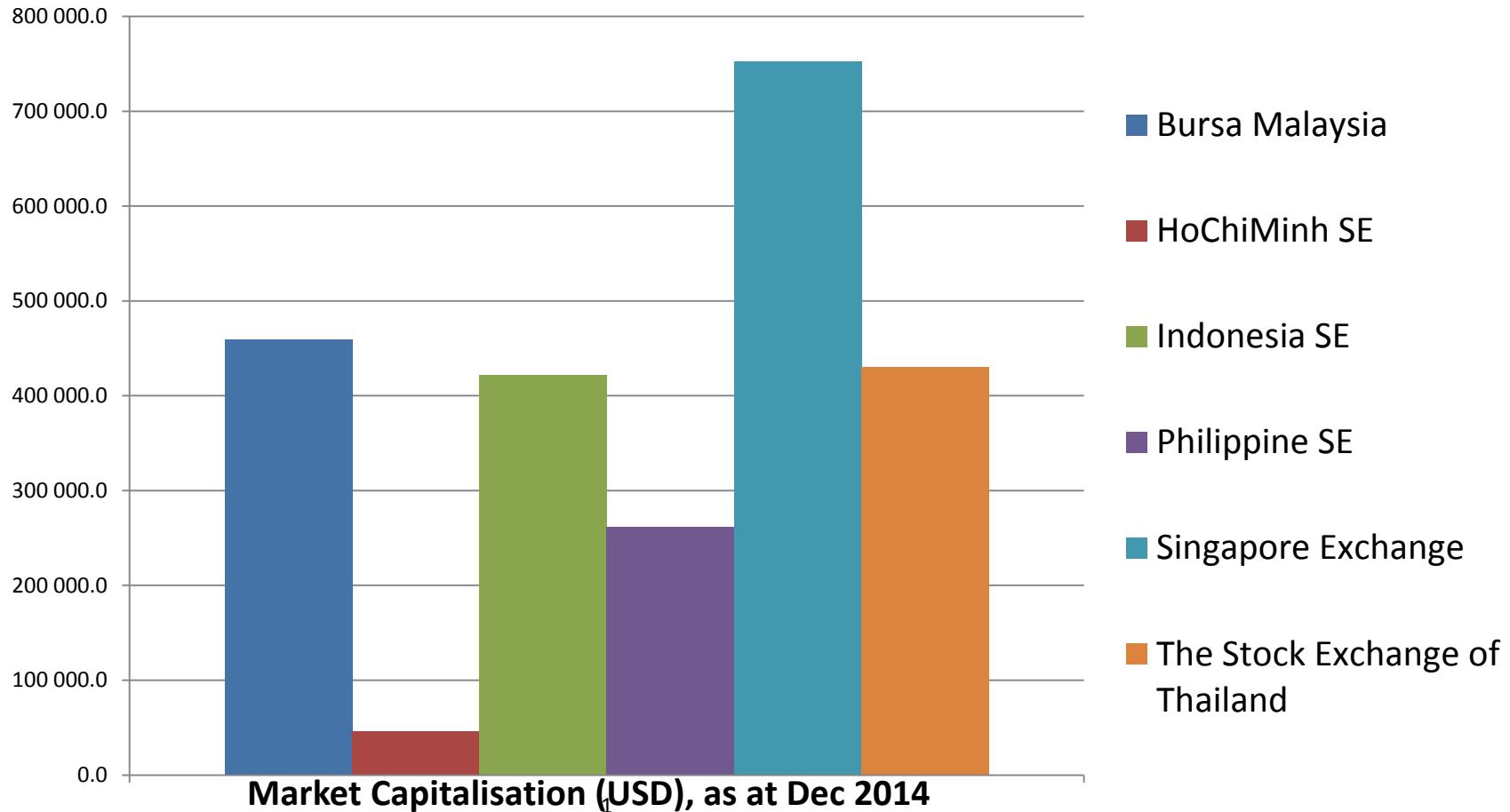


Cross-Border Regulation of Securities Markets in ASEAN

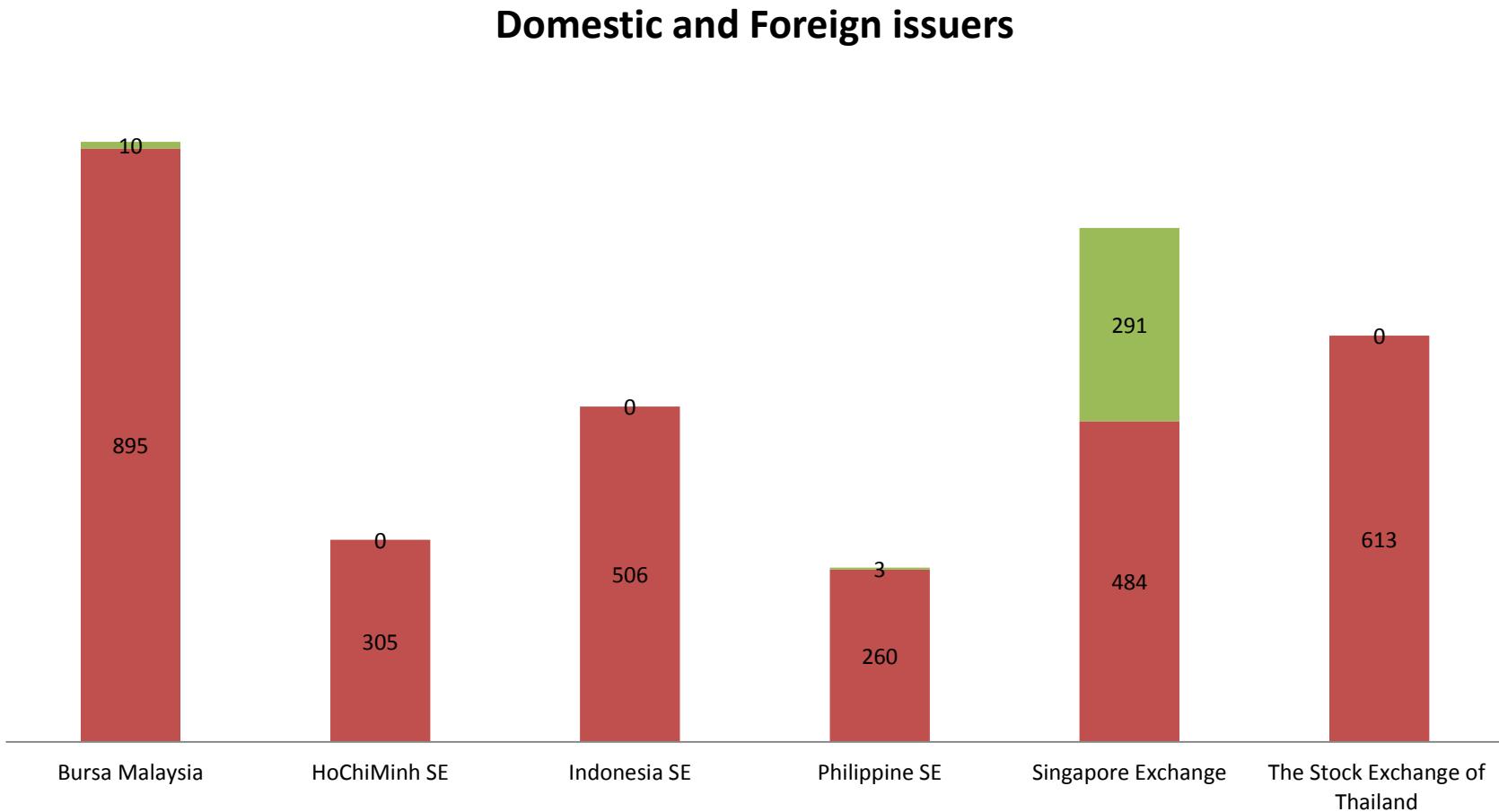
Wan Wai Yee
Associate Dean and Associate Professor
Deputy Director, Centre for Cross-Border Commercial Law in Asia
School of Law
Singapore Management University
November 2015

