchange.¹⁸ The study will be of value to the EAC which is also planning to set up a regional stock exchange.

Moreover, this study will be useful to companies seeking to exploit profit and growth opportunities on the abovementioned regional stock exchanges by means of cross-listings investment ventures.

Therefore, the study makes a significant contribution to the existing literature by filling the gap on how cross-listings assist in setting up a SADC regional stock exchange.

1.5 RESEARCH METHODOLOGY

The method employed for this study will be based on a desktop and library study. The primary sources of information will be treaties, protocols, memorandum of understanding agreements, and articles written by experts and organisations in the field. The secondary sources will include textbooks and information available from electronic resources and databases. A comparative study will be used to indicate the experiences of other regions in the pursuance of regional cross-listings. The comparison will be limited to the following regions: EAC and Francophone West Africa and Euronext. EAC and West Africa have a clear and effective, sound legal and regulatory framework regulating regional cross-listings. Euronext is a working example of a regional stock exchange.

1.6 LIMITATION OF STUDY

It is admitted that regional integration covers a wide range of integration forms which encompasses trade integration, monetary and, even, political integration. However, this study focuses only on how cross-listings enhance regional market integration. Moreover, the study is limited to the comparative analysis of the experiences of regional cross-listings in the Francophone West Africa stock exchange, the East African Community (EAC), and the EU, particularly Euronext.

1.7 LITERATURE REVIEW

Overall, there is a large body of literature that documents whether cross-listings enhance African securities exchanges in a way that overcomes the impediments to their development. Drawing heavily on the case of the Lusaka Stock Exchange, Mwenda argues that, although

¹⁸Irving J *Regional Integration of Stock Exchanges in Eastern and Southern Africa: Progress and Prospects* (2005) 28.

emerging stock markets are relatively illiquid, there is a need for capital markets in Africa to integrate by moving towards the establishment of a regional stock exchange.¹⁹ He advocates the establishment of a regional stock exchange under the Common Market for Eastern and Southern Africa (COMESA), and SADC, as an incentive to improve the efficiency and competitiveness of the sub-region's national securities markets.²⁰ Moreover, Mwenda argues, in favour of establishing a regional stock exchange that would coexist with the sub-region's national stock exchanges, while simultaneously promoting multiple cross-border listings and cross-border investments, to ease liquidity problems on the national exchanges.²¹ This is the plan CoSSE envisages, that all of the national exchanges would remain in place and would be cross-linked to a single desktop work station.²²

The preamble of the SADC Finance and Investment Protocol states that, CoSSE is to pave the way towards cross-border listings and, trading and investments among the different member stock exchanges of SADC in order to facilitate the process of financial integration within the region.²³

Sabri contends that cross-listing enhances the integration of emerging stock markets to global stock markets.²⁴ The idea of cross-listing is to list a domestic firm in international secondary stock exchanges, in order to obtain benefits and increased investment opportunities, as well as the advantages of liquidity.²⁵ Adelegan also notes that cross-listing can bring significant benefits which include the financing and corporate needs of stock markets, the provision of wealth diversification, greater efficiency, the lowering of the cost of capital, and increased market access for small stock markets.²⁶ However, the necessary conditions to harness the benefits of regional cross-listings include sound legal and regulatory frameworks, macroeconomic and political stability, harmonisation of listing rules, accounting law and

¹⁹Mwenda KK 'Securities Regulation and Emerging Markets: Legal and Institutional Issues for Southern and Eastern Africa' (2000) 7 *Murdoch University Electronic Journal of Law* 93.

²⁰Mwenda KK *Legal Aspects of Corporate Finance* (2001) 131.

²¹Mwenda KK *Securities Regulation and Emerging Markets* (2000) 95.

²²Irving J (2005) 21.

²³Annex 11 of the SADC Protocol on Finance and Investment of 2006.

²⁴Sabri NR 'Cross Listings of stocks among European-Arab (Mediterranean) Markets' (2002) XVI *Finance India* 208.

²⁵Sabri NR (2002) 208.

²⁶Adelegan *Accelerate Can Regional Cross Listings Stock Market Development? Empirical Evidence from Sub Saharan Africa* (2008) 27

disclosure requirements across the region, strong money markets, and incentives for listed firms and other market participants to take advantage of regional cross-listings.²⁷

Onyuma et al observes that the regional cross-border listing trail was blazed by the JSE Securities Exchange of South Africa when it cross-listed on the Namibian Stock Exchange (NSX) in October 1992.²⁸ There has also been regional stock listing between stock markets in Botswana and South Africa since 1997, Malawi and South Africa in 1999, and Zambia and South Africa in 2003.²⁹ Onyuma et al states further that, cross-border listings have gained significance over the past few years since the signing of the EAC treaty in 1999.³⁰ Therefore, the development of cross-listings across national stock markets in Tanzania, Kenya, Rwanda and Uganda is a milestone in the EAC's drive for regional market integration.³¹

However, while there are earlier works which have studied the impact of cross-listings in stock markets development, there remains a gap in the literature with respect to how cross-listings might assist in establishing a SADC regional stock exchange, which this research seeks to fill.

1.8 SEQUENCE OF CHAPTERS

The topic under examination will be discussed in five chapters.

1.9.1 Chapter One

This chapter introduces the research and discusses the problem of the study. It also sets out the context of the research in terms of identifying the problem and outlining the methodology. The chapter ends with a review of some of the literature that has been used in this thesis.

1.9.2 Chapter Two

Chapter two gives insight into understanding the concept of cross-listings. This includes an in-depth discussion of the reasons driving domestic markets and firms to participate in cross-

²⁷Adelegan (2008) 27.

²⁸Onyuma, Mugo & Karuiya 'Does Cross-Border Listing (Still) improve firm financial performance in Eastern Africa' (2012) 1 *Journal of Business, Economics & Finance* 96.

²⁹Onyuma, Mugo & Karuiya (2012) 12.

³⁰Onyuma, Mugo & Karuiya (2012) 12.

³¹Onyuma, Mugo & Karuiya (2012) 12.

listings. The chapter also looks at the importance of cross-listings in fostering regional market integration in the SADC region.

1.9.3 Chapter Three

This chapter focuses on the lessons from other regions such as EAC and West Africa. The chapter also critically discusses the requirements for a proper legal and regulatory framework for regional integration of capital markets.

1.9.4 Chapter Four

Chapter four focuses on the Euronext as a working example of a regional stock exchange and comparative discussion with Africa.

1.9.5 Chapter Five

Finally, this chapter concludes the research and proposes recommendations on the establishment of a SADC regional stock exchange



CHAPTER TWO

UNDERSTANDING THE CONCEPT OF CROSS-LISTINGS

2.1 INTRODUCTION

As previously noted in chapter one, the core aim of this research is to establish how cross-listings will assist in establishing a SADC regional stock exchange. Following the same route, this chapter attempts to provide an insight into understanding the concept of cross-listings.

After addressing the concept of cross-listings, this chapter examines the reasons driving domestic markets and firms to participate in cross-listings. Lastly, it addresses how cross-listings can contribute to a regional exchange in SADC as a lead-in to regional exchanges.

2.2 DEFINING THE CONCEPT OF CROSS-LISTINGS

The concept of “cross-listings” is a new and efficient instrument which enhances the integration of emerging stock markets with global stock markets.³² Cross-listings refer either to the listing of ordinary shares of a firm on a different exchange other than its home stock exchange, or entail a single stock being listed on more than one exchange.³³ In addition, cross-listing is a strategic policy of firms to secondarily list their shares abroad.³⁴ Cross-listings can be achieved via direct listing, the Depository Receipts Programme, and Global Registered Firms.³⁵ Direct listing is where an increasing number of firms perceive the benefits of listing their securities abroad.³⁶ Generally such a firm’s primary listing is on a stock exchange in its country of incorporation, and its secondary listing is on an exchange in another country.³⁷ Cross-listing is especially common for companies that started out in a small market but grew into a large market. Furthermore, cross-listings is a mechanism through which domestic markets and firms can improve their access to the lower cost of

³²SabriN (2002) 208.

³³Onyuma S & Mugo R et al (2012) 92.

³⁴Bhumisirikul T & Supattaraku S *Cross Listing, Firms Origins And Destinations, And Cost of Equity Capital* (2011) 521 The Barcelona European Academic Conference.

³⁵Karolyi A ‘Why do companies list shares abroad? A survey of the evidence and its managerial implications’ (1998) 7 *Financial Markets Institutions and Instruments* 12.

³⁶Mmieh F & Frimpong N ‘The Making of a Sub-Saharan Africa Success Story: The Case of Cross-Border Listing of Trust Bank Limited of the Gambia on the Ghana Stock Exchange’ (2009) 51 *Thunderbird International Business Review* 378.

³⁷Miller D ‘The market reaction to international cross-listings: Evidence from depository receipts’ (1999) 51 *Journal of Financial Economics* 103.

external financing and consequently use the funds to invest in viable projects, and affirm a strong commitment to stringent rules backed by stringent enforcement.³⁸

It is important to note that the concept of cross-listings expanded significantly in the nineties and it started in the United States of America (USA).³⁹ Burns and Bill regard cross-listings as a vehicle through which a firm's management can bond themselves to a legal system with more protections against management self dealing or excessive consumption of private benefits of control.⁴⁰ Therefore, cross-listings can be characterised as a limited type of jurisdictional choice that involves opting into an alternative, perhaps stricter, regime from that in which the market is based, but not opting out of the default jurisdiction.⁴¹

Proponents of cross-listings assert that regional integration can bring greater efficiency, synergies and economies of scale; attract foreign flow of funds; foster risk sharing and portfolio diversification; act as an impetus to financial sector reforms, thereby broadening the competitiveness of regional financial systems and minimising the risks of financial instability; facilitate capital market development; and lead to economic growth.⁴² Economic growth increases in integrated markets because of the better allocation of capital among investment opportunities.⁴³

However, cross-listings have implications not only for cross-listing markets, but also for countries in which these markets are based, as cross-listing markets might demand changes in home country law in order to better coordinate with the law of the cross-listed jurisdiction.⁴⁴ Thus, if cross-listing countries attempt to impose laws on cross-listing markets which conflict with the law of their home countries; this could reduce cross-listing and, therefore, the benefits which that foreign market brings to cross-listing jurisdictions.⁴⁵ It is contended that, even though cross-listings give wider opportunities to potential investors or companies to invest in multiple markets in order to exploit profit opportunities, they are susceptible to

³⁸Inder & Khurana et al 'Does cross-listing lead to a higher firm growth?' (2004) University of Missouri. Columbia 9 available at <http://www.zwu-wien.ac.at> (accessed on 11 January 2013).

³⁹Sabri N (2002) 206.

⁴⁰Burns & Bill 'Cross-listing and Legal Bonding: Evidence from mergers and acquisitions' (2006) University of Georgia New York available at <http://www.ceistorvergav.it/conferenzconvergin/banking&finance> (accessed 11 January 2013).

⁴¹Coffee J 'Racing Towards the Top? The impact of Cross-Listings and Stock Market Competition on International Corporate Governance' (2002) 102 *Columbia Law Review* 1757.

⁴²Faruqee H 'Equity Market Integration in Integrated Europe's Financial Market in Market' in Decressin J and Fonteyne W (ed) *Integrated Europe's Financial market* (2007) 14.

⁴³Mensah S (2007) 3.

⁴⁴Ribstein L 'Cross-Listing and Regulatory Competition' (2005) 1 *Review of Law & Economics* 99.

⁴⁵Ribstein L (2005) 99.

market conditions, and there is a potential loss of management control, associated costs, loss of privacy and an increase in reporting and disclosures.⁴⁶

Regional cross-listings in Africa have either been policy driven or market driven.⁴⁷ Some of the government policy-induced regional cross-listings are the cross-listings between the Johannesburg Stock Exchange (JSE) and the Namibian Stock Exchange (NSX) in October 1992.⁴⁸ In the SADC region there has been regional cross-listing between stock markets in Botswana and South Africa since 1997, Malawi and South Africa in 1999, and Zambia and South Africa in 2003⁴⁹. For instance, Investec Limited of South Africa has primary listings on the JSE, and is also dually listed in Botswana since 1995.⁵⁰ Ashanti Goldfields is listed on the Zimbabwe Stock Exchange and is also cross-listed on the Ghana Stock Exchange (GSE), the London Stock Exchange (LSE), and the New York Stock Exchange (NYSE).⁵¹ AngloGold Ashanti has its primary listing on the JSE and a secondary listing on the GSE.⁵² Moreover, a number of companies are cross-listed on the Zimbabwe Stock Exchange and the JSE: Bicc Cafca Ltd, Falcon Investment Holdings, Old Mutual, Pretoria Portland, and Wankie Colliery.⁵³ Oando PLC, registered in Nigeria, cross listed on the JSE on 25 November 2006.⁵⁴

The market driven cross-listings, on the other hand, include the West African triple cross-listing of Ecobank on the Bourse Régionale de Valeurs Mobilières (BRVM), the Nigerian Stock Exchange (NiSE), and GSE; and the cross-listing of Shoprite on the JSE and Lusaka Stock Exchange (LuSE) in Zambia.⁵⁵ Irrespective of the reason for the regional cross-listing, it is beneficial to both the host and home countries.

Decisions on regional cross-listings are taken by firms, while market regulators, policy makers and stock exchanges facilitate the regional approach to cross-listings by signing Memoranda of Understandings (MoUs) and putting in place the necessary conditions to harness the benefits of regional cross-listings and develop their capital markets.⁵⁶

⁴⁶Karolyi A (1998) 18.

⁴⁷Adelegan O *Impact of the Regional Cross-Listings of Stocks on Firm Value in Sub-Saharan Africa* (2009) International Monetary Fund Policy Discussion Paper No. WP/09/99.

⁴⁸Onyuma, Mugo & Karuiya (2012) 96.

⁴⁹Onyuma, Mugo & Karuiya (2012) 12.

⁵⁰Adelegan (2008) 36.

⁵¹Jefferis K & Mbekeani K (2000) 11.

⁵²Department of Economic Affairs (2008) 18.

⁵³Irving J (2005) 15.

⁵⁴Department of Economic Affairs (2008) 18.

⁵⁵Onyuma, Mugo & Karuiya (2012) 99.

⁵⁶Adelegan O (2009).

2.3. REASONS FOR DOMESTIC MARKETS AND FIRMS TO PARTICIPATE IN CROSS-LISTING

Academic literature has identified a number of different reasons which motivate local markets and firms to cross-list.⁵⁷ For example, firms and domestic markets cross-list in order to expand their investor base, increase stock liquidity, improve the terms on which they can raise capital, increase visibility of stock exchanges, and achieve non-financial benefits such as increasing their customer base through the broadening of product recognition among investors of the host country.⁵⁸ In addition, cross-listings enrich and strengthen each individual exchange by the addition of quality-level listed securities.⁵⁹

2.3.1 Expand Investor Base

Cross-listings in a foreign market make the domestic market available to more investors and, consequently increase the shareholder base and risk sharing, which results in higher valuations.⁶⁰ Foerster and Karolyi provide empirical support to this perception, namely that cross-listing increases market value by expanding the shareholder base and improving liquidity.⁶¹ In support of this notion, Canadian managers whose firms are cross listed in the U.S. place greater emphasis on the role of cross-listings in widening their shareholder base.⁶² As cross listings increase the shareholder base, the market's risk is shared among more shareholders and this increased diversification reduces the market's cost of capital.⁶³ Baker reports that the major benefit of foreign listing is to broaden the shareholder base.⁶⁴ It is depicted that cross-listings increase the investor base of the stock market with beneficial effects on its cost of capital.⁶⁵ Cross-listings help to draw the interest of new investors and

⁵⁷Misati R 'Liberalisation, Stock Market Development and Investment Efficiency in Africa' (2006) Conference Paper St. Catherine College, Oxford 8.

⁵⁸Ayyagari M *Does Cross Listing Lead to Functional Convergence? Empirical Evidence* (2004) 6 World Bank Policy Research Working Paper 3264.

⁵⁹Misati R (2006) 8.

⁶⁰Bris A, Cantale S & Nishiotis G 'A Breakdown of the Valuation Effects of International Cross- Listing' (2007) 13 *European Financial Management* 298.

⁶¹Foerster S & Karolyi A 'The effects of market segmentation and illiquidity on asset prices: evidence from foreign stock listing in the U.S' (1998) 54 *Journal of Finance* 981.

⁶²King M & Mittoo U 'Why Companies Need to Know About International Cross-Listing' (2007) 19 *Journal of Applied Corporate Finance* 61.

⁶³Coffee J (2002) 13.

⁶⁴Baker H 'Why Us Companies List on the London, Frankfurt and Tokyo Exchanges' (1992) *The Journal of International Securities Markets* 219.

⁶⁵Doukas J & Switzer L 'Common Stock Return and International Listing Announcements: Conditional Tests Of The Mid Segmentation Hypothesis' (2000) 24 *Journal of Banking & Finance* 471.

encourage them to start trading in both foreign and local markets.⁶⁶ The interest may come not only from the larger scope of corporate information available after listing overseas, but also from a signal of commitment to higher governance standards which a local market sends when deciding to enter foreign markets.⁶⁷ Furthermore, by cross-listing a domestic market could expand its potential investor base more easily than if it is traded on a single market, as cross-listings bring foreign securities closer to potential investors, and they increase investor awareness of the securities.⁶⁸ Therefore, firms and domestic markets participate in cross-listings because this provides an avenue for portfolio diversification for a wider investor base.

2.3.2 Liquidity

Significantly, cross-listing on deeper and more liquid equity markets leads to an increase in the liquidity of the stock and a decrease in the cost of capital. Liquidity is a crucial feature of stock market development since greater liquidity can translate into a lower cost of capital for the stock market concerned, insofar as it is valued by investors and factored into market prices.⁶⁹ According to a World Bank study, liquidity in stock markets increases long-term economic growth by easing firms' access to funds for investment.⁷⁰ In addition, liquidity plays an important role in the ability of markets to attract trading volume.⁷¹ Liquid markets also experience faster rates of capital accumulation and subsequently greater productivity.⁷² Hence, it can be noted that stock market liquidity can positively influence economic growth, capital stock growth and productivity growth.⁷³ It is thus contended that cross-listings generate improved liquidity which lowers the cost of capital and increases share value.⁷⁴ Cross-listings lead to an increase in liquidity due to a pick-up in trading volumes in both the

⁶⁶Korczak P & Bohl M 'Empirical evidence on cross-listed stocks of Central and Eastern European companies' (2005) 6 *Emerging Markets Review* 135.

⁶⁷Korczak P & Bohl M (2005) 135.

⁶⁸Licht A 'Cross- Listing and Corporate Governance: Bonding or Avoiding?'(2003) 4 *Chicago Journal of International Law* 141.

⁶⁹Pagano M, Randl O & Roell A et al 'What makes stock exchanges succeed? Evidence from cross-listing decisions' (2001) 45 *European Economic Review* 777.

⁷⁰Levine R & Zervos S *Stock Markets, Banks and Economic Growth* (1996) 44 World Bank Working Paper No.44.

⁷¹Sarkissian S & Schill M 'Are there Permanent Valuation Gains to Overseas Listing? (2009) 22 *The Review of Financial Studies* 375.

⁷²Senbet L & Otchere I (2008) 6.

⁷³Levine R & Zervos S 'Stock Markets, Banks and Economic Growth' (1998) 88 *American Economic Review* 537.

⁷⁴Waweru K, Pokhariyal G & Mwaura M 'The Key Reasons for Cross-Listing in East African Stock Exchange by firms listed in the Nairobi Securities Exchange' (2012) 7 *International Journal of Business and Management* 118.

home and foreign stock market.⁷⁵ As a result of cross-listing, the home market and the host market will compete for order flows⁷⁶ for the cross-listed stocks and order flows will shift to the market with lower trading costs.⁷⁷ It is established that when local markets enter foreign markets, liquidity of the domestic markets improves significantly.⁷⁸ Therefore, secondary market liquidity increases following cross-listing in both the home and foreign market, accompanied by a reduction in trading costs and a narrowing of bid-ask spreads in the home market.⁷⁹

The cross-listings of emerging stock markets to developed stock markets increases domestic prices by enhancing the ability of the domestic stocks to provide diversification and liquidity, and transfers a segmented local equity market to an integrated market with high liquidity and market capitalisation.⁸⁰ For example, Domowitz et al., based on a study of Mexican firms, submits that cross-listings increase liquidity as long as the advantage of being traded in a more liquid market outweighs the disadvantages of order flow migration.⁸¹ Greater liquidity is associated with increased visibility, greater analyst coverage, improved earnings forecasts, and overall better investor recognition.⁸² Cross-listings result in reduction of transaction costs for investors through gains in market liquidity.⁸³ In contrast, cross-listings may not always enhance liquidity, due to the potentially offsetting impact of market fragmentation.⁸⁴ It is argued that liquidity may suffer in both the domestic and the foreign market if inter-market information linkages are poor.⁸⁵ Order flow migration from the domestic to the foreign market after cross-listing, can, however, reduce the liquidity of the listed shares in the domestic market.⁸⁶ Cross-listing is a dynamic and destabilising force that can moved

⁷⁵King M & Segal D *International Cross-Listing and the Bonding Hypothesis* (2004) 16.

⁷⁶Order flow is a measure of buying or selling pressure. It is the net of buyer- initiated orders and seller-initiated orders. In a dealer market, it is the dealers who absorb this order flow, and they are compensated for doing so.

⁷⁷Liu S 'International cross-listing and stock price efficiency: An empirical study' (2007) 8 *Emerging Markets Review* 260.

⁷⁸Korczak P & Bohl M (2005) 135.

⁷⁹Bancel F & Mittoo U 'European Managerial Perceptions of the Net Benefits of Foreign Stock Listings' (2001) 7 *European Financial Management* 223.

⁸⁰Hargis K 'International Cross-Listing and Stock Market Development in Emerging Economics' (2000) 9 *International Review of Economics and Finance* 101.

⁸¹Domowitz I, Glen J & Madhavan A 'International Cross- Listing and order Flow Migration Evidence from Emerging Market' (1998) 53 *Journal Of Finance* 221.

⁸²Bailey W, Karolyi A & Salva C *The Economic Consequences of Increased Disclosure: Evidence from Cross-Listings* (2002) 34.

⁸³Claessens S, Klingebiel D & Schmukler S *Explaining the Migration of Stocks from Exchanges in Emerging Economies to International Centres* (2002) Centre for Economic Policy Research Working Paper No.3301.

⁸⁴Wang C *What Makes Some Stock Markets More Attractive? An International Cross- Listing Analysis* (2008) 12 North-South-Corridor Foundation.

⁸⁵Domowitz I, Glen J & Madhavan A (1998) 234.

⁸⁶Domowitz I, Glen J & Madhavan A (1998) 243.

liquidity from local exchanges to international markets, thereby impelling a consolidation among market centres.⁸⁷ Nevertheless, cross-listings result in improved liquidity which is the major reason why domestic markets participate in cross-listings.⁸⁸

2.3.3 Increase Visibility

The quest for increasing visibility of stock exchanges is the principal reason that drives domestic markets to participate in cross-listings. The putative benefits of increased visibility in the host country go well beyond the expected increase in shareholder base. Local capital markets are attracted to cross lists to larger markets, insofar as they provide access to a larger pool of potential investors.⁸⁹ Notably, being cross-listed on a larger stock market confers a reputation upon a domestic stock market. In addition, to greater demand for its stock, cross-listings provide a stock market with greater access to foreign money markets and makes it easier to sell debt there.⁹⁰ Increased visibility can also boost local stock market marketing efforts, by broadening product identification among investors and consumers in the host country.⁹¹ Evidence shows that cross-listings enhance the visibility of a market and signal to customers and non-investor stakeholders that the market has become a global player.⁹² For example, Daimler-Benz, a German firm cross-listed on the NYSE in 1993 and this cross-listing gave it direct access to the largest and most dynamic stock market in the world; as a result it became the first firm in the world to have a truly global share.⁹³ It is established that visibility of stock exchanges, as measured by analysts and media coverage, increases around the time of cross-listings.⁹⁴ Smith and Sofianos analysed the effect of the New York Stock Exchange (NYSE) listings on the liquidity of one hundred and twenty eight non-US stocks and found that, after the cross-listing, the average annual turnover ratio in the domestic market increases from 65% to 89%.⁹⁵ Bancel and Mittoo, in a survey of 305 European companies cross listed on foreign exchanges, report that the most perceived benefit of cross-listing is the increased visibility and prestige.⁹⁶ A cross-listed market becomes more credible

⁸⁷Coffee J (2002) 13.

⁸⁸Domowitz I, Glen J & Madhavan A (1998) 260.

⁸⁹Pagano M, Randl O & Roell A (2001) 777.

⁹⁰Licht A (2003) 144.

⁹¹Baker H (1992) 219.

⁹²King M & Mittoo U (2007) 60.

⁹³King M & Mittoo U (2007) 72.

⁹⁴Fernandes N & Ferreira M *Does International Cross-Listing Really Improve the Information Environment?* (2005) 2.

⁹⁵Smith K & Sofianos G *The Distribution of Global Trading In NYSE-listed Non-U.S. Stocks* (1996) NYSE Working Paper 96-06.

⁹⁶Bancel F & Mittoo U (2001) 218.

by providing information to the local capital market and, in turn, this continuous flow of information allows the capital market to make faster and more accurate decisions.⁹⁷ Therefore, firms and domestic markets participate in cross-listings in the quest for increasing visibility of stock exchanges and firms.

