

**INTERNATIONAL ORGANISATION OF SECURITIES COMMISSIONS
(IOSCO)**

**ENHANCED MULTILATERAL MEMORANDUM OF UNDERSTANDING CONCERNING
CONSULTATION AND COOPERATION AND THE EXCHANGE OF INFORMATION
(EMMoU)**

Frequently Asked Questions ("FAQs")

A. Foreword

What follows is a tool to assist you, the applicant, in better understanding the IOSCO Enhanced Multilateral Memorandum of Understanding (“EMMoU”), and some of the expectations on you, as an applicant, in becoming a signatory to the EMMoU.

The information contained in this document is guidance only and is not binding on IOSCO or the Screening Group (“SG”).

B. Background

1. What is the EMMoU?

‘EMMoU’ stands for ‘Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information’.

Like the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, revised in May 2012 (“MMoU”), the EMMoU is a benchmark for cooperation standards, which encourages and enables cooperation between securities regulators through exchanging information in order to combat securities and derivatives violations with a cross-border element.

However, the EMMoU represents a commitment among signatories to provide each other with mutual assistance and cooperation additional to that contemplated in the MMoU. The EMMoU contemplates that signatories are screened for a set of enhanced powers, hence the term “Enhanced MMoU”.

The additional powers that will be available under the EMMoU are referred to as the “ACFIT” powers. These are:

- **To obtain and share Audit work papers, communications and other information relating to the audit or review of financial statements including with the assistance of a prosecutor, court or other authority**

Auditing Information including, but not limited to, audit work papers, communications and other Information relating to the audit or review of financial statements. See Article 3(2)(b)(v) of the EMMoU.

- **To Compel physical attendance for testimony (by being able to apply a sanction in the event of non-compliance) including with the assistance of a prosecutor, court or other authority**

Compelling a person’s physical attendance to take or, where permissible, compel that person’s statement or testimony under oath, regarding the matters set forth in the request for assistance, in accordance with the rights and privileges afforded by the laws and regulations applicable in the jurisdiction of the requested authority. See Article 3(2)(c) of the EMMoU.

- **To Freeze assets if possible or, if not, advise or provide information on how to freeze assets, at the request of another signatory**

Requiring or requesting, where permissible, the freeze or sequestration of funds or assets located in the requested authority’s jurisdiction. Where such assistance

is not available, informing the requesting authority about the relevant funds or assets located in the requested authority's jurisdiction and, to the fullest extent possible, assisting the requesting authority with the use of legal procedures and other means to freeze or sequester those funds or assets. See Article 3(2)(d) of the EMMoU.

- **To obtain and share existing Internet service provider (ISP) records (not including the content of communications) including with the assistance of a prosecutor, court or other authority**

Obtaining existing subscriber records held or maintained by internet service providers, and other electronic communication providers, who are located within the jurisdiction of the Requested Authority, that identify subscribers (name and address), payment details, length of service, type of service utilized, network addresses, session times\dates, and session durations. See Article 3(3)(ii) of the EMMoU.

- **To obtain and share existing Telephone records (not including the content of communications), including with the assistance of a court, prosecutor or other authority**

Obtaining existing subscriber records held or maintained by telephone service providers who are located within the jurisdiction of the Requested Authority, that identify subscribers (name and address), payment details and incoming and outgoing communications with date, time, duration and identification of phone numbers from which communications are made or received. See Article 3(3)(i) of the EMMoU.

- Additionally, the EMMoU envisages obtaining and sharing recordings of telephone conversations or other electronic communications held or maintained by Persons regulated by the Requested Authority. See Article 3(3)(iii) of the EMMoU.

The enhanced powers are set out fully in both the EMMoU Article 3(2) and (3) and identified in the Questionnaire contained in Appendix B to the EMMoU.

In addition to the enhanced powers there are a number of additional elements that address extra aspects of powers required under the MMoU. These additional elements are in respect of the applicant's powers in relation to:

- 'Attempts to commit' the violations specified in Article 1(4)(a) of the EMMoU;
- 'Mis-selling' as specified in Article 1(4)(a) of the EMMoU;
- 'The maintaining of accurate books and records' in relation to the activities specified in Article 1(4)(b) of the EMMoU;
- 'Orders', specifically 'whether or not executed' as specified in Article 3(2)(b)(i); and
- 'Information that identifies or traces funds, or assets into which those funds are converted', as specified in Article 3(2)(b)(iii).

- The EMMoU will exist alongside the MMoU.

2. What are the objectives of the EMMoU?

In 2010, IOSCO mandated the SG to develop "a further standard beyond the existing MMoU, taking into account developments in markets and supervisory and enforcement practices".

The EMMoU provides signatories with:

- An enhanced mechanism to enable regulators to cooperate, including through the sharing of information, and thereby promote the detection, prevention and deterrence of securities and derivatives law violations, and, ultimately to enable regulators to effectively investigate and prosecute such violations.
- A tool for cooperation that is responsive to changes in markets, technology and behaviors.
- The EMMoU is not intended to undermine the MMoU nor to disadvantage any MMoU signatory. There are no sanctions or other measures intended to negatively impact the rights of IOSCO members who do not sign the EMMoU.

3. Why was the EMMoU established by IOSCO?

As noted in the preamble to the EMMoU, since the establishment of the MMoU, "there has been a significant increase in globalisation and the interconnectedness of financial markets, as well as advancements in technology that have changed the way that the securities and derivatives industry operates and how violations of securities and derivatives laws occur. The lessons of the global financial crisis, and the experience gained by the signatories to the 2002 MMoU have made clear that it is critical to enhance information sharing and cooperation between IOSCO members: to keep pace with technological, societal and market developments; to bolster deterrence; and to ensure that IOSCO continues to meet its objectives."