Overview: Market Cap of Issuers Listed on 6 ASEAN Exchanges



Source: World Federation of Exchanges

Number of Issuers Listed on ASEAN Exchanges (Foreign v Local)



An Integrated ASEAN Capital Markets Market

- ASEAN Economic Blueprint 2015 and relevance to securities market

Research Question

- Assessment of the following capital markets integration efforts to create an ASEAN integrated market and the cross-border regulatory issues that arise:
 - ASEAN Disclosure Scheme for plain vanilla debt and equity
 - Mutual recognition for cross-border offerings of funds
 - ASEAN Trading Link
 - Aligning corporate governance standards to international practices

Framework for Cross-Border Regulation and Regulatory Coordination

IOSCO Taskforce on Cross-Border Regulation:

- National treatment
- Mutual recognition
- Passport

ASEAN Disclosure Scheme

- Remove regulatory obstacles to integration by putting common standards to replace national measures (reduce transaction costs inherent in diverging regimes)
- ASEAN Disclosure and Plus Standards (2009)
- ASEAN Disclosure Standards (2013)
 - International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers (IOSCO Equity Disclosure Standards)

ASEAN Disclosure Scheme

- ASEAN Disclosure and Plus Standards (2009)
- “Plus” standards retained by each participating member state:
 - Singapore: requiring further details of the use of proceeds, the disclosure of profit forecast or profit estimate, material background information of directors, key executives or controlling shareholders of the issuer and proforma financial information
 - Malaysia: material background information of directors and key management of the issuer, proforma financial information and the prospectus is required to be translated to Bahasa Malaysia
 - Thailand: compensation of the company’s senior management to be disclosed on an aggregate basis. interim financial statements if the date of submission of the prospectus is more than five months after the end of the most recent completed financial year for which audited financial statements have been prepared. Proforma financial information required