2.3.4 Financial Gains

Firms and domestic markets participate in cross-listings for financial gain motives. Thus, cross-listing is regarded as a means for lowering a market's cost of capital, that is, for enabling markets to get more money from investors when they offer their stock to the public.⁹⁸ It is noted that this effect stems from segmentation gains and diversification gains. Segmentation is whereby foreign listing allows the local stock markets to become part of the global portfolio.⁹⁹ Moreover, cross-listings bring foreign stocks closer to investors and offer several other straightforward advantages that stem from lower transaction costs.¹⁰⁰ Stulz submits that cross-listings provide financial gains by enabling markets to get more money from investors when they offer their stocks to the public.¹⁰¹ It is evident that cross-listed domestic markets benefit from a lower cost capital and raise more external funds after they enter the foreign markets.¹⁰² However, criticism levelled against market segmentation is that, it cannot explain the time-series pattern of listings.¹⁰³ For instance, with greater market integration over time, net benefits of a listing should diminish since the cost of capital for companies is increasingly determined globally.¹⁰⁴ Hence, it is argued that there should have been a reduction in cross-listings instead of an increase.¹⁰⁵

2.3.5 Marketing Motivations

Another reason that pushes domestic markets and firms to participate in cross-listings is marketing motivations. It is claimed that cross-listings creates greater market demand for the

⁹⁷Rock E *Coming to America? Venture Capital, Corporate Identity and U.S Securities Law* (2002) University of Pennsylvania, Institute for Law & Economic Research Paper No.02-07, 719.

⁹⁸Stulz R 'Globalisation, Corporate Finance and the Costs of Capital' (1999) 8 *Applied Corporate Finance* 12.

⁹⁹King M & Mittoo U (2007) 62.

¹⁰⁰Licht A (2003) 144.

¹⁰¹Stulz R 'Globalisation, corporate finance, and the cost of capital' (1999) 12 *Journal of Applied Corporate Finance* 8.

¹⁰²Hail L & Leuz C 'Cost of Capital Effects and Changes in Growth Expectations around U.S. Cross-Listings' (2009) 93 *Journal of Financial Economics* 428.

¹⁰³Karolyi G *The World of Cross-Listings and Cross-Listings of the World: Challenging Conventional Wisdom* (2004) 13.

¹⁰⁴Karolyi G (2004) 13.

¹⁰⁵Karolyi G (2004) 13.

market's products as well as its securities.¹⁰⁶ Domestic markets do cross-list their capital markets as a tool to signal their transparency and private information; hence, they also try to deliver a positive signal of capital markets' value to outside investors that they are high-value or high-growth capital markets.¹⁰⁷ Cross-listings attract positive publicity in the foreign market. However, a good marketing campaign may bring about the same outcome.¹⁰⁸ Therefore, it is evident that the drive for marketing motivations is one of the reasons domestic markets and firms participate in cross-listings.

2.3.6 Bonding

Cross-listing in a foreign market acts as a bonding mechanism used by firms that are incorporated in a jurisdiction with poor investor protection and enforcement systems to commit themselves voluntarily to higher standards of corporate governance.¹⁰⁹ In this way, firms attract investors who would otherwise be reluctant to invest. Bonding refers to the costs of liabilities that an agent or entrepreneur will incur to assure investors that it will perform as promised, thereby enabling it to market its securities at a higher price.¹¹⁰ The bonding hypothesis suggests that cross-listings help capital markets to improve their corporate governance and protect minority shareholder interests by reducing the agency costs of controlling shareholders.¹¹¹ In addition, bonding mechanisms also include submitting to reputational intermediaries in the target jurisdiction, such as securities analysts, investment bankers, auditors and exchanges.¹¹² Cross-listings involve bonding, which causes markets to adhere to superior regulatory and governance standards.¹¹³ Firms often cite the desire for improved corporate governance as one of the motivations for cross-listings on foreign exchanges.¹¹⁴ Fernandes and Ferreira suggest that, an improvement in governance stimulates investors' incentives to collect private information and thereby work to make stock prices

¹⁰⁶Roosenboom P & Van Dijk M 'The Market Reaction to Cross-Listings: Does the Destination Market Matter?' (2009) 33 *Journal of Banking and Finance* 1898.

¹⁰⁷Fuerst O *A theoretical analysis of the investor protection regulations argument for global listing of stocks* (1998)43 Yale University Working Paper.

¹⁰⁸Durand R, Gunawan F & Tarca A 'Does Cross-Listing Signal Quality?' (2006) 2 *Journal of Contemporary Accounting & Economics* 172.

¹⁰⁹Roosenboom P & Van Dijk M (2009) 1899.

¹¹⁰Coffee J (2002) 11.

¹¹¹Bhumisirikul T & Supattaraku S (2011) 522.

¹¹²Coffee J (2002) 15.

¹¹³Durand R, Gunawan F & Tarca A (2006) 171.

¹¹⁴Ayyagari M (2004) 1.

more informative.¹¹⁵ Conversely, an improvement in price information may be one channel through which a cross-listing attenuates agency problems between managers and shareholders.¹¹⁶

In doing so, markets provide a clear signal to shareholders that they intend to abide by higher standards than they would otherwise do in their home market.¹¹⁷ Thus, it is evident that the increased disclosure and monitoring associated with the cross-listing acts as a bonding mechanism for controlling shareholders for less expropriation of market resources.¹¹⁸ Doidge et al., show that cross-listed markets are valued more than non cross-listed markets because the higher disclosure requirements, which usually occur in cross-listings programmes, reduce the opportunity to extract private benefits for controlling shareholders.¹¹⁹ At the same time the bonding hypothesis will constrain insiders of the cross-listed markets from trading on private information, particularly if foreign legislation is tighter than the domestic insider trading rules.¹²⁰

Cross-listings can be a tool for markets to signal to their investors that they are more willing to protect minority rights as corporate governance rules are stronger abroad.¹²¹ Thus, it is argued that markets in weaker protection for minority shareholder countries are more likely to bond themselves by cross-listing in markets with stronger protection for minority shareholders, such as the NYSE.¹²² Cross-listing in a country with better accounting standards allows the market to pre-commit to greater transparency and thereby reduce the monitoring costs of its shareholders and their required rate of return.¹²³ Litch contends that the bonding hypothesis is completely unfounded, and asserts that instead of bonding most issuers of foreign securities may actually be avoiding better governance.¹²⁴ Therefore, firms participate in cross-listings because of enhanced corporate governance and bonding associated with cross-listings.

¹¹⁵Fernandes N & Ferreira M 'Does International Cross-Listing Improve the Information Environment?'(2008) 88 *Journal of Financial Economics* 216.

¹¹⁶Lel U & Miller D 'International Cross-Listing Firm Performance, and Top Management Turnover: A Test of the Bonding Hypothesis' (2009) 64 *Journal of Finance* 1897.

¹¹⁷Durand R, Gunawan F & Tarca A (2006) 171.

¹¹⁸Bris A, Cantale S & Nishiotis G (2007) 320.

¹¹⁹Doidge C, Karoyli G & Stulz R 'Why are foreign firms that are listed in the U.S worth more' (2004) 71 *Journal of Financial Economics* 217.

¹²⁰Korczak A & Lasfer M *Does Cross-Listing Mitigate Insider Trading* (2006) 6.

¹²¹Wang C (2008) 19.

¹²²Reese W & Weisbach M 'Protection of minority shareholder interests, cross-listings in the United States, and subsequent equity offerings' (2002) 66 *Journal of Financial Economics* 65.

¹²³Pagano M, Randl O & Roell A (2001) 779.

¹²⁴Licht A (2003) 147.

2.3.7 Increased Analyst Coverage

It is important to note that an improved information environment associated with cross-listings is one of the reasons why domestic markets and firms are participating in cross-listings. Ammer et al. submits that information disclosure provides the primary influence on foreign cross-listing shareholding.¹²⁵ Thus, the better information environment is associated with the increased returns and the higher valuation of the cross-listed market.¹²⁶ One strand of literature suggests that more analyst coverage and more accurate earnings forecasts indicate an improved information environment.¹²⁷ Hence, it is observed that the analyst coverage hypothesis, which predicts that an increase in trading activity resulting from cross-listings induces entry of analysts.¹²⁸ Furthermore, cross-listings bring the cross-listed markets to the attention of more investors and lead to more analyst and media coverage.¹²⁹ Also, Ahearne et al. contend that cross-border listings mitigate the information barriers by stimulating local market media and analyst exposure in the foreign market.¹³⁰ Baker et al. points out that, cross-listings on the NYSE are associated with greater analyst coverage and heightened media attention.¹³¹ Analysts can reasonably be viewed as financial watchdogs that should be at least as skilful as public regulators in uncovering financial chicanery, and hence a market that subjects itself to their scrutiny is arguably bonding its promise to make full and fair disclosure.¹³² Similarly, a recent study finds that as foreign stocks cross-list in the United States, they obtain significantly increased coverage by securities analysts and, as an apparent result, forecasts of their future earnings become more accurate relative to forecasts of markets that do not cross-list.¹³³

Furthermore, market value increases in direct response to increased analyst coverage. The improvements in a market's information environment provides investors with more public information, allowing them to better evaluate the impact of firms' investment decisions on

¹²⁵ Ammer J, Holland S & Smith D et al *Look at Me Now: The Role of Cross-Listing in Attracting U.S. Investors* (2005) International Finance Discussion Paper No. 815: Federal Reserve Board.

¹²⁶ King M & Mittoo U (2007) 8.

¹²⁷ Healy P, Hutton A & Palepu K 'Stock performance and intermediation changes surrounding sustained increases in disclosure' (1999) 16 *Contemporary Accounting Research* 485.

¹²⁸ Domowitz I, Glen J & Madhavan A (1998) 221.

¹²⁹ Baker H (1992) 219.

¹³⁰ Ahearne A, Grier W & Warnock F 'Information Costs and Home Bias: An analysis of U.S Holdings of Foreign Equities' (2004) 62 *Journal of International Economics* 324.

¹³¹ Baker K, Nofsinger J & Weaver D 'International Cross-Listing and Visibility' (2002) 37 *Journal of Financial and Quantitative Analysis* 495.

¹³² Coffee J (2002) 14.

¹³³ Coffee J (2002) 14.

future cash-flows.¹³⁴ Lang et al. show that the earnings forecasts of cross-listed capital markets are superior to those that do not cross-list.¹³⁵ This increase in information associated with cross-listings is helpful in making the capital market attractive to more potential buyers.¹³⁶ It is submitted that cross-listings is a vehicle to reduce information asymmetries between market insiders and outsiders through more disclosure.¹³⁷ Hence, it is clearly evident that countries participate in cross-listings because of the improved information environment associated with increased analyst and media coverage markets on capital market reactions to the cross-listing decisions.¹³⁸ This, in turn, may lead to lower cost of capital.

Even though, the evidence so far suggests a positive link between the information environment and cross-listing, the association is not clear-cut for various reasons. Sarkissian and Schill argue that overseas cross-listings reflect rather than reduce the information barriers that lead to investor home bias in international investment.¹³⁹ Rather, they observe that countries tend to cross-list in those foreign markets where the information barriers are already low; for instance countries that share large trade, cultural ties, and a similar industrial structure as their home market and are close geographically.¹⁴⁰ Again, it is contended that analyst activity is not a good proxy for private information trading because analysts are showcasing devices and do not possess significant private information.¹⁴¹ Nevertheless, increased analyst coverage fosters the production of industry and market wide information and dampens market-specific return variation.¹⁴²

2.4. HOW CROSS-LISTINGS CAN CONTRIBUTE TO A REGIONAL EXCHANGE IN SADC AS A LEAD-IN TO REGIONAL MARKET INTERGRATION

Capital market development literature proposes that cross-listing is important in fostering the regional markets integration of SADC's national stock exchanges. Regional market integration refers to a market driven and institutionalised process that broadens and deepens

¹³⁴Foucault T & Fresard L *Cross-Listing, Investment Sensitivity to Stock Price and the Learning Hypothesis* (2012) 32.

¹³⁵Lang M, Lins K & Miller D 'ADRs, Analysts and Accuracy: Does Cross Listing in the U.S Improve a Firm's Information Environment and Increase Market Value?' (2003) 41 *Journal of Accounting Research* 317

¹³⁶Ayyagari M (2004) 11.

¹³⁷Lang M, Lins K & Miller D (2003) 317.

¹³⁸Karolyi G (2004) 23.

¹³⁹Sarkissian S & Schill M 'The Overseas Listing Decision: New Evidence of Proximity Preference' (2004) 17 *Review of Financial Studies* 769.

¹⁴⁰Sarkissian S & Schill M (2004) 770.

¹⁴¹Roulstone D 'Analyst following and market liquidity' (2003) 20 *Contemporary Accounting Research* 5.

¹⁴²Fernandes N & Ferreira M (2005) 3.

financial links within a region.¹⁴³ Thus, cross-listing is a form of regional market integration scheme that is an important strategic and practical vehicle to help SADC's national stock exchanges to integrate themselves into the world economy.¹⁴⁴ Mwenda highlights the importance of cross-listings by stating that SADC's regional market integration could be achieved through cross-listings.¹⁴⁵ As a result, cross-listings will facilitate the development of more efficient and competitive capital markets in the SADC region. This will help to ease the liquidity problems of SADC's national stock exchanges, especially the Lusaka, Swaziland and Mozambique stock exchanges.¹⁴⁶ Therefore, SADC's regional market integration through regional cross-listings will facilitate cross-border equity investments by firms and operations between stock exchanges under existing market arrangements.¹⁴⁷

It is important to note that regional integration of capital markets in the SADC region by cross-listings will allow savings to be pooled across the region; reduce costs and increase information sharing among members; diversification of risks; enhanced competition and innovation across financial institutions; wider choices of financial products provided to regional and foreign investors; and more integration into the global economy facilitated by increased attractiveness of markets.¹⁴⁸ Also, increased regional financial integration as a result of cross-listings enhances economic performance in the SADC region.¹⁴⁹ The regional financial integration of the national stock exchanges of southern Africa is vital because it bears strong implications for financial stability.¹⁵⁰ The establishment of regional market integration in the SADC region through cross-listing is significant, in that integrated markets would reduce costs, facilitate capacity building, and provide regional and international services and infrastructure.¹⁵¹

¹⁴³Linn J & Wagh S *Regional Financial Integration: Its Potential Contribution to Financial Sector Growth and Development in Sub-Saharan Africa* (2008) 3 International Monetary Fund High-Level Seminar.

¹⁴⁴Francois C & Subramanian A 'Beyond Trade: Regional Arrangements as a Window on Globalisation' in Z Igbal & Khan M (e.d) *Trade Reform and Regional Integration in Africa* (1998) 361.

¹⁴⁵Mwenda (2000) 136.

¹⁴⁶Mwenda (2000) 136.

¹⁴⁷Onyuma, Mugo & Karuiya (2012) 95.

¹⁴⁸Irving J (2005) 4.

¹⁴⁹Adebola S & Dahalan J 'An Empirical Analysis of Stock Markets Integration in Selected African Countries' (2012) 2 *EuroEconomica* 167.

¹⁵⁰Yu I, Fung K & Tam C 'Assessing financial market integration in Asia-Equity markets' (2010) 34 *Journal of Banking & Finance* 2874.

¹⁵¹Adebola S & Dahalan J (2012) 169.

It is argued that cross-listed securities have always had a significant role in stock market development.¹⁵² Hargis alludes to the role of cross-listing in development by stating that regional cross-listing has been shown to transform a segmented local equity market from equilibrium of low liquidity and market capitalisation to an integrated market with high liquidity and market capitalisation.¹⁵³ Many proponents of stock market development have argued that cross-listings can contribute positively to economic growth by increasing and improving the allocation of savings and investment.¹⁵⁴ Also, stock market development facilitates price discovery, price information content, and transmits signals to various stock holders in the market; which, in turn, facilitates decision making, thus allowing allocation of resources to their best use.¹⁵⁵ This is especially important in the SADC context whose economies before liberalisation were characterised by financial repression which inhibited price signals.¹⁵⁶

The regional integration of stock exchanges in the SADC region through cross-listing is significant in that it is a means of overcoming the size and liquidity problems of existing exchanges, much more quickly than if these problems were to be overcome by the organic growth of national exchanges.¹⁵⁷ Thus, given the small, fragmented structure of SADC's national financial markets, the most empiric importance of regional market integration in the SADC region is that it increases market size.¹⁵⁸ Moreover, it is a means of reducing the costs of investing in the SADC region for international investors.¹⁵⁹ Irving asserts that regional integration of the national stock exchanges in southern Africa through cross-listing offers a way of overcoming some of the impediments to development that most of them now face as relatively fledgling and illiquid exchanges.¹⁶⁰ For instance, with the exception of South Africa, the emerging stock markets in SADC are by far the smallest of any region in terms of the number of listed companies.¹⁶¹ In 2012, 23 companies were trading in Botswana, 8 in

¹⁵²Cozier J *The Impact of Cross-border listing on the Stock Markets of Barbados, Jamaica and Trinidad & Tobago* (unpublished PH.D thesis, St Augustine University, 2010) 5.

¹⁵³Hargis K (2000) 101.

¹⁵⁴Levine R & Zervos S 'Stock Market Development and Long- Run Growth' (1996) 10 *World Bank Economic Review* 267.

¹⁵⁵Misati R (2006) 15.

¹⁵⁶Misati R (2006) 15.

¹⁵⁷Jefferis K & Mbekeani K (2000) 11.

¹⁵⁸Linn J & Wagh S (2008) 8.

¹⁵⁹Jefferis K & Mbekeani K (2000) 11.

¹⁶⁰Irving J (2005) 20.

¹⁶¹Hoover R 'Investing in Africa' available at <http://www.investinginafrica.net/african-stock-markets> (accessed 24 January 2013).

Swaziland, 3 in Mozambique, and 13 in Malawi.¹⁶² Hence, it is contended that only a SADC regional stock exchange can help to increase the assets and number of listed companies on a single SADC's national stock exchange to a level compared to that of leading emerging markets in other parts of the world.¹⁶³ In addition, SADC's regional financial integration will help small financial markets like Swaziland, Malawi, and Mozambique to take advantage of the systematic scale economies that accrue to larger systems.¹⁶⁴ SADC's regional financial integration is important because it benefits countries by inducing foreign direct investment flows and enabling local financial institutions to grow into regional, continental, and, eventually, even globally players in financial markets.¹⁶⁵

Another importance of cross-listing is that it helps to facilitate the integration of SADC's national stock exchanges and the creation of a SADC regional stock exchange. It is argued that with a regional stock exchange, southern Africa will be able to participate in and to benefit from the growing international integration of stock markets.¹⁶⁶ Moreover, a regional stock exchange would be more conspicuous and would make it easier and faster for southern African funds to be floated on international markets.¹⁶⁷ Such a market, as opposed to several small individual national markets, would make the SADC's region stocks more accessible to foreign investors.¹⁶⁸ Cross-listings would help member exchanges of SADC to be competitive both in the region and on the international stage.¹⁶⁹ With heightened competition between national markets, these markets will be compelled to improve their operations. Therefore, cross-listing is an important step in creating a SADC regional stock exchange, given that regionalising the critical regulatory legal and accounting ancillary services may not

¹⁶²Hoover R 'Investing in Africa' available at <http://www.investinginafrica.net/african-stock-markets> (accessed 24 January 2013)

¹⁶³Sheriff M Africa *Capital Markets: Challenges & Opportunities* (1999) 1 African Affairs Correspondent Reports.

¹⁶⁴Bossone B & Lee J 'In Finance Size Matters: The "Systemic Scale Economies" Hypothesis' (2004) 51 *International Monetary Fund Staff Papers* 19.

¹⁶⁵Mah'moud M, Mougani G & Zhang J et al. *Financial Sector Integration In Three Regions of Africa* (2010) 30.

¹⁶⁶Bradley E (1999) 1.

¹⁶⁷Bradley E (1999) 3.

¹⁶⁸Hoover R 'Investing in Africa' available at <http://www.investinginafrica.net/african-stock-markets> (accessed 24 January 2013).

¹⁶⁹Mmieh F & Frimpong N 'The Making of a Sub-Saharan African Success Story: The Case of Cross-Border Listing of Trust Bank Limited of the Gambia on the Ghana Stock Exchange' (2009) 51 *Thunderbird International Business Review* 382.

necessarily be so easily achieved outside the framework of the more effective and deeper regional integration arrangements.¹⁷⁰

2.5 CONCLUSION

From the foregoing discussion it is concluded that, the concept of cross-listings dates back to the nineties. It has been understood that it can bring greater efficiency, synergies, and economies of scale; attract foreign flow of funds; foster risk sharing and portfolio diversification; act as impetus to financial sector reforms, thereby broadening the competitiveness of international financial systems and minimising the risks of financial instability; facilitate capital market development; and lead to economic growth.

It is clear that domestic markets and firms participate in cross-listings due to the following reasons: to their expand investor base, to increase stock liquidity, to improve the terms on which they can raise capital, to increase the visibility of stock exchanges, and to achieve non-financial benefits such as increasing customer base by broadening product recognition amongst investors of the host country. The significance of cross-listing is that it is a form of regional market integration scheme that is an important strategic and practical vehicle to help SADC's national stock exchanges to integrate themselves into the world economy.

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¹⁷⁰Oyejide T *Policies for Regional Integration in Africa* (2000) 20 African Development Bank Economic Research Papers No. 62.

CHAPTER THREE

LESSONS FROM WEST AFRICA AND EAC

3.1 INTRODUCTION

Considering the various possible options of integrating stock markets, it will be interesting to look at the lessons that may be learnt from experiences in West Africa and EAC to advance the path towards a SADC regional stock exchange. Even if member countries of the SADC region chose a different itinerary, from that of these regions, it is a well-known fact that these stocks markets have a well-established practice in the field. Serious lessons can also be learnt on how to promote stock market integration in the SADC and to lay a solid foundation for the creation of the SADC regional stock exchange.

This chapter firstly outlines the requirements for a proper legal and regulatory framework for the regional integration of capital markets. Secondly, it elucidates the benefits and challenges of regional financial integration. The final part focuses on the lessons from other regions such as West Africa and the East African Community (EAC). Concluding remarks are given at the end to sum up important areas addressed by the whole chapter.

3.2.1 The Requirements for a Proper Legal and Regulatory Framework for the Regional Integration of Capital Markets

A sound legal and robust regulatory framework is critical for the competent functioning of a regional stock market. It acts as a bulwark against the backdrop of a financial or economic crisis, and provides clarity and confidence for market players and consumers alike.¹⁷¹ The preconditions for a sound legal and robust regulatory framework for a regional stock market consists of: the harmonisation of legislation, such as bankruptcy, listing and accounting laws; the establishment of regional self-regulatory agencies and regulatory commissions; coordinated monetary arrangements; and harmonised reporting standards.¹⁷² In particular, the tax treatment of investments must be harmonised, since tax policy is an important incentive or disincentive both for issuers and investors.¹⁷³ Moreover, effective regulation for cross-listings requires harmonising corporate governance standards, common standards for stock

¹⁷¹Messrs, Flemin & Balio 'et al' *Financial Sector Assessment: A Handbook* (2005) 5.

¹⁷²Senbet L & Otchere I (2008) 23.

¹⁷³Senbet L *The Development of Capital Markets in Africa: Constraints and Prospects* (1997) 44 United Nations Economic Commission for Africa Ministerial Conference.

brokers, and national rules for capital gains, withholding taxes and transaction costs.¹⁷⁴ Therefore, the preconditions for the robust regulation of regional exchanges serve as the foundation for adequate access to sustained stock market development and stability.

3.2.2 Investment Code

A sound and robust regulatory framework for regional exchange requires the creation of a common investment code; such a code is fundamental to the efficient operation of securities trading and investment across borders within the SADC region.¹⁷⁵ This investment code, together with the municipal laws of SADC member states, can provide legal rules on securities regulation at the regional level.¹⁷⁶ In order to be effective, the common investment code would have to be adopted in member states' national legislation, making it binding on all member states, and provisions of this code must take precedence over municipal laws of SADC member states.¹⁷⁷ Furthermore, an efficient legal and regulatory framework for regional exchanges requires the institution of a regional supervising authority, which might be either private or public, charged with responsibility for off-site analysis of adherence to prudential rules and regulations on a regional basis.¹⁷⁸ A regional supervising authority must be an independent, quasi-judicial regulatory agency with the responsibility for administering the SADC securities exchange laws.¹⁷⁹ The regional regulatory agency must be politically independent and not subject to political interference; such independence is vital for consumer and industry credibility.¹⁸⁰ Independence acts as an incentive to the regulator to adopt best practices of corporate governance and accountability.¹⁸¹

3.2.3 Supervisory Authority

The regional supervisory authority must be well-equipped with appropriate standards and regulations, as well as human capacity in order to establish its credibility.¹⁸² Thus, the supervisory authority must be adequately resourced with skilled personnel in order to match

¹⁷⁴Irving J (2005) 20.

¹⁷⁵Mwenda K Securities Regulation and Emerging Markets (2000) 100.

¹⁷⁶Mwenda K Securities Regulation and Emerging Markets (2000) 100.

¹⁷⁷Irving J (2005) 19.

¹⁷⁸Aryeetey E 'The Prospects and Priorities of Regional Integration in Sub-Saharan Africa' in Teunissen J (ed) *Regional Integration and Multilateral Cooperation in the Global Economy* (1998) 148.

¹⁷⁹Mwenda K *Legal Aspects of Financial Services Regulation and the Concept of a unified Regulator* (2006) 19.

¹⁸⁰Llewellyn D *Institutional Structure of Financial Regulation and Supervision: Basic Issues* (2006) 9.

¹⁸¹Mwenda K (2006) 19.

