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Time for a Second Look at US Markets

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The fifth anniversary of the US Sarbanes-Oxley Act last month should have been toasted by those of generous spirit in the City of London as it has given the UK a significant boost in its rivalry with New York. Less giving types would do well to take stock because this year also marks a turning point in US market regulation that could restore some of New York's traditional swagger.

Complaints about the US regulatory regime have been building for some time. But in the past 12 months they took on a new level of seriousness, with speeches by US Treasury Secretary Henry Paulson, a report by Senator Charles Schumer and New York Mayor Michael Bloomberg and hearings on Capitol Hill.

Although studies of the Nasdaq versus Alternative Investment Market variety have made claims that the US public markets have outperformed London, these have a defensive tone to them that betrays a fear of lost dominance.

At the same time, corporate scandals have receded somewhat in the public mind and the big US stock exchanges have become entwined with Europe - the NYSE through Euronext and Nasdaq through its LSE investment and mooted combination with OMX. Together, these factors have created a more favourable environment for deregulation.

The Securities and Exchange Commission has responded. In a series of pronouncements over the past few months, the main US market regulator has proposed or adopted rules that could make it easier to place and re-sell securities without a public offering in the US; allow limited advertising for private placements; ease the requirements that small public companies must meet for public offerings and compliance; and permit a more principles-based approach to the maligned Section 404 internal control reporting, the costs of which have already started to decline.

The SEC has also confounded its reputation in some quarters for being too US-centric or, worse, extraterritorial, by taking a number of actions that specifically benefit non-US companies.

These actions include easing the path to deregistration by non-US companies with US listings, proposing to eliminate GAAP/IFRS reconciliation and entering into serious discussions about mutual recognition of non-US regulatory systems, which might allow non-US exchanges and brokers to deal directly with US investors.

Many of the SEC's actions had been under consideration for some time, but even so the speed and scope of change is remarkable.

Although none of the proposed changes is groundbreaking on its own, together they promise to make it much easier to tap the US market. Non-US companies should find it simpler to add a privately-placed US component to fundraisings. US investor interest should increase with the opportunity to buy more liquid shares and deal on non-US exchanges.

Perhaps most surprisingly, some non-US businesses may find it more attractive to go public or list in the US, particularly if their US counterparts are able to achieve higher valuations on the US markets. And if those newly-public companies believe they have got it wrong, it will be easier for them to exit because the old “you can check in but you can’t check out” rules are gone. These changes will be especially helpful for equity offerings if the apparent turn in the credit markets continues.

It will take time for the new approach to play out and there will certainly not be a massive tide in New York’s favour. London has and will continue to have fundamental strengths that will keep it a (or the) top financial centre.

There is growing competition from private trading platforms such as Goldman Sachs’ GSTRUE and Nasdaq’s Portal. US regulators could also do more to recognise market globalisation by, among other things, making it easier for US companies to list on non-US markets.

Still, it is time for city participants to shed the reflexive hostility to US fundraisings that has prevailed since Sarbanes-Oxley came into force. Otherwise they could forego opportunities that their US competitors will not ignore.