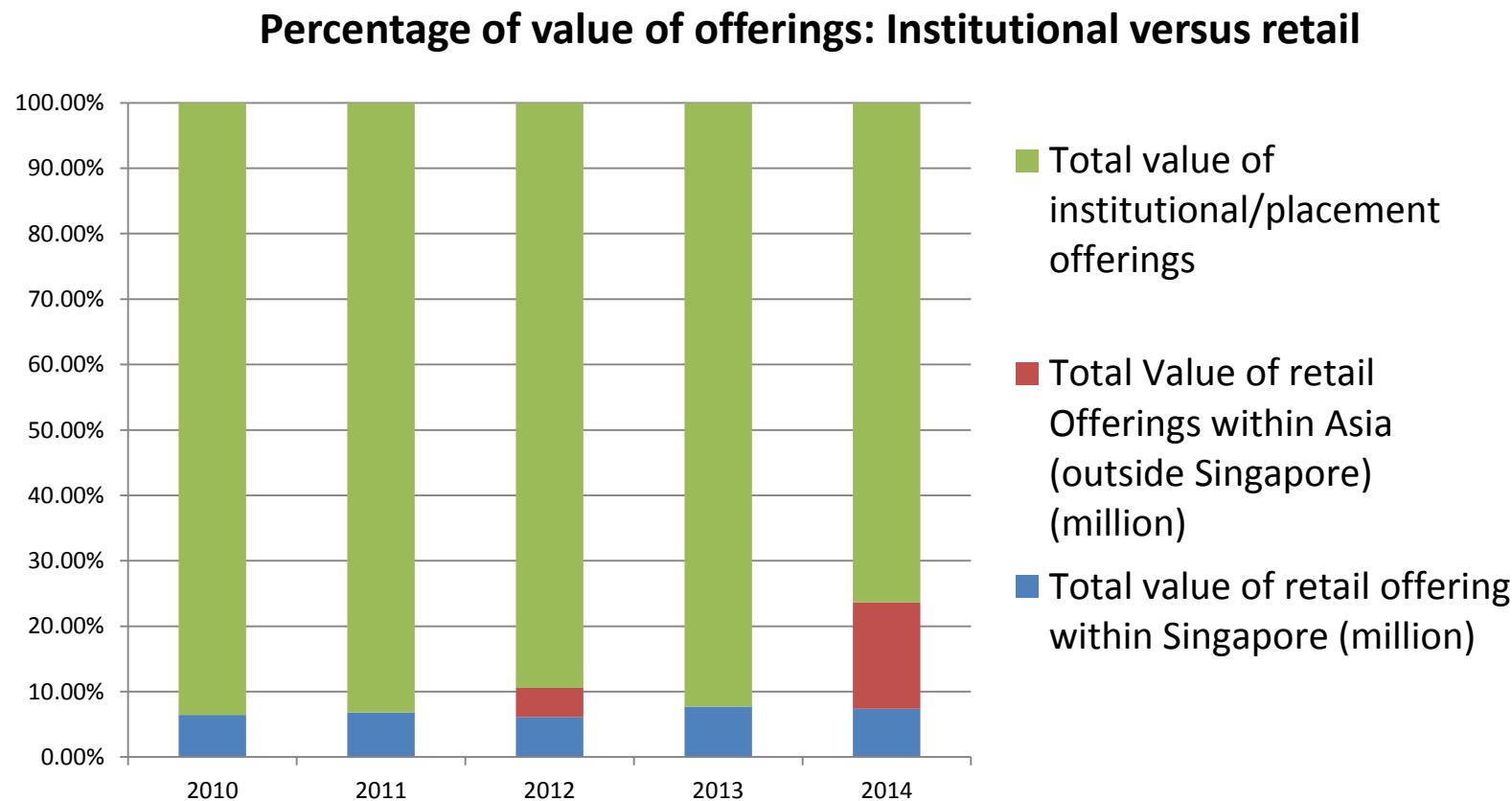
ASEAN Disclosure Scheme

- ASEAN Disclosure Standards (2013)
 - Eliminate the “plus” standards
 - Significant improvements over IOSCO Equity Disclosure Standards:
 - Using International Financial Reporting Standards and International Accounting standards
 - Forward looking statements (profit forecast)
 - Pro forma accounts (required when the issuer has acquired or disposed material assets during the period from last FY to effective date of the prospectus)
 - Reduce transaction costs and regulatory obstacles
 - What ASEAN Disclosure Standards are not:
 - Not true “passport” or automatic mutual recognition
 - No harmonisation of liability regimes
 - Does not cover ongoing disclosure obligations or listing criteria