¹⁸²Aryeetey E (1998) 148.

the skills of those they are regulating.¹⁸³ Skilled personnel such as lawyers, accountants, financial analysts, and examiners, investigators, economists and other professionals must be employed by the supervisory authority.

The supervisory authority would also serve the purpose of a clearing-house of information; promoting the harmonisation of standards in regulation, disclosure, tax, and accounting; and encourage the interchange of ideas and experiences.¹⁸⁴ In addition, the regional supervisory authority will be responsible for enforcing reporting requirements where listed companies are required to immediately publish any new information which is likely to have a considerable effect on the stock market price.¹⁸⁵ Regular disclosure, transparency and enforcement form an integral part of regulation and supervision.¹⁸⁶ Important disclosure requirements include relevant information with regards to transactions, accounting, and the identity of the ultimate beneficial owners. These must be simple and supportive of the legal and accounting framework.¹⁸⁷ The regional regulatory authority must also criminalise or at least penalise the taking advantage of inside knowledge and unauthorised passing on of inside information.¹⁸⁸ As a result, ongoing disclosure obligations would protect investors where, for instance, information disclosed on another stock market is no longer up to date.

The presence of a regional supervisory authority is important in ensuring effective enforcement.¹⁸⁹ Enforcement essentially requires compliance and the ability to prosecute. Enforcement procedures need not be long, cumbersome and expensive.¹⁹⁰ Such enforcement can also be complemented by effective private laws on contracts and dispute resolutions.¹⁹¹ In addition, the supervisory authority would require a clear definition of the scope of government supervisory activities; securities market self-regulation, adequate rules and regulations for brokers, underwriters and other operators of the stock market.¹⁹² The powers and duties of the regional supervisory authority must supersede and have precedence over

¹⁸³Llewellyn D (2006) 8.

¹⁸⁴Bradley E (1999) 14.

¹⁸⁵Mwenda KK 'Legal Aspects of Unified Financial Services Supervision in Germany' (2003) 4 *German Law Journal* 1028.

¹⁸⁶Friedman B & Grose C *Promoting Access to Primary Equity Markets: A Legal and Regulatory Approach* (2006) 23 The World Bank Policy Research Working Paper No. 3892.

¹⁸⁷Friedman B & Grose C (2006) 23.

¹⁸⁸Mwenda K *German Law Journal* (2003) 1030.

¹⁸⁹Yartey C & Adjasi C (2007) 25.

¹⁹⁰Yartey C & Adjasi C (2007) 25.

¹⁹¹Lopez-de-Silanes F *A Survey of Securities Laws and Enforcement* (2004) 32 The World Bank Policy Research Working Paper No.3405.

¹⁹²Bradley E (1999) 14.

those of the national competent authorities. Should disputes arise, the regional regulator's decisions would be binding on the signatories.¹⁹³ The means of implementing the regulator's decisions would be left to member states and their individual stock markets.¹⁹⁴ Each participating country would have to designate an agency that would ensure that the regulator's decisions are adopted and implemented.¹⁹⁵ The regional regulator's decisions would have the effect of local law and would be enforced by any regulatory authority.

In addition, each country's regulator would select the method of implementation that best suits its national system of regulation as well as its customs.¹⁹⁶ Such an agency would then report back to the regional regulator regarding the measures taken in compliance with the regional regulator's decisions. The regional competent authority must be satisfied that the measures meted out to culpable parties by competent authorities in other countries are satisfactory. For instance, both the European Economic Community (EEC) and the World Trade Organisation (WTO) utilise this kind of system.¹⁹⁷ The EEC Commission and the WTO panels render their decisions and leave it to the respective state parties to develop the means to implement these decisions, and this system has proved successful thus far.¹⁹⁸ Mwenda submits that, the common investment code must be binding on all SADC member states and it must be adopted in the legislation of the member states.¹⁹⁹ Such an approach would enable the courts of law in the SADC member states to apply regional law with less difficulty. It is submitted that disputes on public distribution of securities on the regional stock market could be settled by a regional securities regulatory body, with a right of appeal being allowed to the SADC Tribunal Court.²⁰⁰ Therefore, legal and robust frameworks are of great importance in influencing the manner in which companies can access external finance.

3.2.4 Harmonisation

The first precondition of an effective legal and robust regulatory framework for regional capital markets integration is the harmonisation of legislation. Harmonisation is the process, through which different states adopt identical laws-by bridging the gap between the rules. It induces the creation of norms and principles to be used as rules and guidelines as well as the

¹⁹³Mwenda K *Murdoch University Electronic Journal of Law* (2000) 104.

¹⁹⁴Mwenda K (2006) 19.

¹⁹⁵Llewellyn D (2006) 8.

¹⁹⁶Mwenda K (2000) 151.

¹⁹⁷Bradley E (1999) 14.

¹⁹⁸Bradley E (1999) 14.

¹⁹⁹Mwenda K *Murdoch University Electronic Journal of Law* (2000) 104.

²⁰⁰Mwenda K (2000) 153.

elimination of differences in the technical contents of norms.²⁰¹ It is also a process through which two or more institutions achieve consistency in their rules and regulations. Harmonised legislative and regulatory initiatives normally seek to enhance the delivery of the three key objectives of regulation as identified by the International Organisation of Securities Commissions (IOSCO), namely: the protection of investors; ensuring that markets are fair, efficient and transparent; and the reduction of systemic risk.²⁰² It is also likely that harmonisation will be easier to achieve amongst countries with common legal backgrounds, such as within Anglophone or Francophone groupings, than between countries with highly divergent legal traditions.²⁰³ Three of the most significant ways in which the delivery of these objectives may be improved are: firstly, by lowering the direct costs of operating multiple regulators that market participants bear; secondly, by reducing the indirect costs that the existence of multiple regulators impose on market participants by dint of the fact that they have to comply with many regulatory regimes; and, thirdly, by enhancing competition at a regional level between the various types of participants in the capital markets, most importantly by reducing barriers to such competition.²⁰⁴

Harmonisation of common listing requirements and rules will facilitate cross-border listing and transparency; also in addition, accounting could be improved through moving to a common financial reporting system and accounting framework.²⁰⁵ Again, a common accounting framework can lower the costs of maintaining multiple accounting frameworks for firms listed in, or seeking to obtain financing from, different countries within the SADC region.²⁰⁶ However, accounting differences can hinder market participants' abilities to compare financial statements; hence, it is important to harmonise accounting frameworks. It is important to note that cross-listings are assisted by the adoption of common listing standards across stock exchanges. Thus, within SADC all member stock exchanges have harmonised their listing requirements, accounting, and auditing standards based on the thirteen principles of the JSE's listing requirements.²⁰⁷ By adopting common regional standards, SADC regional cross-listings can spur higher standards on both a regional and a

²⁰¹Department of Economic Affairs (2008) 16.

²⁰²International Organisation of Securities Commissions *Objectives and Principles of Securities Regulation* (1998) 9.

²⁰³Jefferis K & Mbekeani K (2000) 18.

²⁰⁴Lee R *Promoting Regional Capital Market Integration: Report* (2001) 12.

²⁰⁵Adelegan (2008) 28.

²⁰⁶Adelegan (2008) 28.

²⁰⁷Committee of SADC Stock Exchanges available at <http://www.cossesadc.org> (accessed on 20 January 2013)

national basis, and thus contribute to greater economic growth.²⁰⁸ Such rules and practices should also, be monitored and enforced by national exchanges and authorities, thereby ensuring horizontal integration and producing decentralised and technically uniform exchanges.²⁰⁹ On the other hand, harmonisation also comes with a number of challenges, such as: achieving consensus is difficult and slow, harmonisation of listing rules still requires compliance with multiple regulatory regimes, harmonisation reduces competition between rules, and the problem of implementation is not easily resolved.²¹⁰ Despite the challenges, the decision by CoSSE members to harmonise listing requirements is a major step forward and overcomes the critical barrier of achieving consensus.

The harmonisation of laws will result in sharing of information between the regulators of different jurisdiction in a region. Harmonisation facilitates the sharing of information amongst different securities regulators at the regional level, both about surveillance and enforcement actions against market participants, and in resolving crises in a market or at a particular firm.²¹¹ Such information sharing is valuable when examining a firm or a market that operates in more than one jurisdiction where, by definition, a local, as opposed to a regional, view of the firm or market will always be limited.²¹² Moreover, it also improves surveillance and risk management by enabling access to information in all market segments.²¹³ It can be observed that, as regional cross listings deepen, the exchange of information between stock exchanges is facilitated.²¹⁴ Thus, the ministries of finance across the region must have the overall responsibility of coordination among the different agencies involved in financial regulation, so as to ensure co-operation, information sharing and policy coordination amongst the various agency regulators.²¹⁵ Therefore, the harmonisation of listings rules within a region can make the following contributions towards capital market integration: reduction of duplication of regulatory efforts, simplification of compliance by issuers across markets, and ease of market entry.²¹⁶

3.3 REGIONAL MARKET INTEGRATION

²⁰⁸Jefferis K & Mbekeani K (2000) 12.

²⁰⁹Adelegan (2008) 28.

²¹⁰Mensah S *Harmonisation Initiative for SADC Stock Exchanges* (2007) 9.

²¹¹Lee R (2001) 13.

²¹²Lee R (2001) 13.

²¹³Yartey C & Adjasi C (2007) 22.

²¹⁴Adelegan (2008) 28.

²¹⁵Messrs, Flemin & Balio 'et al.' (2005)103.

²¹⁶Mensah S *Harmonisation Initiative for SADC Stock Exchanges* (2007) 9.

3.3.1 Benefits of Regional Capital Markets Integration

The integration of stock exchanges produces a number of significant efficiency gains by eliminating the duplication of costly infrastructure, thus reducing the average cost of producing trade.²¹⁷ For instance, accessing a single platform instead of two or more allows market professionals to save on the hardware, software and skilled human capital necessary to access and monitor separate trading platforms.²¹⁸ Integration also allows investors to trade more diversified portfolios, in some cases overcoming the fact that they were previously unaware of the existence of some securities.²¹⁹ Financial integration promotes financial development and financial stability, and enhances economic performance in the region.²²⁰

The creation of a single trading platform made it possible for Euronext N.V. to reduce its operation costs and eliminate the duplication of infrastructure and information technology investments across the individual exchanges in Amsterdam, Brussels, Lisbon and Paris.²²¹ Studies also show that, as a consequence of the regional integration of stock markets, the cost of equity capital for the companies attracting capital through stock exchanges, as well as the cost of settling securities transactions, would decline by an average 50 basis points.²²² Di Noia strongly argues that the integration of stock exchanges is a clear strategic option for exchanges because it improves welfare, consumer surplus, and total profits as well.²²³ The integration of stock markets will provide a wide range of instruments available for both investors and savers, and support the private sector by creating platforms for productive financial capital.²²⁴ Lastly, it facilitates capacity building in countries with less developed capital markets.

In addition, the benefits of regional capital market integration include the following: lower prices for all financial services; more efficient, more liquid, and broader securities markets; innovative financial products and services; an industrial transformation of all sectors of the

²¹⁷McAndrews J & Stefanadis C 'The consolidation of European stock exchanges' (2002) *The Federal Reserve Bank of New York Current Issues in Economics and Finance* 3.

²¹⁸McAndrews J & Stefanadis C (2002) 4.

²¹⁹Goldberg L, Kambhu J & Mahoney J et al 'Securities trading and settlement in Europe: Issues and Outlook' (2002) *The Federal Reserve Bank of New York Current Issues in Economics and Finance* 1.

²²⁰Adebola S & Dahalan J 'An Empirical Analysis of Stock Markets Integration in Selected African Countries' (2012) 2 *EuroEconomica* 167.

²²¹McAndrews J & Stefanadis C (2002) 4.

²²²Claessens S, Klingebiel D & Schmukler S 'The Future of Stock Exchanges in Emerging Economies: Evolution and Prospects' (2002) *Brookings-Wharton Papers on Financial Services* 167.

²²³Di Noia C 'Competition and Integration among Stock Exchanges in Europe: Network effects, implicit mergers and remote access' (2001) 7 *European Financial Management* 39.

²²⁴Adebola S & Dahalan J (2012) 169.

capital market industry; cheaper financing for companies; more efficient allocation of capital; higher returns on investments; enhanced risk-return frontiers; and improved macroeconomic performance.²²⁵

Regionalisation can introduce efficiencies in financial markets.²²⁶ By raising the number and diversifying the types of financial institutions which operate in a particular local market, integration fosters competition and lowers the prices of financial products and services.²²⁷ The opening of regional markets to financial services is likely to result in increased competition resulting from the opening of regional markets to financial services which would result in innovation and would promote a better credit and lending system.²²⁸ This is so as the operation and proliferation of more banks would encourage cheaper and more competitive services in countries within the region.²²⁹

The regional financial integration of SADC's stock markets would improve their negotiating power on the international front and other markets.²³⁰ Closer trading links between SADC's stock exchanges would strengthen their capacity to participate in world trade. This is especially the case as they would be able to secure preferential market access arrangements by combining their forces since they would have a stronger bargaining position, which is not likely to happen if they act individually.²³¹ Regional integration also enables SADC countries to overcome the obstacles resulting from small domestic markets by providing producers with larger markets to sell their goods thus achieving greater economies of scale.²³² Regional cooperation facilitates the pooling of member state resources and allows these states to avail themselves of regional institutional and human resources to achieve technological advancement.²³³

Progress towards integration of capital markets on a regional basis may actually help spur accelerated economic integration in other areas.²³⁴ For instance, the harmonisation of stock

²²⁵Lee R (2000) 48.

²²⁶Linn J & Wagh S (2008) 3.

²²⁷Bossone B & Lee J *In Finance, Size Matters: The Systemic Scale Economies Hypothesis* (2004) 51
International Monetary Fund Staff Papers 19.

²²⁸Bossone B & Lee J (2004) 51.

²²⁹Salami I *Financial Regulation in Africa: An Assessment of Financial Integration Arrangements in Africa Emerging and Frontier Markets* (2012).

²³⁰Salami I (2012).

²³¹Salami I (2012).

²³²Senbet L & Otchere I (2008) 23.

²³³Salami I (2012).

²³⁴Irving J (2005) 9.

markets regulation and trading practices that would accompany any regionalisation of exchanges could deepen regional integration more broadly in policy areas such as taxation, accounting standards, corporate governance and legal practices.²³⁵ Regional reporting requirements can compel greater accountability and transparency on the part of national monetary authorities.²³⁶ As financial services would be operating on a cross-border basis, there would be an increased risk of contagion should banks fail and an increased risk of a systemic crisis that could easily spread across the region.²³⁷ As such, financial regulatory bodies in all countries, and particularly those with more efficient financial systems, would be keen to ensure that all bank subsidiaries operating in their jurisdiction or country are effectively regulated and supervised in their home countries in order to avoid a possible risk from spreading to their financial systems.²³⁸ Large markets can make it more cost effective to improve aspects of the financial infrastructure, such as payments systems, regulation and supervisory regimes, all of which have high initial fixed costs.²³⁹

Regionalism can offer significant opportunities for allocating capital to its most productive use, propel financial development within the region, and bring additional benefits on the institutional side.²⁴⁰ Regional market integration expands the scale of and opportunities for financial intermediation. Pooling national savings can facilitate the financing of large, lumpy investment projects, where funding for such projects might be scarce or unavailable at the national level.²⁴¹

Finally, regional markets are better able to cope with risk. They allow for greater diversification of assets and markets for individual investors.²⁴² Also, they allow individual financial systems to tap into a collective pool of reserves in the event of an idiosyncratic shock or speculative attack.²⁴³ If more services providers existed, providing a variety of investment opportunities, there would be greater opportunities for investors to diversify their risk and, as such, have various combinations of investments in their portfolios. This is itself

²³⁵Okeahalam C *Strategic Alliances and Mergers of Financial Exchanges: The Case of the SADC* (2001) Centre for the Study of African Economies, Oxford University.

²³⁶Linn J & Wagh S (2008) 3.

²³⁷Bradley E (1999) 10.

²³⁸Salami I (2012)

²³⁹Linn J & Wagh S (2008) 3.

²⁴⁰Herrero G & Wooldrige P 'Global and Regional Financial Integration: Progress in Emerging Markets' (2007) *Bank for International Settlements Quarterly Review*.

²⁴¹Linn J & Wagh S (2008) 3.

²⁴²Bossone B, Honohan P & Long M *Policy for Small Financial Systems* (2001) 36 World Bank Financial Sector Discussion Paper No. 6.

²⁴³Bossone B & Lee J (2004) 49.

beneficial as it would encourage investment and enhance the channelling of resources into other viable projects.²⁴⁴

3.3.2 Challenges of Regional Capital Market Integration

Despite the many potential returns of a regional stock exchange, such a proposal is inherently a big challenge. SADC is a region of fifteen countries with diverse cultures, languages and economies.²⁴⁵ Getting the consensus on key issues that must be resolved in establishing a regional stock exchange is likely to be a daunting task.²⁴⁶ Furthermore, SADC's history reveals that attempts at regional integration or cooperation can be very difficult.²⁴⁷ Most of this region's past efforts at cooperation have been politicised and have, in the end, proven unsuccessful. The majority of these attempts came at time when SADC countries were still defining their national identities. It was difficult for governments to agree on cooperation that, in some cases, required handing over a certain degree of sovereignty to a regional organisation.²⁴⁸ African governments view stock exchanges with pride as national assets, just like national airlines, and are unlikely to embrace any policy that will limit the national profile.²⁴⁹ Thus, political leaders were generally unwilling to delegate certain powers and the authority of the state to a regional organisation.²⁵⁰

3.3.3 Lack of commitment

Another reason for the failure of past regional cooperation efforts were a lack of commitment.²⁵¹ Oftentimes, when politicians did not see immediate gains from the cooperation, they lost interest. The SADC regional stock exchange proposal could potentially be met with similar constraints. Obtaining the cooperation and serious commitment of all the parties that would be involved in this endeavour would by no means be a simple task.²⁵² The

²⁴⁴Salami I (2012).

²⁴⁵Southern Africa Development Community 'Member States' available at <http://www.sadc.int/about-sadc/> (accessed on 04 March 2013).

²⁴⁶Bradley E (1999) 8.

²⁴⁷McCarthy C 'Monetary Union: The experience of the Euro and the lessons to be learned for African (SADC) monetary union' in Tralac (ed) *The Tripartite Free Trade Area Towards a New African Integration Paradigm?* (2012) 59.

²⁴⁸Irving J (2005) 10.

²⁴⁹Yartey C & Adjasi C (2007) 22.

²⁵⁰Bradley E (1999) 8.

²⁵¹Bradley E (1999) 8.

²⁵²Oyejide A (2000) 9.

aggressive promotion of the benefits of a SADC regional stock exchange to governments and nationals of the different countries would be very crucial in this regard.²⁵³

The inherent nature of nation states implies that it is not uncommon for all regional integration plans to encounter some resistance at the national government level.²⁵⁴ Governments may oppose the idea of relinquishing the symbol of national sovereignty which a national exchange represents.²⁵⁵ However, resistance is likely to vary according to the degree to which sovereignty is relinquished.²⁵⁶

In sufficient interest and motivation from within the region itself' impedes further stock market development and regionalisation.²⁵⁷ For instance, the African Stock Exchanges Association (ASEA) which was formed in 1993 to promote the development of and cooperation among African exchanges actually had to cancel its 2001 annual conference scheduled in Johannesburg due to a lack of sufficient confirmation of attendance from delegates from stock exchanges and governments in Africa.²⁵⁸ Shortly thereafter, ASEA cancelled the conference. Following the cancellation, some commentators suggested moving future conference events to venue sites in Europe as a better means of showcasing Africa's capital markets to the West.²⁵⁹ In 2003, ASEA joined with the UN Development Programme and the NYSE to host an African Capital Markets Development Forum in New York, the main aim of which was to inform US-based institutional investors of the investment opportunities offered by the African Stock Exchanges.²⁶⁰ Forums such as this could help African participants to showcase some of the high-performing companies listed on their countries' exchanges, whilst simultaneously drawing attention towards the need for more public-private partnerships between large international companies, African SMEs and international donors to nurture the growth of nascent African private sectors, create jobs and contribute to economic growth.²⁶¹

3.3.4 Overlapping Memberships

²⁵³Oyejide A (2000) 9.

²⁵⁴Irving J (2005) 10.

²⁵⁵Bradley E (1999) 8.

²⁵⁶Irving J (2005) 10.

²⁵⁷Irving J (2005) 10.

²⁵⁸Department of Economic Affairs (2008) 1.

²⁵⁹Johnson C & Mims T *Recommendations on Creating Greater Access to African Capital Markets* (2003) African Capital Development Forum, Paper: New York.

²⁶⁰Johnson C & Mims T (2003).

²⁶¹Ana M & Kalotay K *Emerging Stock Markets and the Scope for Regional Cooperation* (2004) United Nations Conference on Trade and Development Discussion Paper No. 79.

Instead of having one strong regional integration body in southern and eastern Africa, there are overlapping memberships in the different regional groupings-; including COMESA, SACU, SADC and EAC.²⁶² This has resulted in duplication of efforts and, occasionally, inconsistent aims in regional integration initiatives-by SADC and COMESA, in particular.²⁶³ Notably, however, in recent years, COMESA has defined its role in promoting the regional integration of stock exchanges as one of building on the prior achievements of SADC and EAC.²⁶⁴

If market participants are subject to multiple regulators when they operate in different countries in a region, they are especially likely to face regulatory uncertainties, complexities, and increased costs, both directly in having to comply with multiple regulatory regimes, and indirectly in having to pay for the many regulators.²⁶⁵ These problems may be evident in all areas subject to regulatory oversight, and by all types of market participants. Inappropriate arrangements for cooperation and mutual assistance between national supervisors can also hinder capital market integration.²⁶⁶

3.3.5 High Transaction Costs

Transaction costs in African markets are the highest in the world.²⁶⁷ This would be an obstacle to regional financial integration, whenever any element of the cross-border trading process faces unnecessarily high costs.²⁶⁸ Amongst the functions where such high transaction costs may be evident are cross-border listings, information dissemination, order routing, trading, clearing via a central counter-party, and settlement.²⁶⁹

3.3.6 Governments, National Markets and Companies would have to make Changes

The integration of SADC's stock exchanges would demand that governments have to drive policy and institutional reforms or else the idea of a regional stock exchange will likely fail.²⁷⁰ Many African countries lack the preconditions needed to ensure sound use of private

²⁶²United Nations Economic Commission for Africa *Final Report- Study on the establishment of inter-RECs' Free Trade Areas in Africa drawing on lessons from the COMESA-SADC-EAC FTA experience* (2011) 13.

²⁶³Bienen D 'The Tripartite Free Trade Area and its implications for COMESA, the EAC and SADC' (2010) 2 *Trade and Development Discussion Paper 2*.

²⁶⁴Irving J (2005) 10.

²⁶⁵Lee R (2000) 11.

²⁶⁶Lee R (2000) 11.

²⁶⁷Senbet L (1997) 23.

²⁶⁸Hearn B & Piesse J (2010) 1034.

²⁶⁹Lee R (2000) 11.

²⁷⁰Bradley E (1999) 8.

capital and manage the risks of large reversals. Therefore, financial integration can magnify the effects of underlying distortions and institutional weaknesses, thereby multiplying the costs of policy mistakes.²⁷¹

Governments would have to pay more attention towards the creation of a stable economic and political environment in their respective countries.²⁷² They would also have to take decisive measures to integrate the stock market in the country's overall development programme. A strong market would in turn require governments to exercise fiscal restraint and maintain sound regulation of their banking systems and individual capital markets.²⁷³ Addressing the underlying weaknesses of the banking system becomes more urgent in an integrated environment as banks tend to increase lending and incur greater risks. Maintaining strong institutions, removing incentive distortions, and strengthening bank supervision capabilities are therefore crucial.²⁷⁴

Cross-listings would require the lifting of foreign exchange controls, the liberalisation or elimination of capital restrictions, and the improvement of financial information flow.²⁷⁵ Some countries have foreign exchange restrictions relating foreign portfolio investment, particularly those regarding the terms of repatriation.²⁷⁶ Others have unduly high withholding taxes on individual income and capital gains. While yet others have discriminatory time periods during which foreign portfolio money must remain invested and restrictions on the types of shares which can be purchased or held by foreign portfolio investors.²⁷⁷ In addition, without a convertible currency, the possibility of most types of market participants using the capital markets across borders will be severely restricted.²⁷⁸ Most noticeably, African countries have complex regulatory procedures concerning registration and transfer of securities, dividend payments, and mechanics of fund transfers.²⁷⁹ All these practices discourage investors and have to be addressed.

²⁷¹Senbet L *The Development of Capital Markets in Africa: Constraints and Prospects* (1997) 23.

²⁷²Bradley E (1999) 8.

²⁷³Llewellyn DT (2006) 5-6.

²⁷⁴Mwenda K (2006) 5.

²⁷⁵Addo E *Policies and Strategies for Enhancing the Regional Integration of Capital Markets in Africa* (2007) United Nations Economic Commission for Africa.

²⁷⁶Odife D 'Changing Trends in Stock Exchange and Capital Market development: Lessons for Africa' (2000) *United Nations Institute for Training and Research* 13.

²⁷⁷Applegarth P, Kansteiner W & Morrison J *Capital Market and Financial Sector Development in Sub-Saharan Africa* (2004) Centre for Strategic and International Studies, Washington. D.C.

²⁷⁸Senbet L & Otchere I (2008) 16.

²⁷⁹Bradley E (1999) 9.

The harmonisation of standards, policies and laws necessary for the functioning of the regional stock exchange could also be met with resistance and criticism from those who fear a loss of sovereignty in these areas.²⁸⁰ Existing stock markets, brokers, and companies may resist integration. For them this would mean adapting to new standards and increased competition. As companies increasingly turn to the stock market for finance, they would be exposed to pressures from foreign investors to produce accurate and timely information and limit insider trading practices by corporate insiders.²⁸¹ Accounting differences can hinder market participants' abilities to compare financial statements.²⁸² Markets which cannot offer competitive services may have to close. Businesses and financial institutions would have to adhere to more stringent business standards. Nevertheless, while this may be strenuous at the beginning, it would be advantageous for those institutions that try to adjust to the new standards.²⁸³ The aggregate of these changes would help improve a country's creditworthiness and attractiveness to foreign investors.²⁸⁴

Common African government policies, such as those limiting the size of foreign banks and limiting foreign investments, can all be viewed as implicit barriers to the efficient provision of financial services.²⁸⁵ Foreign bank entry has several advantages that are specific to Africa: international banks can help foster governance; they can bring in much-needed technology and experience from other parts of the region; and they can help exploit economies of scale in their host economies.²⁸⁶ However, policies which require banks and offer financial institutions to make large-scale loans to public sector backed projects or to invest in publicly issued bonds, limit the ability of financial institutions to diversify and offer credible contracts to investors.²⁸⁷

There are limits to the benefits that can accrue from regional financial integration, depending on the commonalities and dissimilarities of member profiles.²⁸⁸ When the members of a regional sub-grouping have very similar structures and challenges, regionalisation may pool

²⁸⁰Hearne B & Piesse J (2010) 1034.

²⁸¹Moss T *Adventure Capitalism: Globalisation and the Political Economy of Stock Markets in Africa* (2003).

²⁸²Lee R (2000) 12.

²⁸³Bradley E (1999) 9.

²⁸⁴Wellons P *Prototypes of Security Regulation for Africa: The Role of Enforcement, Transparency and Disclosure* (2003) United Nations Development Programme Capital Markets Development Forum Paper.

²⁸⁵Senbet L (1997) 25.

²⁸⁶Beck T, Fuchs M & Uy M *Finance in Africa: Achievements and Challenges* (2009) 44 World Bank.

²⁸⁷Senbet L (1997) 25.

²⁸⁸Honohan P & Beck T *Making Finance Work for Africa* (2007) World Bank.

rather than solve national problems.²⁸⁹ For example, where all member financial systems are characterised by excess liquidity and high interest rate spreads, that might indicate a region-wide paucity of viable investment projects and long-standing structural problems.²⁹⁰ Regionalisation, without national efforts to address the core problems, will not be effective.²⁹¹ The gains from the harmonisation of practices and laws might also be limited in a regional grouping with similar low initial conditions. Even after some form of regional integration, several small country groupings may still not reach the threshold needed to benefit from economies of scale.²⁹²

3.3.7 Lack of information

A lack of information about all aspects of capital markets across a region can obstruct regional integration.²⁹³ This includes information about regulatory requirements, exchange prices and quotes, company finances and strategies, investor allocation policies, or intermediary products and historical records.²⁹⁴

3.3.8 Income Disparity between South Africa and other SADC Countries

The significant income disparity between South Africa and other SADC countries could make the adoption of common policies difficult.²⁹⁵ South Africa is the largest and most advanced economy in Africa. Other countries could view South Africa's economically advantageous position as a threat.²⁹⁶ This could especially be so for smaller economies that may find it difficult to meet the standards and the costs of integration and at the same time absorb its shocks.²⁹⁷ Fear of bigger economies dominating the exchange and diverting capital towards their economies is also a key constraint against acceptance of regional integration by smaller economies.²⁹⁸ For instance, Kenya's dominant role in the East African Community was the source of much friction that was at least partly responsible for the collapse of that

²⁸⁹Linn J & Wagh S (2008) 4.

²⁹⁰Linn J & Wagh S (2008) 4.

²⁹¹Jansen M & Vennes Y *Liberalising Financial Services Trade in Africa: Going Regional and Multilateral* (2006) World Trade Organisation Staff Working Paper ERSD-2006-03.

²⁹²Honohan P & Beck T (2007).

²⁹³Lee R (2000) 12.

²⁹⁴Beck T & Levine R *Legal institutions and financial development* (2003) World Bank Policy Research Paper 3136.

²⁹⁵Okeahalam C *Strategic Alliances and Mergers of Financial Exchanges* (2001).

²⁹⁶Bradley E (1999) 8.

²⁹⁷Hearne B & Piesse J (2010) 1034.

²⁹⁸Yartey C & Adjasi C (2007) 22.

institution in 1977.²⁹⁹ The Botswana stock exchange also is reluctant as there is already evidence that liquidity and capital have moved from Windhoek to the JSE, which has benefited investors and firms in South Africa.³⁰⁰ Certainly, any formal progress on integration efforts would have to be implemented very carefully to ensure that the smaller markets do not suffer even greater liquidity.³⁰¹

3.3.9 Lack of Public Confidence and Human Resources

Lack of public confidence in the integrity of the securities markets as a result of distrust of governments and centralised financial institutions in business transactions is another major challenge that must be addressed if the regional stock exchange and individual national markets are to develop credibility.³⁰² This is fuelled by the adverse history in most SADC economies of corruption, bank failures and collapse of corporations and mismanagement of pensioned provident funds.³⁰³ There is a strong perception that stock exchanges are linked to their governments and they suffer from the taint of public distrust and inefficiencies.³⁰⁴ For many SADC countries, public distrust resulting from years of corruption would have to be overcome before local investors can confidently invest in stock markets.³⁰⁵ This will require companies and stock markets to be well run and clearly managed. Transparency and accountability will have to be emphasised if the investor's perception of Africa as a corrupt continent is to be overcome.³⁰⁶

Regional capital market integration requires dynamic and effective regulation. Most SADC capital markets lack a robust regulatory framework except South Africa.³⁰⁷ There is scarcity of institutional investors due to the poor legal regime for the protection of investors within the SADC region.³⁰⁸ Contract, property, insolvency, and secured transaction laws are weak and poorly enforced. The real challenge is the shortage of experienced supervisors and the absence of a strong tradition favouring compliance with the rules and discouraging regulatory

²⁹⁹McLaughlin J 'Taking Responsibility-Securities Regulation Reform and the Global Financial Crisis: The United States, United Kingdom, and East Africa' (2011) 19 *Transnational Law & Contemporary Problems* 782.

³⁰⁰Botswana Stock Exchange 'Press Statement: Response to the JSE's claim of a pan-African bourse' 2008 available at <http://www.bse.co.bw/press/> (accessed on 12 March 2013).

³⁰¹Irving (2005)

³⁰²Misati R (2006) 13.

³⁰³Misati R (2006) 13.

³⁰⁴Linn J & Wagh S (2008) 18.

³⁰⁵Bradley E (1999) 10.

³⁰⁶Senbet L (1997) 48.

³⁰⁷Mensah S *Capital Market Development in Africa: Selected Topics* (2004) 13.

³⁰⁸Salami I (2011) 382.

forbearance.³⁰⁹ The enforcement of rules and regulations is increasingly challenged by weak judiciary systems making it difficult to obtain convictions when rules are violated. Thus, securities regulators can work hard to administer the law and identify violators but the normal process of enforcement may not be equipped to apply the new laws.³¹⁰ The judiciary in many countries is plagued with weaknesses which include: politicisation and lack of independence; corruption and low remuneration; too few judges, staff and lawyers; weak calendar management; sanctions not specified or limited; ideology; and ignorance of law and markets.³¹¹ Therefore, these legal issues need to be addressed at member state level if there is to be an increase in the number of institutional investors participating in the regional stock exchange.³¹²

There is a lack of public awareness hence the limited public participation.³¹³ The public is reluctant to engage in securities purchases or trading because they do not understand stock exchange operations.³¹⁴ Most schools and universities in SADC's economies do not have courses related to capital markets. Accordingly, people who invest their funds in the capital markets are either professionals or self educated, thus the capital market lack a large number of potential investors.³¹⁵

Many SADC countries also face a number of challenges with respect to building the human resource base of capital markets.³¹⁶ In more developed countries, a large part of training in capital markets is commonly conducted on the job. However, the scope of on the job training for SADC countries is somewhat limited in many areas since the practices for which people need to be trained often do not exist in a country.³¹⁷ It is, therefore, not sufficient to learn existing practices but learning has to keep up with global practices. Working in a market economy and liberalised financial markets requires fundamentally different skills than

³⁰⁹Vittas D *Institutional Investors and Securities Markets: Which Comes First?* (1998) World Bank Policy Research Paper 2032.

³¹⁰Mensah S (2004) 14.

³¹¹Mensah S (2004) 14.

³¹²Salami I (2011) 382.

³¹³Yartey C & Adjasi C (2007) 24.

³¹⁴Cohn R 'Confidence Building In Sub-Saharan Stock Markets' (2000) *United Nations Institute for Technology and Research* 14.

³¹⁵Misati R (2006) 13.

³¹⁶Marone H *Small African Stock Markets- the Case of the Lusaka Stock Exchange* (2003) International Monetary Fund Working Paper WP/03/06.

³¹⁷Mensah S (2004) 16.

working in a command-type economy.³¹⁸ Given that many SADC countries had administered financial systems in the past, training is required to bring about a shift in the mindset of employees from a command-type to a market-type economy.³¹⁹

3.3.10 Disruption Spill Over from One Market to Another

Stock market integration is likely to increase the likelihood of disruptions from one stock market spilling over to other markets.³²⁰ Where financial systems are small and underdeveloped, a few large financial institutions with complex balance sheet linkages and exposures across markets, beyond the monitoring ability of the local monetary authorities, may make it difficult for the supervisory and regulatory authorities to do their job effectively, with concomitant risks.³²¹ With the region's intermittent political turmoil, this is likely to be a major problem. In addition, with the integration of capital markets, domestic financial institutions are exposed to the vagaries of the integrated markets. This is the case as losses on linked stock exchanges can so easily be transferred to banks and other financial institutions through the operation of financial conglomerates and domestic banks dealings on the capital markets.³²² Banks within the monetary union can thus be exposed to a financial crisis. The domestic banking crisis requiring the institution of crisis management procedures and bailouts could easily spill over to other jurisdictions within the monetary union arrangement.³²³ The appropriate response of regulators to such systemic risk would have to be the focus of much attention. Accurate and timely disclosure of country information would decrease the likelihood of cross-country contagion of financial shocks. Investors would then realise that a disruption may be attributable to a specific country as opposed to the whole region.³²⁴

Legislative and regulatory impediments of many types can limit integration, including differences in bankruptcy regimes, sanctions regimes, restrictions on ownership by non-nationals, the imposition of national rules to protect national industries, requirements to establish local companies, and restrictions of many types on issuers, intermediaries, and

³¹⁸Murray T *Global Trends in Post-Trade Infrastructure and Implications for Africa* (2003) United Nations Development Programme African Capital Markets Forum Paper.

³¹⁹Mensah S (2007) 17.

³²⁰Faruquee H (2007) 4.

³²¹Linn J & Wagh S (2008) 4.

³²²Salami I (2012).

³²³Salami I (2012).

³²⁴Hearne B & Piesse J *Equity Markets in Mozambique and Swaziland: Assessing the potential for portfolio diversification* (2008) Department of Management, King's College London Working Paper.

investors in providing cross-border services.³²⁵ Local or regional laws may also be detailed, and thus too inflexible in changing circumstances.

There are many sometimes intangible factors related to a region's history and culture which may limit the possibility of capital market integration.³²⁶ These may include differences in language, and variations in attitudes towards corporate governance and investor protection. Deep and pervasive poverty coupled with the large role of the agricultural and informal sectors in many southern African economies may make stock exchanges seem a "costly irrelevance", the number of local companies which currently use them tend to be small, and the number of potential local investors much smaller.³²⁷ Start-up costs for most of the African exchanges that have emerged since the late 1980s have been partly funded by the International Finance Corporation and other donors.³²⁸ However, the low trading levels which characterise most national exchanges in southern Africa mean that they cannot cover their own operating costs and tend to have to continue to rely on some form of subsidy and high taxes imposed on members and investors.³²⁹ Even abstracting from the narrow cost argument, efficiency questions remain, given that smaller stock exchanges in developed countries also are struggling.³³⁰

Therefore, variance among member states in their commitments to further capital market development as well as regional cooperation and integration-due to a combination of sovereignty concerns and limited available resources for such initiatives-can derail or delay progress. As one concrete example, the technology that would be required to link the JSE with the other stock exchanges in the region may be beyond the current financial means of many of the smaller stock exchanges, particularly since the JSE has forged technological links with the London Stock Exchange.³³¹

3.4 LESSONS FROM OTHER REGIONS

³²⁵Lee R (2000) 11.

³²⁶Misati R (2006) 13.

³²⁷Singh A 'Should Africa Promote Stock Market Capitalism?' (1999) *Journal of International Development* 343

³²⁸Okeahalam C (2001).

³²⁹Irving J (2005) 11.

³³⁰Okeahalam C (2001).

³³¹Irving J (2005) 11.

The experiences of other African regions might be more relevant to SADC policy-makers- except that the path of regional financial integration in other parts of African countries has been similarly problematic.

3.4.1 West Africa

The Bourse Régionale des Valeurs Mobilières (BRVM) is the world's first truly regional stock exchange serving eight French countries in West Africa.³³² As such it is the only integrated regional capital market in Africa, covering eight West African Francophone countries of the West African Economic and Monetary Union (WAEMU),³³³ and with a common regulatory framework for all market participants.³³⁴ The BRVM was opened in 1998 and has branches in each WAEMU country.³³⁵ Prior to its establishment, the only stock exchange in the zone was in Côte d'Ivoire.³³⁶ It was therefore natural for the regional exchange to be established in Abidjan to build on the existing exchange. The BRVM started with listing of 35 companies from Cote d'Ivoire, but these were supplemented by the listing of a Senegalese company late in 1998, and a total market capitalisation of 2904 CFA francs.³³⁷ The establishment of the stock exchange was led by the Union Monétaire et Économique de l'Afrique de l'Ouest (UMOEA) central bank, the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO), and member governments.³³⁸ In addition, the establishment of this regional stock exchange was clearly facilitated by the fact that the member countries share a common currency (the CFA franc) and thus have no restrictions on capital movements between themselves.³³⁹ Although the bourse is majority owned by the private sector, the member states own 13.4 percent of the capital.³⁴⁰

Trading on the BRVM is computerised with satellite links to the central trading facility in Abidjan.³⁴¹ Brokers and agents can transmit orders and consult and edit quotation results to the central site in Abidjan whilst sitting in workstations in their offices or desks located in

³³²Senbet W & Otchere I (2008) 1.

³³³Benin, Burkina Faso, Cote d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, and Togo.

³³⁴Salami I (2011) 381.

³³⁵Yartey C & Adjasi C (2007) 21.

³³⁶Mensah S (2004) 8.

³³⁷Mlambo C & Biekpe N (2001) 60.

³³⁸Jefferis K & Mbekeani K (2000) 6.

³³⁹Jefferis K & Mbekeani K (2000) 13.

³⁴⁰Asea P *Promoting Regional Financial Market Integration* (2003) African Capital Markets Development Workshop.

³⁴¹Mensah S *Harmonisation Initiative for SADC Stock Exchanges* (2007) 4.

national branch offices.³⁴² The exchange has 15 brokerage firms. Trading takes place on three days of the week and all orders are filled at a price set at a fixing once a day. Trades are cleared and settled at the Depositaire Central.³⁴³ The problem with the BRVM however, is that the exchange is dominated by Ivorian companies.³⁴⁴ Activity in the stock market declined substantially after the crisis in Cote d'Ivoire in 1999 because most of the listed firms are Ivorian.³⁴⁵ Sadly, corporations in the remaining member countries have not fully embraced the exchange.³⁴⁶

Although the volume of transactions on the BRVM is still low and irregular, the partnership between the participating countries subsists. The existence of a common colonial heritage seen notably through homogeneous legal systems and the use of a common currency, contributed to easily overcome some bottlenecks that were also observed in other attempts to form regional stock exchanges.³⁴⁷

With respect to a regional framework for capital markets regulation, WAEMU adopts the single formal regional regulator and stock exchange style of capital markets integration.³⁴⁸ Thus, within WAEMU all the existing financial markets are merged into one single market and under a single regulator.³⁴⁹ The single market for both bond and stock trading and fund management is supervised by a regional securities commission called Conseil Régional de l'Épargne Publique et de Marchés Financiers (CREPMF).³⁵⁰ All the member states use one single rulebook for listing, trading, clearing and settlement. This is the reason why financial integration in the WAEMU is deemed to be very advanced.³⁵¹

Fostered by regional institutional arrangements and the abolition of all capital controls, the integration of financial markets in WAEMU is further along than in other parts of Africa, especially when it comes to harmonisation of rules.³⁵² A single commission was created in

³⁴²The Department of Economic Affairs (2008) 43.

³⁴³Yartey C & Adjasi C (2007) 21.

³⁴⁴Asea P (2003).

³⁴⁵Adelegan O (2008) 9.

³⁴⁶Yartey C & Adjasi C (2007) 21.

³⁴⁷Department of Economics Affairs (2008) 43.

³⁴⁸Salami I (2012).

³⁴⁹Irving J (2005) 19.

³⁵⁰Salami I (2011) 381.

³⁵¹Salami I (2011) 381.

³⁵²However, WAEMU countries have retained a number of capital controls vis-a-vis investors from outside the region and residents wanting to invest abroad.

1990 to reinforce regional banking supervision Commission Bancaire de l'UMOA.³⁵³ However, despite the presence of the commission and the BCEAO, the regional central bank, some national banking systems are still fragile and the interbank is underdeveloped.³⁵⁴ Given the gaps in risk assessment and the lack of collateral, activity in the regional interbank market is largely restricted to in-group subsidiaries. Excess liquidity in some banking systems continues to coexist with liquidity shortages in others. Differential reserve requirements by country, ranging from 3 percent in Guinea-Bissau and Togo to 15 percent in Benin, further distort cross-border competition.³⁵⁵

The growth of the BRVM exchange has been curtailed by political disruptions in Côte d'Ivoire. Activity at the BRVM is concentrated in the bond markets.³⁵⁶ After about a decade of trading, the market is still underdeveloped compared with other stock exchanges in Sub-Saharan Africa, with the low level of development due to low trading values and volumes and stringent listing requirements.³⁵⁷ In 2006, total market capitalisation was just under 24 percent of regional GDP, and a bourse listing of 40 companies, compared to a market capitalisation of 280 percent of GDP and 401 listed companies at the JSE.³⁵⁸ Prospects for further growth of the market are constrained by both supply-side factors, and demand-side factors.

The WAEMU banking regulatory framework is provided for by the WAEMU treaty of 1994, the BCEAO statute and the Banking Commission Convention.³⁵⁹ The West African Monetary Union (WAMU) treaty provided that WAMU states would have a common banking code.³⁶⁰ This banking code or regulation is the WAMU banking law. The BCEAO and the WAMU Banking Commission jointly share banking supervisory functions³⁶¹ with residual functions in this field being left to ministers of finance of WAEMU member states.³⁶² In addition, the

³⁵³Jefferis K & Mbekeani K (2000) 6.

³⁵⁴Linn J & Wagh S (2008) 11.

³⁵⁵Linn J & Wagh S (2008) 11.

³⁵⁶Adelegan O (2008) 9.

³⁵⁷Adelegan O (2008) 9.

³⁵⁸Salami I (2012).

³⁵⁹Salami I 'Banking Harmonisation in the African context' (2008) 9 *Journal of Banking Regulation* 191.

³⁶⁰West African Monetary Union Treaty of 1994 Article 22 provided for the promulgation of this law

³⁶¹The banking supervisory function of the BCEAO can be found in the following article of the BCEAO Statute Art 23 and 24 of 1962. Likewise the banking supervisory functions of the WAMU Banking Commission can be found in the WAMU Banking Commission Convention Art 1(1) of 1990 outlines that the function of the WAMU Banking Commission is oversight of the organisation and supervision of banks and financial institutions.

³⁶²WAMU Banking Convention Article 31 of 1990 and the WAMU Banking Law Article 12 require authorisation from the ministry of finance of Member States for the licensing and closure of banks.

WAEMU countries have implemented macroeconomic convergence criteria under a regional surveillance mechanism, backed up by potential sanctions on noncompliant members.³⁶³

Progress on other fronts of market integration has been achieved largely through supranational regulatory laws and bodies.³⁶⁴ Since 1995, the regulatory framework for cooperative financial institutions has been based on the *Projet d'Appui a la Reglementation sur le Mutuelles d'Epargne et de Credit* law (PARMEC).³⁶⁵ In the rapidly proliferating area of microfinance, a regional institution Banque Regionale de Solidarite (BRS), with regional institutional shareholders has been created. The BRS tends to concentrate largely on refinancing microfinance institutions rather than providing direct loans.³⁶⁶

One encouraging development is the rapid growth of the regional market in local currency debt, especially public debt.³⁶⁷ Spurred by the cessation of central bank financing of fiscal deficits, the market in treasury bills and government bonds has been expanding since 2000.³⁶⁸ In the absence of restrictions regional investors within WAEMU, being mostly banks, have in recent years taken up roughly half the treasury bills issued.³⁶⁹ In fact, the rapid growth of the treasury bill market in WAEMU, the excess liquidity in most banking systems, and the continuing lag in private sector investment opportunities has meant that governments in these countries have been able to raise funds at low costs largely unrelated to their credit ratings.³⁷⁰ Therefore, in WAEMU, enhanced autonomy and the capacity of the regional institutions, illustrated by the establishment of the common stock exchange and the elimination of central bank advances to governments are attributed to the acceleration of debt market integration.³⁷¹

³⁶³Bank of France *The Rapid Growth of the Government Securities Markets in Sub-Saharan Africa: The Case of WAEMU* (2006) Rapport Zone franc.

³⁶⁴Claeys A & Sindzingre A *Regional Integration as a Transfer of Rules: The Case of the Relationship between the European Union and the West African Economic and Monetary Union* (2003) 8 University of Strathclyde Development Studies Association Annual Conference.

³⁶⁵Akinrinsola I 'Legal and Institutional requirements for West African economic integration' (2004) 10 *Law and Business Review of the Americas* 493.

³⁶⁶Gestion B *Rethinking the Role of Banks and of Sub-Regional Banks and National Development Finance in Africa* (2006) 626.

³⁶⁷Sy A *Financial Integration in the West African Economic and Monetary Union* (2006) International Monetary Fund Working Paper 06/214.

³⁶⁸Akinrinsola I 'Monetary integration in West Africa' (2003) 5 *Journal of International Banking Regulation* 21.

³⁶⁹Sy A *Financial Integration in the West African Economic and Monetary Union* (2006).

³⁷⁰Sy A *Local Currency Debt Markets in the West African Economic and Monetary Union* (2007) International Monetary Fund Working Paper 07/256.

³⁷¹Sy A (2007).

Despite these institutional measures, further regional integration in WAEMU is made difficult by continuing challenges.³⁷² Intra-regional trade, at just over 10 percent of total trade, is a poor motivator for further integration.³⁷³ While substantial progress has been made on the harmonisation front there are still differences across borders. For instance, bankruptcy proceedings and rules on the realisation of collateral vary across countries. Despite the agreement, national authorities exercise their discretion in the licensing and de-licensing of banks.³⁷⁴

The deeper structural problems which have plagued member countries also make it harder to build regional financial markets.³⁷⁵ The lack of diversification in economic activity across the region means that investor portfolios are limited to a few assets and there is very little cross-border competition in lending. One clear sign of the lack of effective integration of financial markets in WAEMU member countries is the simultaneous co-existence of liquidity shortages in some countries with substantial excess liquidity in other countries and region-wide.³⁷⁶

Côte d'Ivoire is a Francophone country in the WAEMU whose civil unrest and crisis affects the functioning of WAEMU.³⁷⁷ The IMF records that the 2002-2004 civil war between the incumbent President Laurent Gbagbo and the rebel forces affected the region.³⁷⁸ For instance, this instability has resulted in an increase in transaction costs and in diversion of trade away from Côte d'Ivoire in favour of other countries equipped with ports and has led to a reduction of WAEMU's overall potential trade.³⁷⁹ Although, intra-regional trade represents a small share of the total of WAEMU trade, Côte d'Ivoire accounts for around half of that total, thus highlighting the importance of this country for the WAEMU region.³⁸⁰ In 2010 Côte d'Ivoire experienced a second civil war after President Gbagbo refused to step down when he lost elections to Mr Ouattara.³⁸¹ This recent political crisis affected the financial aspects of WAEMU operations more than its trade relations. The BCEAO regional central bank offices

³⁷²Sy A (2007).

³⁷³Salami I (2012).

³⁷⁴Sy A *Financial Integration in the West African Economic and Monetary Union* (2006).

³⁷⁵Linn J & Wagh S (2008) 12.

³⁷⁶Linn J & Wagh S (2008) 12.

³⁷⁷Mensah S (2007) 8.

³⁷⁸International Monetary Fund *West African Economic and Monetary Union* (2012) 4 IMF Staff Report on Common Policies for Member Countries No. 12/59.

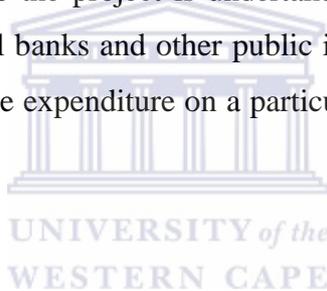
³⁷⁹Salami I (2012).