Challenges in facilitating capital-raising

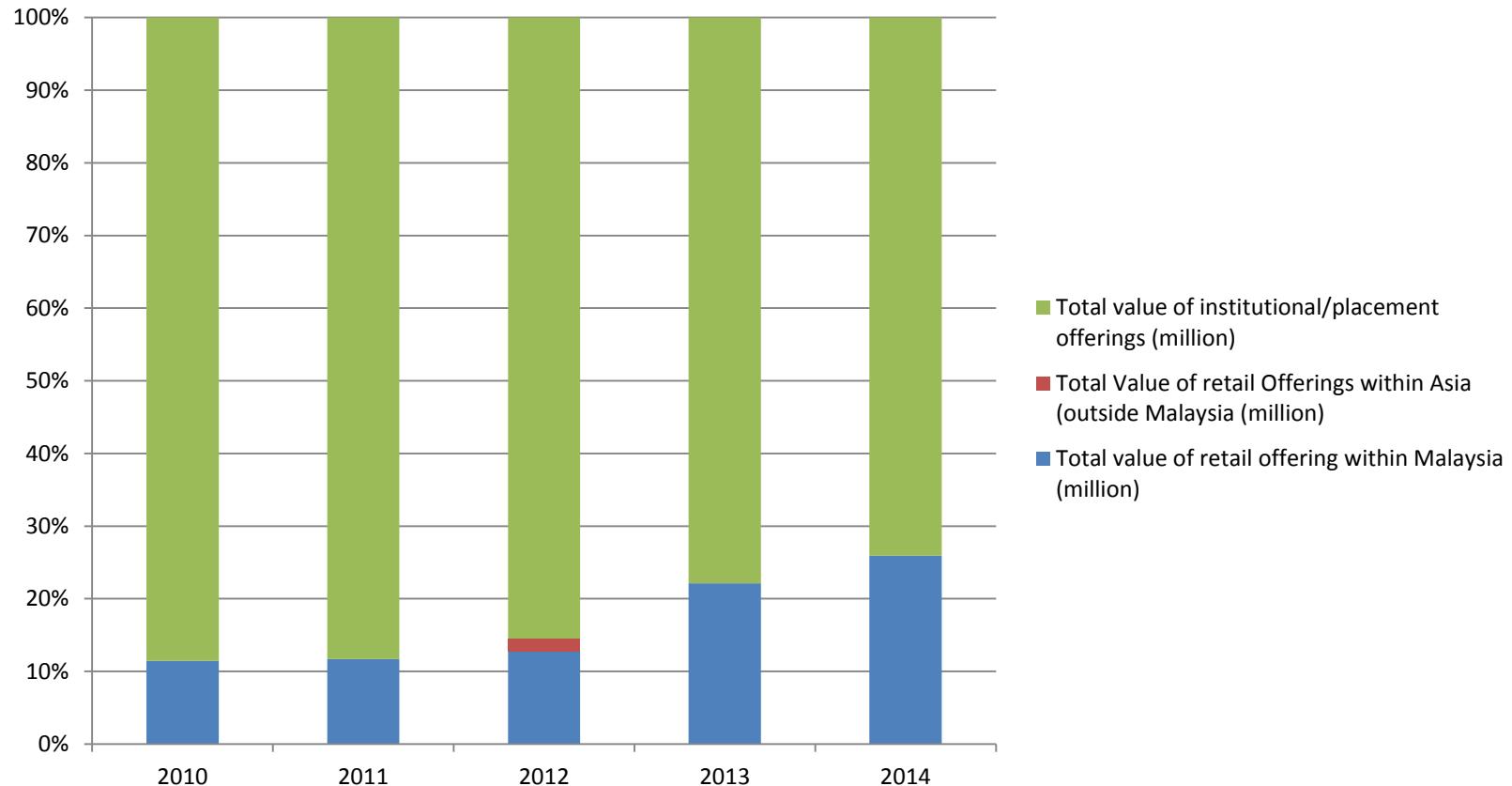
- Non-utilisation of the ASEAN Disclosure Scheme
- Why?

Singapore offerings: Singapore (Value of IPOs: retail v. institutional)



Malaysian offerings

Percentage of values of offerings (institutional versus retail)



Empirical study: Thailand

Year	Number of IPOs with international offerings	Total value of IPOs	Total value of retail offering within Thailand		Total value of institutional/placement offerings		
			Million	Value (million)	%	Value(million)	%
2010	1	3978		428	10.8%	3549.6	89.2%
2011	4	1266.5		403.4	31.9%	863.1	68.1%
2012	8	8833.8		2724.9	30.8%	6108.9	69.2%
2013	5	13557.7		4048.4	29.9%	9509.3	70.1%
2014	1	14500		5474.4	37.8%	9025.6	62.2%