³⁸⁰International Monetary Fund (2012) 4

³⁸¹International Monetary Fund (2012) 4.

and most banks were closed in mid-February 2011, resulting in a near liquidity crisis.³⁸² In addition, the operation of the BRVM single stock exchange for the region was closed on 9 February 2011 and was moved temporarily to Bamako in Mali after Gbagbo's troops attacked its office in Abidjan.³⁸³ Due to the political upheaval, Côte d'Ivoire defaulted on its \$ 2,3 billion Eurobond which is not good for foreign portfolio investment in the region.³⁸⁴

A number of lessons can therefore be drawn from the experiences of BRVM on stock market integration in Africa. Firstly, it can take a very long time to build a regionally integrated exchange. Secondly, the fact that a regionally integrated exchange is established does not mean that it will be used effectively or that it will integrate the markets. Further, the eight countries had several regional institutions already in place at the BRVM's launch, including a central bank, common currency, financial market supervisory body, Supreme Court, as well as a regional legislative framework.³⁸⁵ The sustainability and success of any regional project must be carefully assessed before the project is undertaken. Private sector participation, as opposed to just regulators, central banks and other public institutions normally have the best incentive to determine whether the expenditure on a particular integration scheme for market infrastructure is worthwhile.³⁸⁶



3.4.2 East African Community

The East Africa Community (EAC) is a regional organisation which was established in 2000 by Kenya, Tanzania and Uganda; Burundi and Rwanda joined in 2007.³⁸⁷ The three original members of the EAC have a long and sometimes contentious history of regional cooperation based on a common legal tradition and long-standing trade ties.³⁸⁸ An East African Currency Board issuing legal tender for the three countries was in existence during 1919-1965.³⁸⁹

³⁸²Salami I (2012).

³⁸³Salami I (2012).

³⁸⁴Salami I (2012).

³⁸⁵Irving J (2005) 19.

³⁸⁶African Securities Exchange Association 'Yearbook 2004' available at <http://www.Africansea.org/asea/> (accessed 02 April 2013).

³⁸⁷Yabara M *Capital Market Integration: Progress Ahead of the East African Community Monetary Union* (2012) 2 International Monetary Fund Working Paper, WP12/18.

³⁸⁸Linn J & Wagh S (2008) 14.

³⁸⁹Gershenson D, Masha I & Dunn D *Progress Toward Harmonisation of Capital Account Regulations and Capital Market Integration in the East African Community* (2009) 2 International Monetary Fund Country Report No. 09/37.

Amidst severe unrest in the region, the precursor to the current EAC collapsed in 1977.³⁹⁰ More than two decades later, the current EAC was formally launched in 2001 with the goals of introducing a common market and monetary union with a common currency, and ultimately a political union, the East African Federation, with a common president and a common parliament.³⁹¹ The current EAC treaty contains articles which provide for the development of capital markets within East Africa.³⁹² Member nations are permitted under the treaty to harmonise their policies on cross-border listing, to tax capital markets transactions, and to promote cooperation among regulators and exchanges.³⁹³ Thus far, the most concrete development has been the establishment of a customs union in 2005, in an effort to increase the very modest levels of intra-regional trade; followed by the starting up of a common market in 2010.³⁹⁴ Since 2005, members have implemented a common external tariff, but due to overlapping membership of other regional organisations such as COMESA and SADC, exceptions have been made so that tariffs apply to countries who are not members of these organisations.³⁹⁵

There is a strong commitment among the member nations of East Africa to develop a regional capital market.³⁹⁶ Many of the EAC nations have already harmonised their legal and regulatory structure in anticipation of integration.³⁹⁷ The development of an East African Regional Exchange is heavily anticipated though not yet a reality.³⁹⁸ The proposed collaboration would allow companies and investors from any single East African nation to participate in the exchange.³⁹⁹ There are provisions within the EAC Treaty for the harmonisation of laws, should such a merger occur.⁴⁰⁰

³⁹⁰Nyirabu M 'Appraising Regional Integration in Southern Africa' (2004) 21 *Africa Securities Review* 26.

³⁹¹Yabara M (2012) 2.

³⁹²Article 85 of the East African Community Treaty of 1999.

³⁹³Ford C 'New Governance, Compliance, and Principles-Based Securities Regulation' (2008) 1 *American Business Law Journal* 8.

³⁹⁴Linn J & Wagh S (2008) 14.

³⁹⁵Gershenson D, Masha I & Dunn D (2009) 2.

³⁹⁶World Bank *Capital Market Integration in the East African Community* (2002) World Bank Working Paper No. 38084.

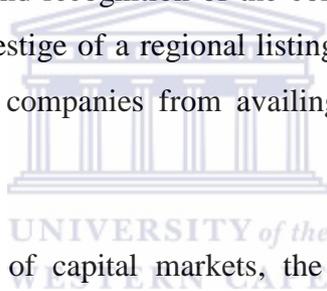
³⁹⁷Ford C (2008) 34.

³⁹⁸Bradley E (1999) 315.

³⁹⁹Ford C (2008) 8.

⁴⁰⁰Art 85 of EAC Treaty of 1999.

In the EAC, the intent to harmonise market infrastructure was evident, even before the establishment of the community.⁴⁰¹ The capital market authorities of Kenya, Tanzania, and Uganda established the East African member states Securities Regulatory Authority (EASRA) in 1997 to serve as a coordinating body for capital market cooperation and integration.⁴⁰² Partial capital account liberalisation has been implemented and cross-listing has been encouraged. The EASRA agreed on an approval procedure for cross-border listings in the EAC in 2000 and compiled common debt ratio criteria for those wishing to issue debt securities.⁴⁰³ November 2006 saw the signing of a memorandum of understanding (MoU) between the NSE and USE on mass cross-listing.⁴⁰⁴ The MoU will allow listed companies in both exchanges to dual-list. This will facilitate the growth and development of the regional securities markets. Some of NSE's listed companies that have dual-listed include: Kenya Airways, East Africa Breweries and Jubilee Holdings.⁴⁰⁵ Benefits that accrue to cross-listed companies include: access to a wider capital base across the region, a regional presence, resulting in a wider acceptance and recognition of the company brand across the region by company stakeholder, and the prestige of a regional listing.⁴⁰⁶ However, cost considerations seem to have prevented several companies from availing themselves of this cross-listing facility.⁴⁰⁷



With respect to the integration of capital markets, the areas of harmonisation and co-operation as outlined in Article 85 of EAC Treaty of 1999 can be categorised into three main areas, namely: policy formulation; regulatory and legal harmonisation; and structural and institutional matters. The Capital Markets Development Committee (CMDC), which was established in 2001, is the driving force behind the integration of capital markets within the EAC.⁴⁰⁸ It comprises representatives from member states' central banks, securities markets regulators, ministries of finance, stock exchanges, and insurance and pension sector regulators.⁴⁰⁹ Its most ambitious goal is to establish a regional stock exchange within the

⁴⁰¹World Bank *Financial Sector Integration in Two Regions of Sub-Saharan Africa* (2007) 34.

⁴⁰²African Development Bank Group *Financial Sector Integration in Three Regions of Africa: How Regional Financial Integration Can Support Growth, Development, and Poverty Reduction* (2010) 52.

⁴⁰³Yabara M (2012) 9.

⁴⁰⁴Aduda J, Masila J & Onsongo E 'The Determinants of Stock Market Development: The Case for the Nairobi Stock Exchange' (2012) 2 *International Journal of Humanities and Social Science* 216.

⁴⁰⁵Onyuma S, Mugo R, & Karuiya J (2012) 96.

⁴⁰⁶Aduda J, Masila J, & Onsongo E (2012) 216.

⁴⁰⁷World Bank (2007) 34.

⁴⁰⁸Salami I (2011) 383.

⁴⁰⁹Salami I (2011)383.

EAC with trading floors in each of the member states through the harmonisation of capital market policies on cross-border listing, foreign portfolio investors, taxation of capital market transactions, accounting, auditing and financial reporting standards, commissions and other charges.⁴¹⁰ It has achieved a great deal of progress: harmonised stock trading systems, which allow residents of member states to acquire and trade financial instruments freely within the EAC, now exist.⁴¹¹ Hence, its interim responsibility is to ensure that national authorities adhere to the harmonised stock trading systems. Additionally, three of the five member states, Kenya, Tanzania and Uganda, have harmonised their trading rules around the standards set by Kenya's Capital Market Authority.⁴¹²

Cross-border listing has gained significance over the past few years since the signing of the East Africa Community treaty in 1999.⁴¹³ The development of cross-listing across national stock markets in Tanzania, Kenya, Uganda and Rwanda is a milestone in the EAC's drive for regional integration.⁴¹⁴ The three East African stock exchanges, namely the NSE, USE, DSE, and the Rwanda Stock Exchange, have established a working relationship among them in the spirit of integrating and developing capital markets in the EAC.⁴¹⁵ The exchanges operate under the umbrella of the East African Stock Exchanges Association (EASRA). EASRA is a member of the Capital Markets Development Committee of the EAC. Other members of the CMDC include EASRA and the East African Stock Exchange Brokers Association (EASBA).⁴¹⁶ The three associations have a common objective of integrating the three markets in order to achieve growth of the market with the ultimate aim of economic union in the EAC. The three markets are aiming at achieving this objective in a systematic, coordinated manner that will facilitate the availability of listed securities in the three markets simultaneously.⁴¹⁷ To this end the East Africa Stock Exchanges Association (EASEA) has determined mass cross-listing as the key activity that will achieve this objective.⁴¹⁸

⁴¹⁰United Nations Economic Commission for Africa *Assessing Regional Integration* (2008) 276 available at <http://www.uneca.org/aria3/> (accessed 20 March 2013).

⁴¹¹United Nations Economic Commission for Africa (2008) 276 available at <http://www.uneca.org/aria3/> (accessed 20 March 2013).

⁴¹²World Bank (2007) 34.

⁴¹³Mugo R, Onyuma S, & Karuitha J *Regional Cross-Border Listing and Firm's Financial Performance in Eastern Africa* (2011) Paper Presented at the 7th International Conference of Moi University.

⁴¹⁴Onyuma S, Mugo R, & Karuitha J (2012) 96.

⁴¹⁵Onyuma S 'Regional Integration of Stock Exchanges in Africa' (2006) 97 *African Review of Money, Finance & Banking* 122.

⁴¹⁶Mugo R, Onyuma S, & Karuitha J (2011).

⁴¹⁷Adelegan (2008) 18.

⁴¹⁸Onyuma S, Mugo R, & Karuitha J (2012) 96.

Furthermore, EAC countries have pursued the development of their capital markets through regional integration.⁴¹⁹ In the Treaty for the Establishment of the East African Community, the member states committed to establishing a common market with free movement of capital. Specifically, the treaty calls for: the removal of controls on capital transactions among member countries.⁴²⁰ The common market was officially launched in June 2010, awaiting full implementation by 2015. The Common Market Protocol requires legislation by each member to fully implement the common market by 2015. The annexes to the protocol provide timetables of actions to be undertaken by each state, including capital account liberalisation.⁴²¹

It is now easier to cross-list on the East African Bourse due to a number of incentives. Firstly, only a summarised information memorandum is required. Secondly, an abridged financial statement for the last five years is acceptable. Thirdly, provision of the latest annual or interim accounts submitted to the home exchange would be accepted as the latest financial statements. Finally, a standard initial cross-listing fee of US\$5 000 against previous US\$21 126 has been set for firms listing their equities across Kenyan and Ugandan borders.⁴²² However, only companies in the main investment market segment in their home country are allowed to cross-list their securities on the East African Bourse. This noble act, if successful, will provide employment opportunities for the residents of the region.⁴²³

East African countries, especially Kenya, Uganda and Tanzania, have equally taken steps to link up their stock exchanges by harmonising the listing of securities, as well as clearing and settlement rules.⁴²⁴ To this end, many memoranda of understanding have been signed to foster closer links. The Nairobi Stock Exchange is the flagship in this process given its high level of development in the region. As such, it provided substantial support to strengthening the capacity of the Dar-es-Salaam Stock Exchange (DSE) and to the Uganda Securities

⁴¹⁹Yabara M (2012) 7.

⁴²⁰Article 86 of the EAC Treaty 1999.

⁴²¹Yabara M (2012) 7.

⁴²²Onyuma S *Paradigm Shift in Stock Exchanges: Automation, Competition, Governance, Integration and Regulation of Stock Markets* (2012) CODESREA.

⁴²³Mwangi K *Short-term and Long-term effects of cross-border listing announcements on companies listed at NSE and their post listing performance* (unpublished MBA project, University of Nairobi, 2008).

⁴²⁴Department of Economic Affairs (2008) 41.

Exchange (USE) during their commencement phases.⁴²⁵ In addition, the NSE proposed that all three EAC stock exchanges jointly conduct a regional public awareness and educational campaign to attract more investors.⁴²⁶ Most of the stock exchanges now operate websites which provide updated information on trading activities and development progress and plans.⁴²⁷ Finally, the East African Securities Exchange has commenced a regional trading system in May 2008.⁴²⁸

At the present time, there are still significant disparities between the capital markets in the EAC countries.⁴²⁹ Kenya's capital market is substantially more developed than the markets in Tanzania and Uganda and clearly dominates in size.⁴³⁰ Relative to GDP, Kenya's equity market is nearly three times larger than its counterparts in Tanzania and Uganda.⁴³¹ Similarly, the turnover rates in the respective markets indicate far greater liquidity in Kenya. As a result, the Kenyan market serves as the benchmark for the other regional markets, hosting the gradually growing number of companies with cross-listings.⁴³² The USE has harmonised its listing rules with those of the NSE, although the number of companies cross-listed at the EAC stock exchanges only stood at six as of the end of 2010.⁴³³ However, Kenya, Uganda, and Tanzania are working toward demutualising their respective stock exchanges, and merging them into a single regional stock exchange in the future.⁴³⁴ Regional initiatives are ongoing to integrate payment and settlement systems across the region.

There is currently no regional framework for banking regulation and supervision within the EAC.⁴³⁵ However, bank regulators in three original states, i.e. Kenya, Tanzania and Uganda, have expressed a strong commitment to develop such a framework. Plans are underway to harmonise banking laws and regulations, and the regulatory authorities in these three member states hold regular meetings to this effect. They have also signed memoranda of

⁴²⁵ Draper P, Halleson D & Alves P *SACU, Regional Integration and the Overlap Issue in Southern Africa: From Spaghetti to Cannelloni?* (2007) 15 South African Institute of International Affairs, Trade Policy Report No.15.

⁴²⁶ Irving J (2005) 3.

⁴²⁷ Irving J (2005) 3.

⁴²⁸ Department of Economic Affairs (2008) 42.

⁴²⁹ Yabara M (2012) 5.

⁴³⁰ Yabara M (2012) 5.

⁴³¹ Stefano S 'Financial Integration, GDP Correlation and the Endogeneity of Optimum Currency Area' (2008) 75 *Economica* 168.

⁴³² Gershenson D, Masha I & Dunn D (2009) 3.

⁴³³ African Development Bank Group (2010) 52.

⁴³⁴ Draper P, Halleson D & Alves P (2007) 16.

⁴³⁵ Salami I (2011) 382.

understanding enabling the exchange of supervisory information; and supervisors participate in bank examinations on a cross-border basis as a means of sharing knowledge about banks which operate across the region.⁴³⁶ Banking harmonisation in the EAC has been facilitated by member states' regulatory authority having the same objectives as their banking systems to comply with international standards rather than agreeing on common standards for all of them.⁴³⁷ However, as these three member states are far from fully complying with international standards, efforts are nowhere near full harmonisation and a great deal of work needs to be done to achieve the harmonisation of laws and regulations between the three States.⁴³⁸

Kenya, Tanzania, and Uganda share a common legal tradition, based on British common law, which has enhanced cooperation among the three countries.⁴³⁹ Due to Kenya's advanced status in capital market development, the legal and regulatory frameworks in Tanzania and Uganda were largely designed with the objective of minimising deviations from the Kenyan securities law so as to facilitate the regional integration agenda.⁴⁴⁰ Disclosure rules and financial and accounting standards are also being reformed, and a framework developed by the Kenyan Capital Market Authority has been recommended for adoption throughout the EAC with appropriate modifications in individual jurisdictions.⁴⁴¹

The fact that all these three countries are members of the EAC, and that they share a common colonial past, as well as a similar legal framework, makes it easier for the stock markets concerned to pull together.⁴⁴² The integration of the three stock exchanges concerned was achieved more easily considering the good work done upstream in computerising their transactions systems and harmonising their regulatory and legislative frameworks.⁴⁴³

Nonetheless challenges for capital markets integration exist within the EAC, including: formal and informal national restrictions on cross-border investment; lack of harmonisation

⁴³⁶World Bank (2007) 34.

⁴³⁷World Bank (2007) 35.

⁴³⁸Salami I (2011) 383.

⁴³⁹World Bank *Capital Market Integration in the East African Community* (2002).

⁴⁴⁰Irving J (2005) 15.

⁴⁴¹Gershenson D, Masha I & Dunn D (2009) 6.

⁴⁴²Linn J & Wagh S (2008) 13-14.

⁴⁴³Department of Economic Affairs (2008) 42.

of cross-listing rules;⁴⁴⁴ differences between the treatment of capital gains within the three main countries, making it more attractive to invest through one market rather than another;⁴⁴⁵ and no harmonisation of accounting and reporting standards. All this is further compounded by the absence of a regional dispute resolution mechanism for cross-border disputes, meaning that any dispute must be resolved slowly and expensively through the national courts. As such, capital markets integration would be achieved within the EAC only to the extent that integration policies agreed at regional levels by the national supervisory authorities are implemented at domestic levels.⁴⁴⁶

Therefore, the EAC has by far the strongest proposed framework for capital market integration and harmonisation among all the Regional Economic Communities (RECs) in Africa.⁴⁴⁷ It has also been branded the model for African capital markets integration in certain quarters.⁴⁴⁸ Thus, this process is one of the most promising models of stock exchange integration in the light of the above-mentioned favourable conditions.

3.5 CONCLUSION

The discussion above points out that, preconditions of a sound legal and robust regulatory framework for a regional exchange consists of; harmonisation of legislations, such as bankruptcy, investments, listings and accounting laws; establishment of regional self-regulatory agencies and regulatory commissions; coordinated monetary arrangements; and harmonised reporting standards.

There are a number of benefits which can be exerted by regional capital markets integration. These benefits range from lower prices for all financial services to more efficient, more liquid, and broader securities markets.

However regional capital markets integration in the world have been beset with contradictions stemming from the absence of a clear consensus on the benefits of integration, the lack of political will necessary to make it work, vested interests, and a proliferation of a

⁴⁴⁴Tanzania, which has the most stringent cross-listing rules, requires a company to obtain special approval from the Bank of Tanzania in order to cross-list.

⁴⁴⁵Listed companies receive tax concessions in Kenya, making that market more attractive.

⁴⁴⁶Salami I (2011) 383.

⁴⁴⁷Salami I (2011) 383.

⁴⁴⁸United Nations Economic Commission for Africa (2008) 276.

variety of groupings with multiple memberships. African governments view stock exchanges with pride as national assets, and are unlikely to embrace any policy which will limit their national profile. A fear of bigger economies dominating the stock exchange and diverting capital towards their economies is also a key constraint against acceptance of regional integration by smaller economies. These concerns may also partly explain the reluctance to move SADC and other regional groupings in Africa to higher levels of integration. These concerns should be addressed before any benefits can be gained and financial development leads to economic growth across the wider populations.

Any strategy intending to realise the benefits of regional financial integration would be well served by incorporating the lessons from SADC's own experiences with the regional arrangement thus far, as well as those from other regions such as West Africa and EAC.

A major lesson of experience from West Africa and EAC suggests that regional financial integration schemes should constitute an extension of the domestic reforms of the member countries rather than act as a force to engineer them. In other words, prior to the establishment of a regional financial integration arrangement, each member country should have its domestic house in order where this means maintaining macroeconomic stability and a competitive domestic economy.

The experiences of the BRVM and EAC, as well as the merging of stock markets in other parts of Africa, are quite encouraging and thus go a long way to confirm the idea that stock market integration or regionalisation is gradually taking root in Africa and that only the nature of the process still has to be developed.

In general, therefore, the lessons of experiences with respect to the design and implementation of regional financial integration schemes in Africa and elsewhere, as well as the initial conditions and structural characteristics of African economies, suggest that new approaches for establishing more successful regional financial integration and cooperation arrangements among groups of African countries should pay attention to certain key changes. These should include a change in the primary objective or focus of such arrangements, a change of their orientation and a re-definition of the basic strategy for their implementation.

Thus, for SADC countries to achieve successful regional financial integration, with all the resulting benefits in terms of larger, more efficient, more dynamic, and more stable financial systems, national governments must be firmly committed to both financial and economic integration, even to the extent of allowing short-term national concerns to be outweighed by the benefits of long-term regional cooperation. The alternative may well be the continuation of small, inefficient financial sectors, which are unable to contribute effectively to economic growth and poverty reduction.



CHAPTER FOUR

THE EURONEXT AS A WORKING EXAMPLE OF A REGIONAL STOCK EXCHANGE AND COMPARATIVE DISCUSSION WITH AFRICA

4.1 INTRODUCTION

Euronext is the first pan-European market which was created in September 2000, following the merger, demutualisation and initial public offering of the Paris, Amsterdam and Brussels Stock Exchanges. This alliance, called Euronext, was declared to be the first real merger of stock exchanges in Europe. It boasts of the world's most advanced and effective regulatory frameworks.⁴⁴⁹

In this chapter the paper discusses the Euronext as a working example of a regional stock exchange and then draws a comparison with the African context. Thereafter, the regulatory framework of the Euronext regional stock exchange will be critically discussed, particularly from a legal perspective. Concluding remarks are given at the end of the chapter to summarise the observations noted throughout the chapter.

4.2 HISTORY AND BACKGROUND OF EURONEXT

Euronext is the second largest European stock exchange. It is primarily private-sector driven involving the operational integration of the exchanges based in the Netherlands, Belgium, France, Portugal and the United Kingdom under a single holding company with wholly owned subsidiaries.⁴⁵⁰ It was created as a result of strong demand from the market against the backdrop of a favourable climate for integration of the European stock market, in particular, and the financial market, in general, as well as to satisfy the increasing liquidity need and cost reduction from the introduction of the Euro.⁴⁵¹ This merger gave the European Union its first transnational stock market, making securities listed on any of the four predecessor stock exchanges readily available to the clients of members from all four stock exchanges. Together, the three stock exchanges established a holding company, Euronext N.V., which owns all the shares in the participating exchanges.⁴⁵² Therefore, the three stock exchanges have become full-fledged branches of Euronext NV, a Dutch portfolio company, and its

⁴⁴⁹Lacker V Listed in Belgium 2004: A Legal Guide to Euronext Companies (2004).

⁴⁵⁰Euronext N.V '2005 Registration Document and Annual Report' 2006 18-19 available at <http://www.euronext.com/file> (accessed 12 February 2013).

⁴⁵¹Department of Economic Affairs (2008) 45.

⁴⁵²Clausen N & Sorensen K 'Stock Exchanges Mergers-The new Driver in the Harmonisation of Securities Regulation Market Regulation?' (2009) 1 *European Company & Financial Law Review* 38.

names have been changed to Euronext Paris, Euronext Brussels and Euronext Amsterdam.⁴⁵³ Each represents a portal offering issuers, intermediaries and investors access to a single market. The holding company, Euronext NV, is incorporated and supervised in the Netherlands and was successfully listed in 2001.⁴⁵⁴

In January 2001, Euronext went public and acquired the London International Financial Futures and Options Exchange (LIFFE), out-bidding the London Stock Exchange and the Deutsche Bourse.⁴⁵⁵ Shortly thereafter, Euronext merged with the Portuguese stock market in February 2002 and created Euronext Lisbon.⁴⁵⁶ By acquiring LIFFE, Euronext was able to offer a broad selection of products such as cash, derivatives, equity and bonds, as well as gain a foothold in the United Kingdom market.⁴⁵⁷ Furthermore, Euronext's ambition was to consolidate the financial markets across Europe to provide users with a single market which would be broad, highly liquid and extremely cost-efficient.⁴⁵⁸ Euronext was successful in the technological integration of the exchanges. For instance, in September 2002, all Euronext members regardless of their location were able to access all securities listed on Euronext.⁴⁵⁹ As a result, every market participant now has a single point of access to all elements of trade. This order-driven trading architecture is based on the French trading system, the Nouveau System Cotation (NSC).⁴⁶⁰ Again, all Euronext products listed in Amsterdam, Brussels, Paris and Lisbon are cleared by Clearnet.⁴⁶¹ Therefore, the centralised, order-driven trading system, along with the central clearing, settles transactions on a net basis to guarantee performance.⁴⁶² Significantly, this creates the potential for greater cost-saving because most of the costs of building trading and clearing platforms are fixed.⁴⁶³

⁴⁵³Litch A 'Stock Exchange Mobility, Unilateral Recognition, and the Privatisation of Securities Regulation' (2001) 41 *Virginia Journal of International Law* 592.

⁴⁵⁴Clausen N & Sorensen K (2009) 38.

⁴⁵⁵Pownall G, Vulchena M & Wang X *The Ability of Global Stock Exchange Mechanisms to Mitigate Home Bias: Evidence from Euronext* (2012) 9.

⁴⁵⁶Pownall G, Vulchena M & Wang X *The Post-Merger Segmentation of Euronext: A Solution to the Inadequacy of National Securities Regulators?* (2011) 7.

⁴⁵⁷Boland V & Pretzlik C 'Euronext Wins Battle For Life' *Financial Times* 30 October 2001 available at <http://www.ft.com/home/uk> (accessed on 02 February 2013).

⁴⁵⁸Hirsch S & Marquette V 'Euronext leads the way for European exchange mergers' (2000) *International Financial Law Review* 18.

⁴⁵⁹Hirsch S & Marquette V 'EURONEXT: The first pan-European exchange, an overview from creation to completion' (2000) *International Financial Law Review* 18.

⁴⁶⁰Chen C A *Survey Paper of the Microstructure of Block Trading in European Equity Markets* (2003) 5.

⁴⁶¹Pownall G, Vulchena M & Wang X (2012) 9.

⁴⁶²Poser N 'The Stock Exchanges of the United States and Europe: Automation, Globalisation, and Consolidation' (2001) 22 *University of Pennsylvania Journal of International Economic Law* 497.

⁴⁶³Pownall G, Vulchena M & Wang X (2011) 7.

It is also Europe's largest market in terms of trading volumes through a central order book, and number two in terms of both the number of companies listed and total market capitalisation.⁴⁶⁴ Thus, combined the Euronext components make up the second largest stock exchange in Europe behind the London Stock Exchange (LSE).⁴⁶⁵ Importantly, in 2007 Euronext N.V. was acquired by the New York Stock Exchange (NYSE), creating the first trans-Atlantic exchange operator NYSE-Euronext.⁴⁶⁶ It offers securities listed in the United States and several European countries, and is essentially an international virtual store where an investor can buy and sell stocks issued by companies from many countries instantaneously.⁴⁶⁷ Most noticeably, NYSE-Euronext is now the world's most liquid market place, with average daily trading value of \$100 billion, and the world's premier listing, with total market capitalisation of listed companies of \$27 trillion.⁴⁶⁸ As a global leader in listings, Euronext in 2007 had more than 4 500 issuers on its US and European markets.⁴⁶⁹ Currently, it has more than 8,000 listed issuers all of sizes, industries and geographies.⁴⁷⁰

Prior to the creation of Euronext N.V., Amsterdam, Brussels and Paris were three distinct stock exchanges each with its own organisation, operating rules, trading platform, clearing house, and procedures for payment and delivery.⁴⁷¹ The trading platforms in Brussels and Paris were relatively similar, but differed significantly from the platform used in Amsterdam. However, this market structure did not allow investors to make the most of monetary union. For instance, investors in Belgium, France or the Netherlands wishing to invest in a market in one of the other two countries thus had to: seek out information about companies and their securities with no guarantee of obtaining it, including prices, trading volumes, bids, asks, and more; place an order through their usual broker or bank, which in turn had to pass this on to correspondents in the other two countries and make costly cross border payments; and face

⁴⁶⁴Clausen N & Sorensen K (2009) 39.

⁴⁶⁵Poser N (2001) 504.

⁴⁶⁶Kothari L 'Global Regulation for Global Stock Exchanges: The NYSE-Euronext Merger' (2008) 22 *Temple International & Comparative Law Journal* 500.

⁴⁶⁷Kothari L (2008) 500.

⁴⁶⁸Hassan M & J Yu *Stock Exchanges Alliances in Organisation of Islamic Conferences (OIC) Countries* (2007) 4.

⁴⁶⁹World Federation of Exchanges 'NYSE Euronext opens NYSE Euronext London – A new securities market targeting issuers seeking a London listing' available at <http://www.world-exchanges.org/news-views/nyse-uronext-opens-'nyse-uronext-london'> (accessed on 16 February 2013).

⁴⁷⁰European Equities available at <http://www.europeanequities.nyx.com> (accessed 20 February 2013).

⁴⁷¹Chen C *On Liquidity around Large- Block Trades: Upstairs Trading Mechanisms, Price Impacts and Common Factors* (published PhD thesis, University of Lugano, 2004) 11.

delays due to the complexity of the transaction.⁴⁷² Also, for companies the same difficulties were an obstacle to the development of a broader shareholder base in the euro.

Since its creation, Euronext the first pan-European market for equities and derivatives, has brought investors unified access to a broader range of issues and products. As a result, this unified market combines: a single trading platform serving all trading members and providing access to all shares and other products in accordance with unified rules; a single order book for each stock, a change which makes for greater market transparency and liquidity; a single clearing house acting as a central counterparty to guarantee payments and deliveries; and a single payment and delivery system.⁴⁷³ Transactions are centralised and a uniform negotiation platform, the driving force for NSC transactions of the Paris Stock Exchange (PSE), is thus used to determine a single price for each security. The shares are also listed at national level and companies can select their place of transaction among the three stock exchanges. Therefore, Euronext utilises a business model that exploits the mutual recognition principle.⁴⁷⁴

4.3 REGULATORY AUTHORITIES

The functional and technical integration of Euronext is designed to be in harmony with the legal and cultural environment of each country. Thus, each Euronext European market holds an exchange licence and operates under the supervision of its respective national exchange regulatory authority. Market operators are also subject to the requirements imposed by a national exchange authority, the laws and regulations in their national jurisdictions, and in some cases, the central banks and finance ministries in their respective European countries.⁴⁷⁵ For example, companies applying for listing with Euronext can do this through Amsterdam, Brussels, Lisbon, LIFFE or Paris. While they remain subject to the supervision of authorities in the country of access, the five centres are portals to a single list. An issuer who wishes to list a security on a Euronext stock exchange must comply with the listing requirements of the jurisdiction from which it hails and thereafter the issuer may access the aggregate capital pool of Euronext's electronically linked stock exchanges.⁴⁷⁶ Participants in the market are subject

⁴⁷²Mensah S (2007) 7.

⁴⁷³Mensah S (2007) 8.

⁴⁷⁴Euronext N.V '2005 Registration Document and Annual Report' (2006) 18-19 available at <http://www.euronext.com/file> (accessed 12 February 2013).

⁴⁷⁵European Equities 'Rules and Regulations' available at <http://www.europeanequities.nyx.com/markets> (accessed on 11 February 2013).

⁴⁷⁶Shipp B 'Filling Gaps in European Union Securities Law: Contractually Organised Supervision & the College of Euronext Regulators' (2008) 23 *American University International Law Review* 400.

to the supervision of the regulator of the country from where they received their main licence. In spite of the merger, the five stock exchanges have maintained their separate legal status on regulation. Although, the Euronext business model is built upon the mutual recognition principle that is at the core of European Community (EC) securities harmonisation legislation, Euronext has proceeded beyond the minimum harmonisation aspect of EC securities legislation and sought to create a unified set of listing and trading rules for Euronext stock exchanges.⁴⁷⁷

Euronext has worked actively with regulators in the five Euronext jurisdictions to harmonise the listing rules for its stock exchanges.⁴⁷⁸ In June 2010 Euronext regulators signed a Memorandum of Understanding (MOU) which establishes the framework for such cooperative rule of harmonisation.⁴⁷⁹ This represents the first multilateral agreement destined to regulate a multinational exchange for securities and derivative products.⁴⁸⁰ The agreement includes two distinct parts. The first part concerns the regulation and supervision of Euronext N.V. and regulated markets managed by Euronext, and the second concerns the supervision and control of Euronext's clearing activities.⁴⁸¹ Therefore, each of these two parts was signed separately by the respective regulatory or supervisory authorities concerned.

Under the terms of the Euronext Regulatory MOU, Euronext is obligated to cooperate with the securities authorities of the jurisdictions in which it operates regulated markets.⁴⁸² This cooperation is aimed at maintaining a coherent and efficient regulatory framework which is carried through consultation, co-ordination and the exchange of information between the signatory authorities.⁴⁸³ Despite consultation, co-operation is also in the form of periodic meetings, written requests as needed, and other practical arrangements as may be developed by the signatory authorities.⁴⁸⁴ The MOU however, does not create any enforceable rights.⁴⁸⁵ It only cursorily touches upon enforcement-related information sharing and surveillance of

⁴⁷⁷Lamfalussy 'Final Report of the Committee of Wise Men on the Regulation of European Securities Markets' 15 February 2001 15-16 available at http://www.ec.europa.eu/internal_market/securities/docs/lamfalussy (accessed 11 February 2013).

⁴⁷⁸Di Giorgio G & Di Noia C 'Financial Market Regulation and Supervision: How Many Peaks for the Euro Area?' (2003) 28 *Brooklyn Journal of International Law* 476.

⁴⁷⁹Memorandum of Understanding Regarding the Co-ordinated Regulation and Supervision of the European Regulated Markets operated by the Euronext Group and of the Euronext NV 24 June 2010 available at <http://www.amf-france.org/documents/general> (accessed on 12 February 2013).

⁴⁸⁰Shipp B (2008) 424.

⁴⁸¹Di Giorgio G & Di Noia C (2003) 476.

⁴⁸²Article 2.2 of the MOU 2010.

⁴⁸³Article 2.2 of the MOU 2010.

⁴⁸⁴Article 2.4 of the MOU 2010.

⁴⁸⁵Article 2.3 of the MOU 2010.

the activities of market participants for compliance purposes.⁴⁸⁶ Nonetheless, the goals of the Euronext Regulatory MOU are identical to the goal of creating harmonised securities regulation in the European Community.

In addition, the MOU agreement is the foundational document of the Euronext College.⁴⁸⁷ The Euronext College consists of a chairman's committee and a steering committee, which has the authority under the MOU to create working parties to address particular aspects of the coordinated regulation of the Euronext.⁴⁸⁸ The chairman's committee also consists of the chairmen of the regulatory authorities which are party to the MOU.⁴⁸⁹ The chairman's committee formally meets on a quarterly basis, or more regularly as required.⁴⁹⁰ A steering committee is composed of representatives of each of the signatory authorities and reports to the chairman's committee.⁴⁹¹ Its function is to support, assist and implement the decisions made by the chairman's committee.⁴⁹² Furthermore, there are three permanent working parties and each working party comprises representatives of each of the signatory authorities, and is set up by, and accountable to, the steering committee.⁴⁹³ Its role is to interact with representatives of the markets on a variety of operational issues relevant to more than one of the markets, and provides recommendations for decision-making at the steering committee level.⁴⁹⁴

Significantly, the MOU identifies particular actions, decisions and events which require that Euronext obtain prior approval or non-opposition from the Euronext College, or notify the steering committee of the Euronext College of the occurrence of such events.⁴⁹⁵ Thus, where a Euronext securities market takes action or makes a decision that falls within a review competence of the Euronext College, Euronext College must submit that decision or action for the review of the Euronext College as if it were a free-standing regulatory body.⁴⁹⁶

⁴⁸⁶ Article X of the MOU 2007.

⁴⁸⁷ Euronext N.V 'Prospectus of NYSE Euronext, INC' 27 November 2006 194 available at <http://www.euronext.com/file/view> (accessed on 11 February 2013).

⁴⁸⁸ Article 4.1 of the MOU 2010.

⁴⁸⁹ Article 4.2 of the MOU 2010.

⁴⁹⁰ Article 4.2 of the MOU 2010.

⁴⁹¹ Article 4.3 of the MOU 2010.

⁴⁹² Article 4.3 of the MOU 2010.

⁴⁹³ Article 4.4 of the MOU 2010.

⁴⁹⁴ Article 4.4 of the MOU 2010.

⁴⁹⁵ Article IV para 4.1 of the MOU 2007.

⁴⁹⁶ Euronext N.V 'Prospectus of NYSE Euronext, INC' 27 November 2006 194 available at <http://www.euronext.com/file/view> (accessed on 11 February 2013).

Further, the Euronext College⁴⁹⁷ has authority under the Euronext Regulatory MOU to approve the modification and harmonisation of Euronext Rulebooks.⁴⁹⁸ Euronext must also consult with the Euronext College to obtain non-opposition to the issuance of Euronext notices for interpreting or implementing the provisions of the rulebooks.⁴⁹⁹

In general Euronext's cooperation with the Euronext College encompasses the harmonisation of domestic regulations pertaining to listing requirements, prospectuses, take-over bids, ongoing obligations of listed companies, and disclosure of large shareholdings.⁵⁰⁰ Notably, such obligations are independent of national level obligations to submit such actions or decisions for review to the securities regulator with authority over the particular jurisdiction in which the Euronext market that is taking the action or decision is located.⁵⁰¹ Decisions at the chairmen's committee are done by consensus.⁵⁰² Thus, the regulatory relationship of each individual Euronext market operator with the securities authority in the relevant jurisdiction is thereby altered because events that trigger the prior approval or non-objection obligations requires the involvement of the entire Euronext College.⁵⁰³ Therefore, Euronext's obligation to the Euronext College is independent and additional to its obligations to comply with national laws.⁵⁰⁴

Importantly, the harmonisation framework established in the Euronext regulatory MOU is effective, because of technological advances and, multiple regulators of varying levels of expertise and regulatory approaches are involved in the harmonisation process.⁵⁰⁵ Of cognisance, the signatories to the Euronext Regulatory MOU treat the arrangement as creating positive legal obligations. Furthermore, the Euronext Regulatory MOU is remarkable for the innovative cooperative relationship that it establishes with industry to facilitate convergence in European Community (EC) securities regulation.⁵⁰⁶ The MOU further

⁴⁹⁷The group of regulatory authorities that are signatories to the MOU is known as the College of Euronext Regulators, or Euronext College.

⁴⁹⁸Article 3.2.4 of the MOU 2010.

⁴⁹⁹Article 3.5 of the MOU 2010.

⁵⁰⁰Article VII para 7.1 of the MOU 2007.

⁵⁰¹Shipp B (2008) 424.

⁵⁰²Euronext N.V 'Prospectus of NYSE Euronext, INC' 27 November 2006 194 available at <http://www.euronext.com/file/view> (accessed on 11 February 2013)

⁵⁰³Article II para 2.1 of the MOU 2007.

⁵⁰⁴Euronext N.V '2005 Registration Document and Annual Report' 2006 163-164 available at <http://www.euronext.com/file> (accessed 12 February 2013).

⁵⁰⁵Warren D 'Regulatory Harmony in the European Communities: The Common Market Prospectus' (1990) 19 *Brooklyn Journal of International Law* 52.

⁵⁰⁶Memorandum of Understanding on Supervision, Regulation, and Oversight of the Euronext Group 22 March 2001 available at <http://www.amf-france.org/documents/general> (accessed on 12 February 2013).

provides for negotiation between College regulators on the identification of a home country supervisor in the case of companies listed in multiple jurisdictions, or in a jurisdiction other than that of incorporation.⁵⁰⁷ In addition, the MOU applies home country control to ongoing disclosure obligations of Euronext listed issuers, and adopts the term of the art created in the Investment Service Directives (ISD) regulated markets to assist in determining the competent home country authority.⁵⁰⁸ Notably, the MOU appears to have created legal obligations that Euronext members are willing to recognise, even if the MOU is not a binding international arrangement between the regulatory authorities themselves.⁵⁰⁹ Finally, the Euronext regulatory MOU itself is modelled on the EC harmonisation framework that existed prior to the advent of the Lamfalussy process.

4.4 HARMONISATION OF LISTING REQUIREMENTS

The Euronext securities markets are regulated markets within the meaning of the markets in the Financial Instruments Directive of 2007 (MiFID)⁵¹⁰. As such they are governed by a common set of rules applicable to all the Euronext securities markets. Euronext and regulators in the individual jurisdictions have harmonised their rules and regulations over the years to produce the so called Euronext harmonised rules.⁵¹¹ The Euronext rulebook currently has two books: rulebook I contains harmonised rules, including rules of conduct that are designed to protect the markets, as well as rules on trading and membership. Rulebook II contains the remaining rules of the individual markets which have not been harmonised.⁵¹² Notably, the notices adopted by Euronext for the enforcement of rulebook I applies to all Euronext markets, whereas those for the enforcement of book II are specific to local jurisdictions. The coverage of rulebook I have gradually increased from harmonised membership, trading, and enforcement rules in the early periods to a common set of listing qualifications governing listed companies in later periods.⁵¹³ Thus, the regulators in Belgium, France, Netherlands, Portugal and the United Kingdom have approved the market rules of books I and II.

⁵⁰⁷ Article VII para 7.4 of the MOU 2007.

⁵⁰⁸ Article VII para 7.3 of the MOU 2007.

⁵⁰⁹ Shipp B (2008) 42.

⁵¹⁰ European Council Directive 2004/39/EC, 2004 O.J. (L145) 1 (EC).

⁵¹¹ Hirsch S & Marquette V (2000) 18.

⁵¹² Pownall G, Vulchena M & Wang X (2011) 7.

⁵¹³ Pownall G, Vulchena M & Wang X (2012) 9.

To list on a Euronext exchange an issuer must comply with the unified listing requirements as specified in rule book I, and after admission, with the ongoing financial reporting requirements of its home member state.⁵¹⁴ Euronext provides issuers with the opportunity to access a larger pool of capital at a lower cost.⁵¹⁵ To achieve even more consistent regulation of at least some firms from the markets in each country, Euronext established two voluntary named segments of the integrated stock market on which firms could choose to list by pre-committing themselves to enhanced financial reporting quality and corporate governance.⁵¹⁶ The two named segments are Next Economy which is for companies from high-tech industries and Next Prime which is for companies from the traditional sectors of the economy.⁵¹⁷ Thus, this mechanism of voluntary pre-commitment to transparency, if credible to investors, is a solution to the problem of regulating integrated global capital markets.⁵¹⁸ However, in October 2007 the Next Economy and Next Prime were discontinued by Euronext.

4.4.1 Rulebook I

The rules that are integrated in rulebook I include: membership rules for cash and derivatives markets; trading rules for cash and derivatives markets; rules of conduct for cash and derivatives markets; transparency obligations for certain issuers; and enforcement of the rules.

Euronext began by harmonising the rules governing membership of and trade on the stock exchanges. Initially there are two things that an issuer must comply with in order to acquire membership of the Euronext securities market or the derivative market. Firstly, an issuer must apply in terms of chapter 2 of rule book I and obtain prior written approval of the relevant Euronext market undertaking.⁵¹⁹ Secondly, upon admission by a relevant Euronext market undertaking, it then determines whether the applicant complies with the following requirements: the investment firm or a credit institution is authorised by the competent authorities of its home member state to conduct business on the market and it has given appropriate notification to the competent authority concerned that it wishes to take up its

⁵¹⁴Euronext N.V '2005 Registration Document and Annual Report' 2006 15-16 available at <http://www.euronext.com/file> (accessed 12 February 2013).

⁵¹⁵Shipp B (2008) 401.

⁵¹⁶Pownall G, Vulchena M & Wang X (2011) 4.

⁵¹⁷Pownall G, Vulchena M & Wang X (2012) 3.

⁵¹⁸Leuz C, Lins K & Warnock F 'Do foreigners invest less in poorly governed firms?' (2009) 22 *Review of Financial Studies* 3250.

⁵¹⁹Chapter 2 s 2101/1 of the Euronext Rule Book-Book I of 30 January 2013.

European Economic Area (EEA) right in the jurisdiction in which the relevant Euronext market undertaking is situated.⁵²⁰

A firm which does not hold Euronext securities membership must be authorised by the competent authorities to conduct business on the market, or, in the absence of authorisation, it may demonstrate that it is fit and proper, and that it enjoys the business standing suitable for admission to membership.⁵²¹ The applicant is required to satisfy that its staffs is suitably qualified and experienced to implement and maintain adequate internal procedures and controls in relation to its intended business on the market.⁵²² Only legal persons are eligible to acquire Euronext securities membership.⁵²³ Thus, by creating common rules on membership the alliance reached a milestone in its co-operation, as a member of one stock exchange can now easily and at low cost be accepted as a member of the exchanges of the alliance.⁵²⁴

Chapter 5 of the Euronext rule book, book I of 30 January 2013, sets forth rules governing trading on the Euronext derivatives markets. A Euronext derivative member is responsible for the acts and conduct of all responsible persons registered in its name and the acts or conduct of such persons are regarded as the acts and conduct of the Euronext derivative member.⁵²⁵ Sanctions may be imposed under the rules if Euronext derivative member violates a relevant obligation.⁵²⁶ Thus, the relevant Euronext market undertaking has the discretion to suspend a Euronext derivatives member's access following a written or verbal warning, or terminate its access to LIFFE CONNECT by written notice.⁵²⁷

The advantages of harmonising listing rules are quite evident. If companies want to list on several stock exchanges, common or harmonised listing rules ensure that the listing procedure for additional listings can be kept to a minimum. Chapter 6 of the Euronext rule book, book I of 26 October 2012, includes fully harmonised rules on admission to listing and the continuing obligation of issuers. Accordingly, the relevant Euronext market undertaking is competent for all matters with respect to admission to listing and delisting of securities and the continuing obligations of issuers.⁵²⁸ Issuers are required to comply with the disclosure

⁵²⁰Chapter 2 s 2201/1 (i) (a)-(b) of the Euronext Rule Book-Book I 2013.

⁵²¹Chapter 2 s 2201/1 (ii) (a)-(b) of the Euronext Rule Book-Book I 2013.

⁵²²Chapter 2 s 2201/1 (iii) of the Euronext Rule Book-Book I 2013.

⁵²³Chapter 2 s 2201/2 of the Euronext Rule Book- Book I 2013.

⁵²⁴Clausen N & Sorensen K (2009) 41.

⁵²⁵Chapter 5 s 5107 of the Rule Book-Book I 2013.

⁵²⁶Chapter 5 s 5107 of the Rule Book-Book I 2013.

⁵²⁷Chapter 5 s5202 (i)-(ii) of the Rule Book-Book I 2013.

⁵²⁸Chapter 6 s 6103A of the Rule Book-Book I 2013.

obligations of the competent authority according to the national regulations, to give investors in the securities proper information for determining the current value of the securities and confidence that the market is well regulated.⁵²⁹

Furthermore, Chapter 6, sections 1 to 9 of Euronext rule book- book I, governs most aspects of the listing requirements. The legal position and structure of the issuer upon admission to listing is required to be in accordance with applicable laws and regulations both as regards its formation and its operation under its articles.⁵³⁰ The issuer must also comply with the requirements of any relevant competent authority and adequate procedures must be available for the clearing and settlement of transactions in respect of such securities.⁵³¹ However, additional rules formulated by the individual stock exchanges and rules on the procedure and examination of prospectuses are governed by national laws.⁵³² Nevertheless, by increasing the number of harmonised listing rules in rulebook I, Euronext thereby decreases the number of distinct listing requirements in rulebook II with which an issuer must comply for listing and admission to trading on all Euronext exchanges.⁵³³

Euronext has worked hard to issue common rules on disclosure for its main markets. Harmonised disclosure rules are attractive from the point of view of investors and financial analysts as they get the same information, at the same time and in a similar format, from all companies listed by the organisation.⁵³⁴ The issuer has the sole responsibility to provide the relevant Euronext market undertaking with any information regarding the listed securities which it has to make public.⁵³⁵ Such information includes: annual and interim reports, including financial statements with auditors' reports, if any; information required to be filed with the relevant competent authority or public authority in respect of changes in its share ownership; changes to the nature of its activities or amendments to its articles of association; legal announcements of special and general meetings; and all periodic and occasional information which has to be made public, no later than when it is made public.⁵³⁶ The issuer must communicate to the relevant Euronext market undertaking all information disclosed to other markets on which the relevant securities are admitted to listing or trading and must do

⁵²⁹ Chapter 6 s 6103B of the Rule Book-Book I 2013.

⁵³⁰ Chapter 6 s 6601(i) of the Rule Book- Book I 2013.

⁵³¹ Chapter 6 s 6601 (ii)-(iii) of the Rule Book-Book I 2013.

⁵³² Section A-2.7 Book II General Rules for the Euronext Amsterdam Stock Market of 14 December 2007.

⁵³³ Euronext N.V '2005 Registration Document and Annual Report' 2006 15-16 available at

<http://www.euronext.com/file> (accessed 12 February 2013).

⁵³⁴ Lannoo K 'The Emerging Framework for Disclosure in EU' (2003) *Journal of Corporate Law Studies* 329.

⁵³⁵ Chapter 6 s 61005/1 of the Rule Book-Book I 2013.

⁵³⁶ Chapter 6 s 61005/2 (i)-(v) of the Rule Book-Book I 2013.

so no later than the time at which such information is made public on this other market.⁵³⁷ Such continuous disclosure builds investor confidence and protection.⁵³⁸ Therefore, common disclosure requirements make it easier and less costly to compare companies and thus make investments.

Rules of conduct specific to the Euronext markets which members must observe when trading on such markets are contained in chapter 8 of the Euronext rule book I. A member trading at Euronext markets is obliged to observe high standards of integrity, market conduct and fair dealing; act with due skill, care and diligence; and refrain from any act or course of conduct which is likely to harm the reputation of Euronext or any Euronext market.⁵³⁹ In dealing with Euronext's personnel, members are required to act in an open and cooperative manner, be honest and truthful and not mislead or conceal any material matter.⁵⁴⁰ Euronext's members are required to maintain for a period of five years records of automatic screening parameters and modifications thereof as well as rejected orders; orders, arranged chronologically; and transactions and the custody of securities traded on the Euronext markets.⁵⁴¹ All records must be made available for inspection by Euronext.

Measures that will be taken in cases of violations of the Euronext rules are contained in chapter 9 of the Euronext rule book. Thus, in an event of violation of the rules by a member which constitutes a threat to the integrity or the safety of the markets, Euronext has the discretion to take immediate measures to protect the market, including suspension of all or some of a member's trading rights.⁵⁴² The procedure that Euronext is obliged to follow for the examination of an alleged violation is as follows: Firstly, a member is required to provide any information, copies of records and documents that may be relevant for the examination of alleged violation.⁵⁴³ Secondly, Euronext may send a representative to a member's office at any time during normal business hours in the country in which such offices are located, who may require immediate access to all such information, records and documents kept by a member that may be relevant for the examination of the alleged violation.⁵⁴⁴ Lastly, Euronext may require any member to procure the attendance of any of its personnel or representatives

⁵³⁷ Chapter 6 s 61005/3 of the Rule Book-Book I 2013.