Currency: Thai Bhat
13

Empirical study: Singapore

- Cross-listed firms in Singapore, Malaysia and Thailand

Company	Year of Listing/Offering	Dual listings
Sri Trang Agro-Industry PLC (Thailand)	1993	SGX (2011); convert to secondary listing in 2014
Malaysia Smelting Corporation Berhad (Malaysia)	1994	SGX (2011)
IHH Healthcare Berhad (Malaysia)	2012	SGX (2012)

Reasons for fragmentation

- No true “passporting” for a pan-ASEAN offering
 - Securities regulator of host jurisdiction still needs to approve prospectus (impact on approval process and time-lines) (No supra-regulator)
 - Streamlined review of prospectuses prepared under the 2013 ASEAN Disclosure Scheme (which indicates that the review time to 3 to 4 months) but not automatic mutual recognition
 - Compare with the ASEAN CIS Framework (which has a streamlined process for mutual recognition) for promoting cross-border offering of securities (there are 5 funds that have been approved)
- Unanswered questions on “materiality” thresholds in respect of key disclosures – materiality varies across jurisdictions
- Availability of exemptions for public offerings

Reasons for fragmentation

- No harmonisation of liability rules for prospectuses
- No harmonisation of continuous or ongoing disclosure rules; instead a “bottom up” approach is used through ASEAN Corporate Governance Scorecards
- Difficulties in investors receiving information that relate to public offering of securities (e.g. rights issues, exchange offers)

ASEAN Collective Investment Scheme

- ASEAN Collective Investment Scheme Framework
 - Mutual recognition pursuant to a streamlined process
 - Home regulator approves CIS prospectus, assesses the suitability of the CIS
 - Once home regulator issues approval letter, it can be submitted to the host regulator to approve prospectus under stream-lined process
 - 5 funds registered thusfar (as at March 2015)

ASEAN Trading Link

- Allows licensed brokers in the member stock exchange to place orders in stocks of all participating member exchanges
- Trade volume not publicly disclosed but market reports lack of enthusiasm
- Draw-backs:
 - Not as integrated as the Hong Kong-Shanghai Stock Market ; host broker bears all of the settlement risks
 - Post-trade linkages (clearing, custody and settlement) are not in place
 - Avoids mutual recognition of professional advisers