⁵³⁸ Mwenda K *German Law Journal* (2003) 1028.

⁵³⁹ Chapter 8 s 8102/1 9(i)-(iii) of the Rule Book-Book 2013.

⁵⁴⁰ Chapter 8 s 8103/1 of the Euronext Rule Book-Book I 2013.

⁵⁴¹ Chapter 8 s 8302/1 (i)-(iii) of the Euronext Rule Book-Book I 2013.

⁵⁴² Chapter 9 s 9103 of the Euronext Rule Book-Book I 2013.

⁵⁴³ Chapter 9 s 9201/1 (i) of the Euronext Rule Book-Book I 2013.

⁵⁴⁴ Chapter 9 s 9201/1 (ii) of the Euronext Rule Book-Book I 2013.

at a specified time and place, at either the offices of the relevant Euronext market undertaking or those of the member, in order to answer questions or provide explanations that may be relevant for the examination of the alleged violation.⁵⁴⁵ Termination or resignation of Euronext membership is without prejudice to the right of Euronext to ask evidence and to require financial compensation for damages caused by any violations of the rules by a member.⁵⁴⁶

Although, Euronext has developed a common set of rules of listing qualifications and disclosure requirements applicable to listed companies, Euronext has no power of enforcement on its own other than the threat of delisting, which is not an attractive option when the goal of Euronext is to maximise utility through garnering liquidity.⁵⁴⁷ Thus, firms listed on Euronext continue to be regulated by the regulatory agencies of their own home stock exchanges, and the strength of enforcement differs considerably across these four exchanges.⁵⁴⁸ For instance, using the resources provided to the securities regulator in a country as a proxy for enforcement, Jackson and Roe found that for 2005 Amsterdam had the strongest enforcement out of the four markets.⁵⁴⁹

In contrast, Paris is the market with the weakest enforcement as measured by the staff of its market regulator, and Brussels is the market with weakest enforcement based on the budget of its capital market's regulator.⁵⁵⁰ Furthermore, Euronext-listed firms are also able to use the integration of exchanges to avoid strict regulation by shifting listing among stock exchanges.⁵⁵¹ As such, there may be some limits set by the strength of the legal protections in the jurisdiction of listing.⁵⁵² Therefore, firms are still subject to different institutional arrangements and legal enforcement mechanisms in their home countries, which provide

⁵⁴⁵Chapter 9 s 9201/1 (iii) of the Euronext Rule Book-Book I 2013

⁵⁴⁶Chapter 9 s 9501 of the Euronext Rule Book-Book I 2013.

⁵⁴⁷Pownall G, Vulchena M & Wang X (2011) 13.

⁵⁴⁸N Poser (2001) 538.

⁵⁴⁹Jackson H & Roe M 'Public and Private Enforcement of Securities Laws: Resource- Based Evidence' (2009) 93 *Journal of Financial Economics* 212.

⁵⁵⁰Of importance, enforcement has increased materially in Brussels from 259 in 2001 to 408 in 2004, the last year for which data is available and Amsterdam from 139 in 2000 to 446 in 2007, but has remained constantly in Paris 595-600 and Lisbon 170-172.

⁵⁵¹Piotroski J & Srinivasan S 'Regulation and Bonding: The Sarbanes-Oxley Act and the Flow of International Listings (2008) 46 *Journal of Accounting Research* 383.

⁵⁵²Coffee J 'Racing towards the Top? The Impact of Cross-Listings and Stock Market Competition on International Corporate Governance' (2002) 102 *Columbia Law Review* 1757.

firms with different incentives to use discretion to use discretion when applying accounting standards.⁵⁵³

4.5 HARMONISATION OF LEGISLATION

The Euronext model has been facilitated by wider European integration involving a common currency with no capital account restrictions, adoption of common trading and post trade technology platforms, and a harmonisation of national regulatory frameworks.⁵⁵⁴ Obviously, the European stock markets presented a high degree of integration and efficiency before the euro and the euro has clearly added to the pressures from technological change and globalisation for the creation of new Euronext alliances among Europe's exchanges.⁵⁵⁵

As the most advanced example of regional financial integration, the European Union (EU) seems like the most obvious place to end this exercise. However, given the stark differences between European and SADC economies, great care must be taken in trying to apply lessons from the EU to SADC. The European model of financial market integration has evolved and adapted over decades, and functions in an institutional and economic environment that is in many respects quite different from that found in most SADC countries.

In Europe, the construction of a single market began with the Treaty of Rome of 1957, which established the European Economic Community. However, regulatory integration in the financial services sector did not occur in any meaningful way until the 1980s. Prior to this, financial activity was conducted within heterogeneous frameworks, characterised by different legislative and supervisory structures and different currencies. While there are a few exceptions to this trend, notably the First Banking Directive of 1977, real financial services sector integration only began with the start of the Single Market Programme in 1985-6.⁵⁵⁶

In the EU financial services sector, there is a primary role played by governmental bodies in initiating the harmonisation of regulation and legislation.⁵⁵⁷ Firstly, the Single European Act of 1986, which established the single market programme in 1986, aimed to create a European market for goods, people, services and capital by 1992. By 1992, 22 directives had been

⁵⁵³Pownall G, Vulchena M & Wang X (2011) 14.

⁵⁵⁴Mensah S (2007) 9.

⁵⁵⁵Hassan M & J Yu (2007) 17.

⁵⁵⁶Edwards H, Porter T & Roberge I 'Politics or Markets? The Determinants of Cross-Border Financial Integration in the NAFTA and the EU' (2004) 9 *New Political Economy* 334.

⁵⁵⁷Edwards H, Porter T & Roberge I (2004) 334.

adopted and another nine were still under discussion. These included the second banking directive,⁵⁵⁸ the investment services directive and the insurance services directives.⁵⁵⁹ Therefore, this set of regulatory initiatives laid the groundwork for integrating the financial services market in Europe and still provides the regulatory framework for much that occurs in the sector.⁵⁶⁰

The European Commission's 1985 white paper lays down two, seemingly irreconcilable, principles for integration, mutual recognition and harmonisation.⁵⁶¹ Mutual recognition or competition among rules, as the concept is also known, ensures the continued existence of separate and distinct national legal and regulatory systems.⁵⁶² Harmonisation of minimum standards calls for member states to conform to certain EU specified requirements, and thus limits the scope for competition among rules.⁵⁶³ This tension is inevitable in any process of merging national markets. What did help the reconciliation process in the EU is that the volumes of cross-border trade and investments on the ground were quite large unlike the situation in SADC.⁵⁶⁴ So the institutional process was actually reflecting, and may even have been lagging behind, the market. In Africa, by contrast, some of the more advanced examples of regional integration are based on a pre-existing currency arrangement, based on the region's colonial history. Intra- African trade and investment, outside of certain concentrated pockets, is relatively limited. Moreover, given the similar structure of most African economies, it is not clear that there is a vast untapped potential to increase the scale of such trade.⁵⁶⁵ While regional financial integration could address some of the barriers to regional transactions, a process driven more by theory than existing economic ties is likely to be quite challenging.

Even with the requisite political will and a long history of cross-border economic transactions, the resource requirements for creating and sustaining integrated financial

⁵⁵⁸EU Directive 89/646/EEC (OJ 1989 L386/1-13).

⁵⁵⁹Stirbu C *Financial Market Integration in a Wider European Union* (2004) 2 Hamburg Institute of International Economics Discussion Paper 297.

⁵⁶⁰Edwards H, Porter T & Roberge I (2004) 334.

⁵⁶¹Steil B 'Regional Financial Market Integration: Learning from the European Experience' (1999) 12 *Tokyo Club Papers* 99.

⁵⁶²Corcoran A & Hart T 'The Regulation of Cross-Border Financial Services in the EU Internal Market (2002) 8 *Columbia Journal of European Law* 221.

⁵⁶³Lastra R 'Regulating European Securities Markets: Beyond the Lamfalussy Report' in Andenas M & Avgerinos Y (ed) *Financial Markets in Europe: Towards a Single Regulator?* (2003) 211.

⁵⁶⁴Linn J & Wagh S (2008) 19.

⁵⁶⁵Honohan P & Lane P *Will the Euro Trigger More Monetary Unions in Africa?* (2000) World Bank Policy Research Paper 3965.

markets within the EU have been considerable.⁵⁶⁶ Since the beginning, grants by the structural funds, loans by the European Investment Bank (EIB), and, more recently, guarantees by the European Investment Fund have played a role in making the overall process of integration effective and equitable.⁵⁶⁷ The introduction of the euro, which is a key element in promoting economic stability and prosperity in Europe, has boosted to a greater level the integration of financial markets in the EU.⁵⁶⁸ These mechanisms have allocated substantial funds to building the necessary infrastructure, including communication and transport networks, to facilitate regional transactions. At the same time, resources have also been allocated to mitigating the income differentials between member states, including those created by the emerging pattern of regional trade and investment.⁵⁶⁹

4.6 COMPARATIVE DISCUSSION WITH AFRICA

The initial institutional environment faced by the EIB was not dissimilar to that found in several SADC countries today: capital controls; small, segmented capital markets; discrepancies in banking sector development; and incomplete information markets.⁵⁷⁰ This market developing of financially sound, effective regional institutions, especially the European Investment Bank, should be of particular interest to SADC countries. It highlights the need for an overarching regional body to play a promotional role in setting up the financial infrastructure needed to support the development and operation of regional markets.⁵⁷¹ It also highlights the vast resource requirements necessary for such a body to play its role effectively. One reason for the EIB's continued financial soundness has been prudent lending policies, as it will not lend to weaker members without credible third party guarantees.⁵⁷² This approach is likely to be severely limiting for a regional organisation with several poorly rated members, and illustrates the difficulties in setting up a similar well-funded organisation in the SADC region.⁵⁷³

⁵⁶⁶Linn J & Wagh S (2008) 19.

⁵⁶⁷Stephany G, Steinherr A, & De Lima A 'European Financial Institution: A Useful Inspiration for Developing Countries?' in Ocampo J (ed) *Regional Financial Cooperation* (2006) 18.

⁵⁶⁸McCreevy C 'The New Global Regulatory Agenda in Financial Services: A Framework for the Twenty-First Century' (2006) 9 *International Finance* 386.

⁵⁶⁹Linn J & Wagh S (2008) 19.

⁵⁷⁰Lastra R 'The Governance Structure for Financial Regulation and Supervision in Europe (2003) 49 *Columbia Journal of European Law* 50.

⁵⁷¹Linn J & Wagh S (2008) 19.

⁵⁷²Bieling H 'Social Forces in the Making of the New European Economy: The Case of Financial Market Integration' (2003) 8 *New Political Economy* 203.

⁵⁷³Linn J & Wagh S (2008) 19.

The European Union has a new financial market regulatory framework known as the European System of Financial Supervision (ESFS).⁵⁷⁴ This EU regulatory framework operates as the hub and spoke network of EU and national bodies working together.⁵⁷⁵ It comprises three levels of authority with the European Systemic Risk Board (ESRB) sitting at the highest level; the European Supervisory Authorities (ESAs) sitting at the middle level; and the National Supervisory Authorities sitting at the lowest level.⁵⁷⁶

The role of the ESRB is to supervise the financial system as a whole.⁵⁷⁷ It was established to prevent widespread financial distress. The three main tasks of the ESRB include: monitoring and assessing systemic risk; providing early warnings when significant risks emerge; and issuing policy recommendations for remedial actions and monitoring their implementation.⁵⁷⁸ The ESAs set common technical standards for EU financial firms and have the power to intervene in crises.⁵⁷⁹ These authorities include the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA).⁵⁸⁰ Furthermore, these authorities comprise national banking supervisors, national insurance supervisors and national securities supervisors.⁵⁸¹ In addition, the ESAs work in tandem with the supervisory authorities of member states. At the lower echelons of the EU financial regulatory framework are the national banking supervisors, national insurance supervisors and national securities supervisors.⁵⁸² These national supervisory authorities are responsible for the daily supervision of individual firms.

⁵⁷⁴Verhelst S *Renewed Financial Supervision in Europe-Final or Transitory?* (2011) 18 EGMONT Paper No. 44.

⁵⁷⁵Art 1(2) of the EU Regulation, 1094/2010 (2010) (ESMA Regulation).

⁵⁷⁶European Commission 'Internationalisation of financial supervision- The European System of Financial Supervision and the Banking Union' (2012) 3 available at <http://www.fme.is/media/.../121024-Internationalisation-of-supervision.pdf> (accessed on 26 March 2013).

⁵⁷⁷Art 2 of the EU Regulation, 1092/2010 (2010) OJ L 331/1 (ESRB Regulation).

⁵⁷⁸Art 3 of the EU Regulation, 1092/2010 (2010) OJ L 331/1 (ESRB Regulation).

⁵⁷⁹Verhelst S (2011) 36.

⁵⁸⁰Verhelst S (2011) 36.

⁵⁸¹Art 1 (3) of the EU Regulation, 1092/2010 (2010) OJ L 331/1 (ESRB Regulation).

⁵⁸²The RegZone 'The new European System of Financial Supervision-institutional reform within the EU' available at <http://www.law-now.com/cmck/pdfs/nonsecured/neweuropeanreform.pdf> (accessed on 26 March 2013).

This hub and spoke network of the EU and national bodies working together is possible as a result of the EU and its member states' embrace of the concept of supra-nationality.⁵⁸³ As an integral part of their EU membership, EU member states delegate decision-making powers to EU institutions, which are in turn responsible for providing oversight and direction to member states, a factor that is distinctly lacking in the operation of the SADC Regional Economic Community.⁵⁸⁴

One could argue that these developments are the sole explanation of the increased integration in the EU.⁵⁸⁵ However, this would miss the important role that private actors have played in developing the increasingly integrated regulatory framework. At a minimum there is a role for market actors or their associations in European regulatory integration. The commission, in particular, has limited resources and, therefore, is open to external expert advice, creating a dense consultation network.⁵⁸⁶ Thus, this process ensures that many of the framework agreements contain elements of private input.⁵⁸⁷

Within the EU framework, the ESAs have EU legislative powers.⁵⁸⁸ They have the power to create legally binding technical standards. The idea is for the ESAs to create a single, harmonised, European rulebook applicable to national authorities and financial institutions in the single market.⁵⁸⁹ This in effect means that the financial supervisory authorities have a direct role in rule-making at the European level. Additionally, the ESAs also have exceptional powers to take action in emergencies, including the banning of certain products or restriction of certain activities.⁵⁹⁰ However, it is the EU Council that will have the power to declare emergencies, in consultation with the European Commission and the ESRB and, where appropriate, the ESAs.⁵⁹¹ The ESAs also have the power to mediate, arbitrate and enforce their decisions.⁵⁹² They also have the power to settle disputes between national authorities, in particular in areas that require co-operation, co-ordination or joint decision-

⁵⁸³McCreevy C (2006) 387.

⁵⁸⁴Salami I (2011) 384.

⁵⁸⁵Edwards H, Porter T & Roberge I (2004) 335.

⁵⁸⁶Kohler-Koch B 'Organised interests in European integration: the evolution of a new type of governance?' in Wallace H & Young A (ed) *Participation and Policy-Making in the European Union* (1997) 42.

⁵⁸⁷Greenwood J & Aspinwall M *Collective Action in the European Union: Interests and the New Politics of Associability* (1998) 68.

⁵⁸⁸Art 8(2) of the EU Regulation, 1095/2010 (2010) OJ L 331/84 (ESMA Regulation).

⁵⁸⁹Verhelst S (2011) 40.

⁵⁹⁰Art 18 of the EU Regulation, 1095/2010 (2010) OJ L 331/84 (ESMA Regulation).

⁵⁹¹Art 3 (e) of the EU Regulation, 1092/2010 (2010) OJ L 331/1 (ESRB Regulation).

⁵⁹²Art 17 of the EU Regulation 1093/2010 (2010) OJ L 331/12 (EBA Regulation).

making by supervisory authorities from one member state.⁵⁹³ Decisions may be appealed to a joint board of appeal for the three ESAs.⁵⁹⁴ The performance of these functions by an ESA-like body in the African context is currently inconceivable. This is primarily as a result of the varying degrees of expertise of financial authorities across African countries, thus making attempts at establishing single financial rulebooks for Regional Economic Communities (RECs) a great challenge.⁵⁹⁵

The role of the ESAs in developing a harmonised single rulebook is made possible by its authority to make legally binding law that is recognised by the EU legislative process.⁵⁹⁶ The rulebook would, as such, carry the same binding effect as EU regulations, which are binding in their entirety and directly applicable in all member states.⁵⁹⁷ This is possible only as a result of the supremacy of the EU law in EU member states. The SADC Regional Economic Community is unlikely to be able to provide a regional equivalent of financial supervisory authorities equipped with this level of power as supremacy of regional law is non-existent.⁵⁹⁸ Such regional authority would barely be effective as its power to create laws, as well as the laws it creates, would hardly be recognised let alone implemented.

The core remedies available for EU securities market regulation are directives and regulations.⁵⁹⁹ Minimal harmonisation is done through directives, which are EU legal instruments that need to be transposed into national law by each member state.⁶⁰⁰ Regulations are instruments that are directly applicable in the member states, but they are less often used for market integration. So far, in EU securities market regulation only essential rules have been harmonised, thus leaving the bulk of regulation subject to mutual recognition.⁶⁰¹ However, Di Giorgio and Di Noia argue that the mutual recognition and minimum harmonisation approach failed to bring about convergence of securities regulation.⁶⁰²

⁵⁹³ Art 19 and 56 of the EU Regulation 1093/2010 (2010) OJ L 331/12 (EBA Regulation).

⁵⁹⁴ Art 58 of the EU Regulation 1093/2010 (2010) OJ L 331/12 (EBA Regulation).

⁵⁹⁵ International Financial Reporting Standards available at <http://www.ifrs.org/News/Features/Africa+embraces+IFRSs.htm> (accessed 20 March 2013).

⁵⁹⁶ EU Council *Agreed Council conclusions on Strengthening EU Financial Supervision* (2009) 5.

⁵⁹⁷ EU Council *Agreed Council conclusions on Strengthening EU Financial Supervision* (2009) 5.

⁵⁹⁸ Salami I (2011) 384.

⁵⁹⁹ Hertig G 'Regulatory Competition for EU Financial Services' in Esty D & Geradin D (ed) *Regulatory Competition and Economic Integration: Comparative Perspectives* (2001) 221-22.

⁶⁰⁰ Hertig G (2001) 221-22.

⁶⁰¹ Kruse M & Dumoulin H *The Regulatory and Supervisory Framework For Fixed Income Markets in Europe* (2004) 13 World Bank Policy Research Working Paper 3308.

⁶⁰² Di Giorgio G & Di Noia C (2003) 476.

Most noticeably, as financial supervisory authorities in most SADC states have weak enforcement powers, it is hardly conceivable how a SADC equivalent to the ESAs would be able to mediate, arbitrate and enforce its decisions or have the power to settle disputes between national authorities.⁶⁰³

Therefore, EU financial regulation has thus far been achieved by the member states implementing financial harmonisation directives, although it must be mentioned that this has not been without challenges, and member states' applications of harmonised directives have at times been inconsistent and, as such, destabilising for the single market.⁶⁰⁴ Nonetheless, it is believed that the new framework will further strengthen the EU financial regulatory framework.⁶⁰⁵ Financial supervision is still in the hands of national supervisory authorities, although a regional perspective is now provided under the new framework as the ESAs work in tandem with the member states' supervisory authorities as they conduct this function.

4.7 CONCLUSION

In short this chapter demonstrated that Euronext has made possible the integration of the organisational structure, operating rules, trading platform, clearing house and procedures for payment and delivery thus giving investors access to a single market. Notably, Euronext made a first step toward the integration of de jure reporting, disclosure and trading regulation by issuing one rulebook covering many aspects of reporting and trading across the four exchanges and separately codifying other reporting and trading regulations that were specific to each exchange in four secondary rulebooks. The creation of a single trading platform also made it possible for Euronext N.V. to reduce its operation costs and eliminate the duplication of infrastructure and IT investments across the individual exchanges in Amsterdam, Brussels, Paris and Lisbon.

In addition, one can learn, from the experience of Euronext N.V. that cost efficiencies created by consolidation of a trading platform should be sizeable, timely, merger-specific and passed on to users. Further, in order to achieve such a merger, it is essential to have the goodwill of all the regulatory authorities involved. Lastly, clarity and simplicity both in ownership

⁶⁰³Salami I (2011) 384

⁶⁰⁴Avgouleas E 'A Critical Evaluation of the New EC Financial-Market Regulation: Peaks, Troughs, and the Road Ahead' (2005) 18 *Transnational Law* 224.

⁶⁰⁵Verhelst S (2011) 42.

structures of markets and in regulatory environments are attractive propositions to market participants. However, Euronext has limited options for enforcement of even common regulation, and much of the relevant regulation remained jurisdiction-specific.

It is additionally clear that the success of the Euronext model is largely due to its advanced regulatory framework and political integration. Thus, member state securities regulation created the regulatory conditions that were necessary for Euronext to become a successful pan-European exchange and thus an attractive partner for combination with the NYSE group.

African stock exchanges may not be in a position to adopt the Euronext approach for a number of reasons. Firstly, the wider integration underpinnings of the EU are largely absent. Secondly, there is the major political hurdle of demutualising stock exchanges in Africa into corporate structures that allow them to operate under one unified organisational and operational structure. In addition, adopting the new EU financial regulatory framework in the African context would be inappropriate as African states are currently characterised by poor financial regulation, inadequate legal environment for the operation of financial markets and little or no embrace of supra-nationality in their relations with Regional Economic Communities (RECs). As financial integration has been a challenge even within the EU, it is hardly likely that this approach would succeed in Africa.

The creation and successes of a financial regulatory framework among African RECs would involve two processes. The first would involve strengthening existing regional economic arrangements, and would require the status of RECs provisions and institutions within member states to be enhanced. The second process would involve strengthening the financial regulatory frameworks in member states. This should be accompanied by necessary legal and judicial reform, which, if successful, should provide the right environment for financial sector development. Only then can a regional framework for financial regulation be a viable project within Africa.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSION

From the foregoing, it is apparent that stock market integration and the creation of a SADC regional stock exchange through cross-listings offer the best hope for Southern African stock market problems. This idea may, at first glance, seem unrealistic, but it will make it possible to develop a long-term strategy for the integration of SADC stock exchanges, and the development of the financial sector. It would also undoubtedly face serious challenges, the greatest of which would be a lack of support and commitment from the different governments. Overcoming such a challenge would require aggressive promotion of the precise goals and benefits of a regional stock exchange. A progressive implementation of the process would make this proposition feasible.⁶⁰⁶ Current regional cross-listings in SADC exchanges should be perceived simply as a stepping stone towards the eventual goal of regional market integration and the creation of a SADC regional stock exchange.

As noted earlier in the introduction, the main institution driving capital markets integration in SADC is the Community of SADC Stock Exchanges (CoSSE) which is a private sector association, but it is also a structure under the Finance and Investment Protocol (FIP) of the Southern African Development Community charged with overseeing the implementation of Annex 11 of FIP.⁶⁰⁷ The primary goal of CoSSE is to promote regional financial integration and a network of financial markets.⁶⁰⁸ There are also initiatives aimed at finalising the harmonisation of transaction systems, and discussions are underway on the training of investors, a common certification test for brokers and the cross-border listing of securities in SADC stock exchanges.⁶⁰⁹ Thus, there is currently no regional capital markets regulatory framework in operation within SADC.

Overall, regionally integrated stock markets as indicated by cross-listings perform better than non-regionally integrated stock markets. Also, the study shows that the growth of regional cross-listing activities facilitated the development of the stock market in those countries, and

⁶⁰⁶Bradley E (1999) 15.

⁶⁰⁷The objective of cooperation under Annex 11 is to facilitate the process of financial integration within the SADC region, through the development of a harmonised securities market environment, the establishment of an integrated real time network of national securities markets, and supporting cross-border listings, trading and investments.

⁶⁰⁸Committee of SADC Stock Exchanges *CoSSE 5-year Strategic and Business Plan 2012-16* (2012) 6.

⁶⁰⁹Department of Economic Affairs (2008) 20.

that the growth and expansion of regional cross-listing of stocks is positively associated with the capitalisation of the other firms in the stock market of primary listing. The necessary conditions to harness the benefits of regional cross-listings are sound legal and regulatory frameworks, macroeconomic and political stability, harmonisation of listing rules, accounting law and disclosure requirements across the region, strong money markets, and incentives for listed firms and other market participants to take advantage of regional cross-listing.⁶¹⁰

Generally, a number of challenges affecting regional capital markets integration in SADC economies were explained. Among the challenges, the issue of lack of political commitment and that of overlapping memberships are prominent. These challenges partly explain the reluctance to move SADC and other regional groupings in Africa to higher levels of integration. Therefore, these challenges should be addressed before any benefits can be gained and financial development leads to economic growth across the wider populations.⁶¹¹

Successful integration experiences were presented with the aim of engaging brainstorming on various possible options for the creation of a SADC regional stock exchange. Thus, SADC governments have to play an important role in transforming present stock exchanges and the entire landscape where they operate. In fact, it may, for example, facilitate the process by encouraging cross-listings within stock markets rather than waste time and money promoting introvert policies that block efforts and undermine innovation. Cross-listings may be stimulated by harmonisation of rules and standards on the markets and by allowing trans-boundary activities. The profits generated would certainly benefit investors and companies in the form of improved financial services, and a fall in the costs of transactions and capital. Progress made on these fronts will determine how the SADC regional stock exchange may see the light of day.

This study also highlighted the experiences from other parts of the world that, though there may be some hurdles on the way, what is determinant is the commitment of countries and actors concerned in the realisation of set objectives. Besides, it is possible to avoid errors committed in the regions studied with regards to the integration process of the financial market in general and the stock market in particular.⁶¹²

⁶¹⁰Adelegan O (2008) 27.

⁶¹¹Saurombe A 'Regional Integration Agenda for SADC "Caught in the winds of change' Problems and Prospects' (2009) 4 Journal of International Commercial Law and Technology 102.

⁶¹²Department of Economic Affairs (2008) 59.

Euronext has made possible the integration of organisational structures, operating rules, trading platform, clearing house and procedures for payment and delivery, thus giving investors access to a single market. The prerequisites for achieving the Euronext model are independent exchanges with the flexibility to operate as subsidiaries of a single company. The Euronext model has also been significantly facilitated by wider European integration involving a single currency with no capital account controls and a harmonisation of national regulatory frameworks. SADC stock exchanges may not be in a position to adopt the Euronext approach for a number of reasons. Firstly, the wider integration underpinnings of both UEMOA and EU are largely absent. Secondly, there is the major political hurdle of demutualising stock exchanges in SADC into corporate structures that allow them to operate under one unified organisational and operational structure.⁶¹³

The idea of a regional stock exchange is neither new nor impossible as it has happened elsewhere. A good example is the BRVM model with a single market which has been facilitated by a comprehensive regime of economic and regulatory integration involving all members of UEMOA.⁶¹⁴

5.2. RECOMMENDATIONS

5.2.1 Proposed recommendations

It is highly recommended that the following conditions need to be met prior to the creation of an efficient SADC regional stock exchange. Firstly, there is a need to create the regional connectivity by using state of the art technologies to improve on communication between intermediaries of stock holders and small investors. Secondly, it is urgent for SADC countries to encourage the idea of creating a single negotiation platform in accordance with uniformed regulations. Thirdly, SADC countries must encourage initiatives that aim at promoting trans-boundary clearing and settlement or the creation of links between central depositories of various stocks. Fourthly, the integration of SADC stock exchanges will continue to be rooted on progress made in harmonising legislation on stocks and shares, mainly the creation of a common regulatory body with real authority to supervise and regulate current stock markets, at least at regional level.⁶¹⁵

⁶¹³Mensah S *Harmonisation Initiative for SADC Stock Exchanges* (2007) 14.

⁶¹⁴Salami I (2011) 381.

⁶¹⁵Department of Economic Affairs (2008) 57.

The study suggests that SADC policy makers and stock market authorities must provide incentives to encourage corporate firms to fully embrace increased regional cross-listings. These incentives should include reductions in the transaction and approval costs of regional cross-listings and relaxation of stringent cross-listing requirements. Cross-listings are the building blocks for the construction of regional markets. In addition, policy makers need to give due consideration to taking the necessary steps to further integrate SADC stock markets. This would enable easy access of regional capital markets by firms. The introduction of policy measures that focus on shareholder protection and information, and the proper code and regulation of corporate governance are paramount. Strong investor protection and transparency are prerequisites for capital inflows. Such measures are important if the stock markets are to make external capital available to firms.⁶¹⁶

In addition, efforts should also be made aimed at improving the regional flow of information and coordination to facilitate cross-listings. The exchange of information between stock exchanges should be facilitated as regional cross-listing deepens. Moreover, the regional countries should work towards harmonisation of their different currencies. However, SADC member countries should avoid hasty implementation of a monetary union but first bridge their disparate economic strengths by the weaker economies raising their per capita income levels, and harmony in the management of the economies to avoid the recent shocks seen in the euro zone where over-expenditure by Greece is pulling down other states.⁶¹⁷ The introduction of regional integration policies geared at removing legal, regulatory and institutional barriers. Barriers⁶¹⁸ to entry can compartmentalise markets and hamper market liquidity and efficiency.

In order to carry out cross border securities trades efficiently, electronic trading, clearing and settlement systems must be synchronised. Technology in use on the national stock exchanges seeking to integrate operations must be harmonised: if the systems used across the exchanges are not identical, they must at least allow for an efficient, uninterrupted flow of information across borders. This requires an upgrade of the technology used by smaller stock exchanges in particular. As a prerequisite for integration, national stock markets need to be automated to enable real-time investment decisions.⁶¹⁹ Therefore, the existence of a solid ICT

⁶¹⁶Onyuma S, Mugo R & Karuiya J (2012) 107.

⁶¹⁷Onyuma S, Mugo R & Karuiya J (2012) 107.

⁶¹⁸Barriers between countries can range from structural factors,(linguistic and cultural differences) economic factors (high fixed cost and network externalities), and policy-induced factors.

⁶¹⁹Irving J (2005) 20.

infrastructure is required in order to support the high-quality, efficient and linked clearance and payment settlement systems required to facilitate financial asset transactions.⁶²⁰

It is important that SADC stock exchanges adapt fast to automation and electronic systems. This adaptation reduces the costs and inefficiencies associated with manual systems and increases trading activity and liquidity in the stock markets by speeding up operations. Of course, automation is an expensive undertaking with considerable resource implications for governments sponsoring stock exchanges. However, SADC has to be fully committed to this venture of stock market development and adopt best practices in operational efficiency. This is particularly important as SADC stock exchanges contemplate regional consolidation of markets, which would be difficult without automation. In fact, without such moves, the benefits of regional integration, as well as financial globalisation of SADC, will vanish.⁶²¹

Institutional investors perceive Southern Africa as a high-risk investment destination. The high-risk ratings of the majority of countries in the region emanate mostly from the unstable political environment, a perceived risk of nationalisation, macroeconomic underperformance and the underdevelopment of financial markets. Actual and perceived risk to each country in the region should be reduced in order to increase the region's attractiveness to international investors. This cannot be achieved by one country in isolation because of the contagion effect of such risks. Actions by one country can adversely affect all its neighbours. There should be a concerted regional effort to ensure peace and political stability; to eliminate investors' fears of possible nationalisation and confiscation of property or investments; and to address crime and corruption. This requires good corporate governance, consistency and openness by the governments in the region, which are prerequisite for sustained foreign investment.⁶²²

5.2.2 Harmonisation

The issue of harmonisation is a complex one, but is one that must be seriously and carefully considered before establishing a SADC regional stock exchange. Effective harmonisation of national standards requires a high degree of collaboration among the different countries so as to achieve equivalent regulatory outcomes. Stock market integration would require harmonisation of clearance and settlement procedures, accounting principles, auditing practices, tax policies and disclosure standards. It is necessary to harmonise legal

⁶²⁰ African Development Bank Group *Southern Africa Regional Integration Strategy Paper 2011-2015* (2011) 9.

⁶²¹ Senbet L & Otchere I (2008) 14.

⁶²² Brink N & Viviers W (2003) 233.

mechanisms such as bankruptcy courts and laws to enforce contracts and ensure minority rights protection by SADC stock markets. Harmonising common listing requirements and rules will facilitate cross-listings. Currently, all SADC stock exchanges have harmonised their listing requirements based on the 13 principles of the JSE's listing requirements. Today, national rules for the listing of securities are identical within the region except for minor differences at the level of accounting constraints and technical development.⁶²³ Thus, the harmonisation of national listing rules in the SADC region indicates the political will of the countries to integrate their stock exchanges. Notably, the harmonisation of listing rules in the SADC region by national stock exchanges provides a good base upon which a SADC regional stock exchange through cross-listings can be founded.⁶²⁴

It is suggested that transparency and accountability could be improved through moving to a common financial reporting system and accounting framework. A common accounting framework can lower the cost of maintaining multiple accounting frameworks for firms listed in, or obtaining financing from, different countries within the SADC region. For instance, Botswana requires companies that have primary cross-listings in other stock exchanges and secondary listings on the Botswana Stock Exchange (BSE) to comply with some aspects of their listing requirements. It is necessary to harmonise trading rules, settlement periods, operating days, taxes, and fees associated with cross-listings across the region. Such rules and practices should be monitored and enforced by national exchanges and authorities, thereby ensuring horizontal integration and producing decentralised and technically uniform stock exchanges.⁶²⁵

It is recommended that the regulatory and tax frameworks must also be harmonised before stock markets can actually link up. More specifically this would involve harmonising not only stock market regulations, listing requirements, and trading, clearing, and settlement procedures, but also transaction fees, accounting standards, corporate governance standards, disclosure requirements, common standards for stock brokers, and national rules for capital gains and withholding taxes.⁶²⁶ Generally, tax policies are enormously crucial in determining the development of capital markets. If taxes are disproportionately heavy, discriminatory or levied in multiple stages, they can retard the growth of stock markets. Fortunately, Botswana, Namibia and Swaziland seem to have realised this and have recently abolished or suspended

⁶²³Department of Economic Affairs (2008) 39.

⁶²⁴Mwenda K (2000) 348.

⁶²⁵Adelegan O (2008) 28.

⁶²⁶Irving (2005) 20.

capital gains taxes. These efforts at dealing with taxation issues at national levels are a positive sign that governments may be more willing than would have otherwise been expected to negotiate taxation issues in the integration process.⁶²⁷

There is broad consensus among CoSSE members and indeed the wider financial community that there are positive economic benefits to be gained through a progressive integration of capital markets in the SADC region. The major factors driving this consensus are the small size of markets with the related problems of illiquidity, high operating costs and the limited options available to both issuers and investors in the region.⁶²⁸ Thus, SADC should quickly launch a brainstorming exercise on the harmonisation of the regulatory framework of stock market activity, drawing inspiration from the Organisation for the Harmonisation of Business Law in Africa (OHADA) texts.⁶²⁹ These endeavours that would have to include all stakeholders would make it possible to determine the level of harmonisation, total or partial, desired and thus the type of stock market integration desired.⁶³⁰

5.2.3 Legal and Regulatory Framework

A sound legal framework is critical for the optimal functioning of any stock market. Securities exchanges regulations will have to be promulgated, with the major focus of these regulations being the protection of investors by ensuring the equitable and fair operation of the securities market. Such regulations would, for example, provide for disclosure standards, or require that investors have access to current financial information regarding securities that trade publicly on exchanges or over-the-counter.

The regulations should also prohibit companies, securities brokerage firms, and others from engaging in fraudulent and unfair behaviour, such as sales practice abuses and insider trading. Rules concerning the operation of the markets and participants, including proxy solicitations by companies and shareholders, tender offers and buying securities on credit will also have to be negotiated. The regulations would have to set clear and firm accounting and auditing standards. Needless to say, this would be a challenge to those countries that do not have an established accounting profession, accounting principles or auditing standards.⁶³¹

⁶²⁷Bradley E (1999) 12.

⁶²⁸Mensah S *Harmonisation Initiative for SADC Stock Exchanges* (2007) 14.

⁶²⁹In 1993, 14 African countries of the franc zone signed the treaty to set up OHADA, in a bid to harmonise their business law especially with the purpose of attracting more local and foreign investments.

⁶³⁰Department of Economic Affairs (2008) 59.

⁶³¹Mwenda KK *German Law Journal* (2003) 1030.

In addition, regulations for institutional investors would have to be negotiated. Regulation of the companies would be left to domestic regulators, but these companies would have to meet the minimum listing requirements of the regional exchange. The regulatory framework, while setting minimum standards, would encourage participating stock markets to set higher standards. These regulations would be aimed at lowering international investment barriers.

Regulation needs to go beyond the establishment of regulatory agencies and the passage of laws and regulations. In most SADC capital markets, adequate laws have been put in the books to maintain market integrity. The missing piece seems to be enforcement. This requires the strengthening of the monitoring and surveillance activities of regulatory agencies, the reform of the judiciary systems and more reliance on regulatory rules that are either self-enforcing or requires minimal surveillance. Mandatory procedural and structural rules empower outside directors and large minority shareholders to protect themselves against opportunism by insiders, thus minimising the need to rely on courts and administrative agencies for enforcement.⁶³²

There is need to establish a properly functioning dispute settlement mechanism for the organisation. Clearly, dynamics of regional integration go far beyond personal politics.⁶³³ The dispute settlement mechanism will override political decisions that are normally anti-economic integration. The DSM needs to be supported by a regional SADC parliament. Efforts being driven by the SADC parliamentary forum on this front have to be accelerated. Political decisions have to be scrutinised by this parliament. The parliament by virtue of its representational function is the best vehicle for popularising regional and global instruments.⁶³⁴

5.2.4 Institutional Framework

An adequate institutional framework would also have to be given serious consideration. The establishment of a SADC regional market would require an effective system of intermediaries, including brokers, dealers and underwriters. This project would also imply participation of private telecommunication links among markets and market actors.

⁶³²Mensah S (2004) 18.

⁶³³Jacobait C 'The Theoretical Dimensions of Regional integration: Have the motives for developing countries changed?' in Dieter H (ed) *The Regionalisation of the World Economy and Consequences for Southern Africa* (1997) 27.

⁶³⁴Saurombe A (2009) 105.

Protection of the investor must be afforded paramount importance. Therefore, only stockbrokers licensed and regulated by particular stock exchanges should be used to transact investment business. Such brokers would also have to be conversant with the regional market regulatory framework in order to advise investors accordingly.⁶³⁵

Regional financial integration would require high speed computers which would be able to disseminate information to the regional market and from there to national stock markets or trading floors. The linking of processes would require the establishment of a communication network. Adequate regional custody, settlement, clearing systems and links between securities trading processes would, therefore, have to be established.⁶³⁶

Trading would take place on the existing stock markets as well as on the regional exchange. In countries with no stock markets, settlement and clearing could be done through banks. Countries which already have existing stock markets would still be able to conduct trade on these markets as well as on the SADC regional stock exchange.

Institutional investors, including insurance companies, unit trusts, and provident funds, are important in stock market development. The SADC regional stock exchange would have to include the necessary framework for them. By mobilising significant amounts of resources, domestic institutional investors can serve as a counterweight to foreign investors, thereby assuaging fears of excessive foreign presence. They also reduce the vulnerability of domestic capital markets to foreign investor herding. The presence of these institutions may also assure foreign investors of the nation's respect for corporate governance and property rights. Similarly, a system of obtaining and updating comprehensive information about companies and stock markets would have to be established in the SADC regional stock exchange.⁶³⁷

As much as possible, this regional market would be structured on accepted international standards. International standards for market infrastructure provide excellent medium-term benchmarks for emerging markets. Already new capital adequacy requirements for the JSE are based on European Union requirements.⁶³⁸

Funding for the regional exchange would also be an issue of serious discussion. Governments of participating stock markets could pledge to contribute a specific amount for the start up

⁶³⁵Senbet L & Otchere I (2008) 29.

⁶³⁶Committee of SADC Stock Exchanges (2012) 48.

⁶³⁷Bradley E (1999) 13.

⁶³⁸Bradley E (1999) 13.

costs. Ultimately, the market would have to be a self-sustaining corporation. This is not unusual, as a number of Africa's regional organisations such as the African Union are already being maintained by government contributions.⁶³⁹

The SADC regional stock exchange would have to be a private sector-driven company, but would maintain working relations with governments. Already the JSE is a privately driven, self-regulating organisation owned and managed by the private sector.

5.2.5 Commission of Securities Regulators

SADC countries would have to negotiate a multilateral treaty to establish the single regulatory authority, a securities commission that would oversee the SADC regional stock exchange. The treaty would authorise the commission to negotiate a regulatory regime. The commission would have to coordinate with regulatory authorities from SADC countries in negotiating the regulatory regime. The objective here is to maintain market discipline and win investor confidence.⁶⁴⁰

Notably, SADC defines CoSSE's role in the finance and investment protocol and other policy documents, and CoSSE has links to ministerial and senior treasury bodies and also works closely with the Committee of Insurance, Securities and Non-Banking Financial Authorities (CISNA) and the Committee of Central Bank Governors (CCBG).⁶⁴¹ Ideally, as CoSSE is both a SADC structure and a private sector association, it should be the securities commission that would oversee the SADC regional stock exchange. Therefore, the aim is to use existing institutions.

The commission would be an independent, quasi-judicial regulatory agency with the responsibility for administering the SADC securities exchange laws. It would be responsible for regulating firms engaged in the purchase or sale of securities, people who provide investment advice, and for investment companies. It would require a clear definition of the scope of government supervisory activities, securities market self-regulations, and adequate rules and regulations for brokers, underwriters and other operators of the stock market. Such a commission would be authorised to inspect the books and records of the national securities exchanges and trading floors. The commission would also serve the purpose of a clearing-

⁶³⁹Saurombe A (2009) 105.

⁶⁴⁰Mwenda K (2000) 347.

⁶⁴¹Committee of SADC Stock Exchanges 'SADC stock exchanges work together towards links, shared links and better visibility' *Press Release* 6 July 2012 available at <http://www.cossesadc.org> (accessed on 10 April 2013).

house of information, promoting the harmonisation of standards in regulation, disclosure, tax, and accounting; and encourage the interchange of ideas and experiences.⁶⁴²

Should dispute arise, the CoSSE's decisions would be binding on the signatories. However, the means of implementing CoSSE decisions would be left to member states and their individual stock markets. Each participating country would have to designate an agency which would ensure that CoSSE's decisions are adopted and implemented. CoSSE's decisions would have the effect of local law and would be enforced by any regulatory authority. However, each country's regulator would select the method of implementation that best suits its national system of regulation as well as its own customs. Such an agency would then report back to the commission regarding the measures taken in compliance with CoSSE's decisions. This system would require CoSSE to develop a strong network of relationships with national administrators.⁶⁴³

Both the European Economic Community and the World Trade Organisation utilise this kind of system. The EEC Commission and the WTO panels render their decisions and leave it to the respective state parties to develop the means to implement these decisions, and this system has proven successful thus far.⁶⁴⁴

The principal divisions of CoSSE would include

(a) The Division of Market Regulation

This division would be responsible for registering and regulating brokerage firms, national stock exchanges, and other market participants, such as transfer agents and clearing organisations. It would also set financial responsibility standards, and regulate trading sales practices, policies affecting the operation of the securities markets and surveillance. The body would review issues relating to international regulation, self-regulation and multi-national integration, as well as ensuring that disclosure requirements are met by publicly held companies registered with the regional stock exchange.⁶⁴⁵

(b) The Division of Investment Management

⁶⁴²Senbet L & Otchere I (2008) 29.

⁶⁴³Mwenda K (2000) 151.

⁶⁴⁴Bradley E (1999) 14.

⁶⁴⁵Mwenda KK *German Law Journal* (2003) 1028.

This division would be responsible for administering the securities exchange regulations through compliance with regulations relating to registration and the financial responsibilities of national markets, companies and other market participants. It would also review company proxy statements and reports.

(c) The Division of Compliance Inspections and Examinations

This office would primarily be responsible for conducting and coordinating all compliance inspection programmes of brokers, dealers, national stock markets, investment companies and advisers, clearing agencies, and transfer agents. This office would determine whether these entities are in compliance with the regional securities exchange laws, with the goal of protecting investors. Investigations of possible violations of these laws and recommendations of appropriate remedies for consideration by CoSSE would also be within this office's realm of duties.⁶⁴⁶

(d) The Division of Market Development

Its purpose would be to review issues relating to operations, new product development, technology, communications, marketing and services that may be of interest for the development of the national markets as well as the regional exchange.

(e) The Division of Clearing and Settlement

Its purpose would be to review issues relating to securities clearing and settlement. It would provide an effective channel of communication and joint work with securities depository and settlement institutions.⁶⁴⁷

5.2.6 Promotion campaigns

Here it requires concentrated efforts on the promotion of SADC stock markets to local and foreign investors. A regional securities market should first and foremost target local clientele made up of small shareholders and institutional investors. If these investors are quite active on the markets, the volume of transactions and ratio of liquidity would increase. This in turn would arouse interest in foreign investors and encourage other companies to list their securities on the regional stock market. The stock market culture should be developed in

⁶⁴⁶Mwenda KK *German Law Journal* (2003) 1028.

⁶⁴⁷Bradley E (1999) 15.

African people by regularly organising targeted events that are given wide media coverage for identical segments, including schools and universities.⁶⁴⁸

SADC needs to make regional capital market integration issues a part of parliamentary discourse in the short term. This can be done by increasing the information transmission to parliamentarians, who will, in turn, share it with their constituencies. The constituencies can provide valuable feedback. In addition, individual SADC stock exchanges will need to maintain close contacts with representatives within their country, such as the regulators, the governor of the central bank, the minister of finance, and senior officials of the treasury or the ministry of finance. This will ensure that when issues are raised on committees at a regional level, the individual ministers or committee members will already be well briefed and supportive of the issues and understand the benefits that they would bring to their individual countries and the need to prioritise them.⁶⁴⁹

CoSSE can stage road shows to promote listings and investments in the listed securities in the region. These may work best if handled in the spirit of competitive clusters, boosting the competitiveness of the region, and they could be timed to support advances in cross-border investment and the inter-connectivity hub; financial literacy and investor education, support structures for share clubs, and lobbying policy-makers on regional and national levels.⁶⁵⁰

Increasing public knowledge about the functioning of the regional stock market could promote the development of the SADC regional stock market. Knowledge about regional stock market activity can be improved through regular and intensive education programmes. Educating the public about the role of the regional stock market can help increase the investor base and improve the liquidity of the stock markets. There is often very little or no education on the role of stock markets in SADC economies. Education about the regional stock market must be at the firm and individual level. At the firm level, it is important to allay the fears of firms by educating them strongly and regularly on the benefits of listing on the regional stock exchange. Firms in the SADC economies have an array of reasons why they would not list on stock markets. Apart from the lack of knowledge about how stock markets work, there are other reasons such as high listing requirements and fear of losing control over family businesses. At the individual level, SADC markets could tap into potentially large amounts of financial wealth which exists outside of the financial system, by pursuing vigorous and

⁶⁴⁸Department of Economic Affairs (2008) 61.

⁶⁴⁹Committee of SADC Stock Exchanges (2012) 39.

⁶⁵⁰Committee of SADC Stock Exchanges (2012) 9.

consistent educational campaigns about regional markets at various levels of society. Such educational drives are already in existence in South Africa. The JSE/Liberty Life investment challenge, which introduces the youth to dynamic games in economics and finance and its application to investing and trading on the JSE, has been running for decades now.⁶⁵¹

5.2.7 Capacity building

There is a huge need for capacity building in the region and this is likely to be the key to the future of the capital markets. Capacity building should be on a regional basis so that it leads to a network of technical skills and experience sharing. The aim is to upgrade the skills of capital market participants across the region. Each member exchange faces similar issues including the fact that the staff may have excellent technical qualifications but little knowledge or experience in the specialised expertise of capital markets. Once they are recruited by the member stock exchange, they may still be mainly exposed to the domestic market and it can be helpful to create more chances to learn directly about trends in international capital markets and international standards. Thus a training and capacity-building initiative should aim to expose them to outside influences and international trends and standards. SADC capital markets bring their own issues which may be different to those on international markets for example, local political, social, technical and regulatory environments; investment institutions in their infancy; and developing financial literacy and investor skills. Training and courses should be structured to include both teaching about international standards and best practice, and opportunities for local market participants to teach each other, sharing their own skills and experiences as well as solutions that they found effective in their own contexts.⁶⁵²

5.2.8 Final remarks

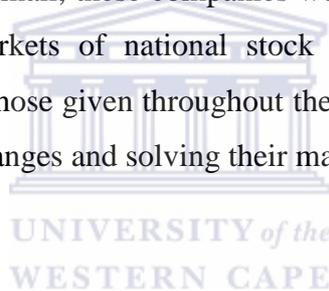
At a time when even the biggest financial world markets are pursuing alliances, the actors concerned with stock market activities in SADC should not hesitate if they want to stop the final nose dive of SADC from the rest of the world and contribute to sustainable economic growth that supports the fight against poverty in the region.

Finally, the study recommends that the introduction of a SADC regional stock exchange through cross-listings that co-exists with national stock exchanges would be a step forward

⁶⁵¹Yartey C & Adjasi C (2007) 26-27.

⁶⁵²Committee of SADC Stock Exchanges (2012) 29.

towards stimulating increased liquidity on the SADC stock exchanges. Indeed, cross-listings are likely to take place both on the regional stock exchange and the national stock exchanges. Both the regional stock exchange and the national stock exchanges must co-exist so that the national stock exchanges can accommodate the listing of company and government securities which cannot meet listing costs on the regional stock exchange. By maintaining the existing national stock exchanges, sovereignty concerns could be minimised and national officials would likely give their support more readily than they would in the case of a regionalisation strategy that would have closed down and replaced national exchanges with a single regional exchange. Ideally, it is suggested that securities that must be admitted to listing on a SADC regional stock exchange are those in highly capitalised companies or in companies which attract a lot of investment. Given this view, it is submitted further that for smaller companies that have a low capitalisation such a listing requirement would prove costly. Notably, since smaller companies are often not highly capitalised and their market share, in terms of attracting investment, is usually small, these companies would be better off if they traded on listed or unlisted securities markets of national stock exchanges.⁶⁵³ Adhering to these recommendations in addition to those given throughout the study will go a long way towards integrating the SADC stock exchanges and solving their market problems.



This mini-thesis is 35 472 words (chapters and footnotes only) long.

⁶⁵³Mwenda *Securities Regulation and Emerging Markets* (2006) 96.

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