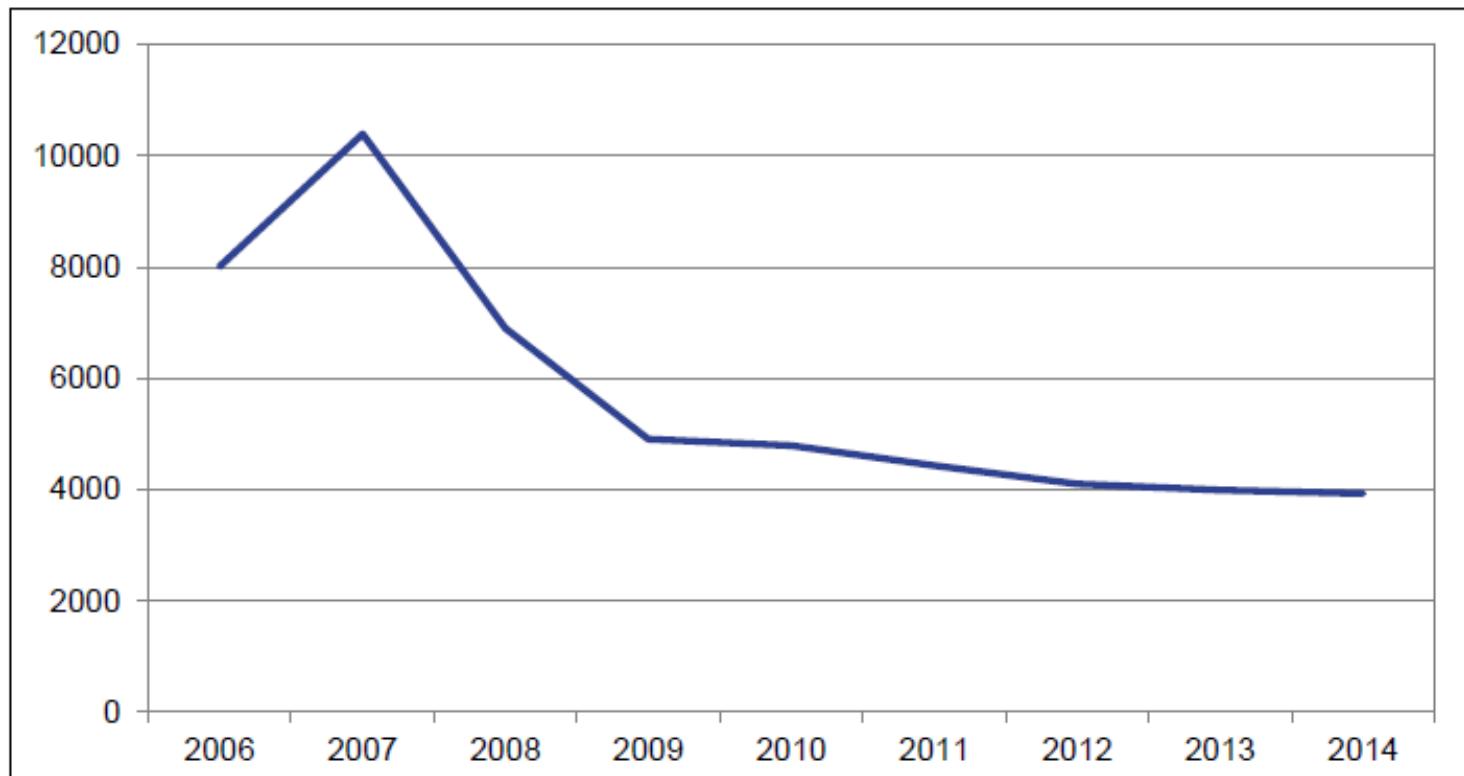
Comparators (for offerings of securities)

- EU Prospectus Directive
 - First started as a mutual recognition regime
 - Overhaul in 1999 due to the Financial Services Action Plan; revamped EU Prospectus Directive
 - Maximum harmonisation measure; only applies to admission to trading on a regulated market and does not apply to offers made to qualified investors or private placements

Comparators

- Number of prospectus approvals between 2006 to 2014

Figure 3: Annual number of prospectus approvals from 2006 to 2014 (total EEA)



Source: ESMA, Report on EEA prospectus activity in 2014

Comparators

- While there is a high number of prospectuses passported, it does not necessarily represent the actual number of volume of pan-European offerings:
 - Some issuers passport just in case it may be needed) [CESR study]
 - Passporting is more successful for non-equity than equity issuers [In 2014, 75% of the prospectuses was for non-equity issuance and 25% was for equity issuance]
 - Qualitative study (CSES study) shows that most of the equity passporting is for secondary offerings (rather than IPOs)

Comparators

- Reasons given for lack of interest in passporting IPO offerings in EU are similar to those in ASEAN:
 - Availability of exemptions to make cross-border offerings
 - Companies continue to focus on the most liquid market to list their shares
 - Retail investors express little interest in cross-border offerings in view of the difficulties in obtaining information on foreign companies and the transaction costs in trading these securities [Cf ASEAN link]

Implications on securities market integration

- While home bias of retail investors cannot be resolved by law and regulation, can some of the barriers be removed?
 - Secondary capital raising facilitated through a passporting or mutual recognition
 - Through passporting

Implications on securities market integration

- Will focus be shifted away from merely removing barriers (and lowering regulatory costs) to enforcement and supervision, where there are pronounced differences?
- Supervision – unify interpretation
- Need to achieve greater harmonisation in enforcement
 - Harmonisation of the administrative sanction regime of breach of the disclosure standards on the participants (issuers, directors, issue managers, underwriters and professional advisers)? “Top-down” versus “bottom up” approach