4. What does it mean to be a signatory to the EMMoU?

Being a signatory to the EMMoU is a statement of your commitment and legal ability to render the assistance set out in the EMMoU or the relevant sections of the EMMoU.

As with the MMoU, signatories to the EMMoU must, among other things, have the legal ability and willingness to:

- Act in accordance with the EMMoU (as set out in the Questionnaire);
- Provide information and assistance to counterparts for the uses described in the EMMoU; and
- Protect the confidentiality of information.

5. What is the legal impact of the EMMoU?

The provisions of the EMMoU (like the MMoU) are not intended to create legally binding obligations or supersede domestic laws. Signatories execute their responsibilities under the EMMoU within their legal framework.

The EMMoU does not supersede the MMoU, existing bilateral MoUs, or other arrangements but exists alongside the MMoU. The provision of fullest mutual assistance possible, as set out in the MMoU, is still expected between MMoU signatories.

C. EMMoU Provisions

6. How were the EMMoU provisions determined?

- The enhanced provisions of the EMMoU were identified over time by the members of the SG and, in part, drawn upon existing resolutions already voted on and adopted by IOSCO members. The SG suggested these powers as it considered them to be important to achieve the objectives of enforcement in securities regulation. The IOSCO Presidents Committee ultimately adopted these powers in its Resolution 2/2016. In identifying these new powers, IOSCO resolved to strike a balance between the aspirational and the achievable; accordingly, applicants can apply to be an Appendix A.1 or A.2 signatory. The new 'ACFIT' powers are set out in Article 3(2) and (3) of the EMMoU.
- An authority will be considered a signatory to the EMMoU if it is either a signatory to Appendix A.1 or A.2.
- No signatory to the EMMoU will lose its status as a signatory to the MMoU by reason of becoming an EMMoU signatory.
- Unlike Appendix B of the MMoU, the EMMoU does not provide for a list of jurisdictions that are committed to seeking the legal authority necessary to enable them to become signatories of the EMMoU.
- As background, IOSCO Members listed in 'Appendix B' to the MMoU have committed to seeking the legal authority necessary to enable them to become full signatories to the MMoU (Appendix A Signatories). No authorities have, or will, "commit" to seek the legal authority necessary to enable them to become full signatories to the EMMoU and so there is no "Appendix B" list for the EMMoU.

7. How is the EMMoU organised? What is its structure?

It is organized as follows:

- **Preamble** - sets out the background, purpose and aims of the EMMoU. It highlights the expectation that its signatories will, by availing themselves of new forms of assistance and providing each other with the 'Fullest Assistance Permissible' (as defined in the EMMoU), increase the effectiveness of their investigations and the enforcement of their jurisdiction's laws and regulations, whilst recognizing the rights and privileges afforded to persons in their respective jurisdictions.
- **Definitions**
- **Mutual assistance and the exchange of information** - contains sections which address: principles, the scope of assistance, requests for assistance, execution of requests for assistance, permissible uses of information, confidentiality, consultation regarding mutual assistance and the exchange of information and unsolicited assistance. The scope of assistance provisions include, in Article 3, the powers required to become a signatory to the EMMoU.
- **Final provisions** - includes provisions relating to the date of commencement of the EMMoU and provisions relating to amendments and termination of the EMMoU.

- **Appendix A.1** – includes a list of signatories to the powers referred to in Article 3(2) and (3) of the EMMoU and the date that they signed.
- **Appendix A.2** – includes a list of signatories to the powers referred to in Article 3(2) of the EMMoU and the date that they signed.
- **Appendix B** - contains the procedures for applying to become a signatory to the EMMoU, the EMMoU Questionnaire, and the procedures for monitoring the operation of the EMMoU.
- **Appendix C** – sets out the format for drafting requests for assistance under the EMMoU.

8. If my organization, as a member, cannot meet the requirements of all of the Article 3(2) 'ACF' and (3) 'IT' powers, would my organization still be encouraged to apply for Article 3(2) 'ACF' powers?

Yes. However, we would also encourage your organization as an applicant to Appendix A.2 to seek the legislative changes necessary to permit you to render the assistance contemplated under Article 3(3) in order to migrate to Appendix A.1.

9. What happens if my organization is a new IOSCO member and I am not a signatory to the MMoU nor the EMMoU? Do I have to apply to both the MMoU and the EMMoU simultaneously? Can I apply to become a signatory only to the MMoU or to the EMMoU?

Section 4 of Appendix B of the EMMoU contains a helpful matrix that sets out the various options that are available to you based on your current status.

10. Will my organization be a signatory to the EMMoU if I have signed just one of the two appendices?

Yes.

11. If my organization is an ordinary or associate member, are we required to become a signatory to the EMMoU?

No. However, we encourage all eligible members to do so.

12. Does Article 3(3) of the EMMoU – the 'IT' powers - include the power to obtain the content of telephone and internet records?

- The content of existing records held by communications providers is not covered by the EMMoU. However, some securities regulators can obtain the content of communications made on private devices and it may be possible to seek such assistance under Fullest Assistance Permissible.
- Telephone conversations or electronic communications held or maintained by firms regulated by the Requested Authority, including the content of such conversations or electronic communications, are covered in the EMMoU under Article 3(3)(iii).

13. What if communications providers in my jurisdiction do not keep records, or store them for only a short period? Does the EMMoU mean that those providers will have to store records for longer?

The power referenced in Article 3(3) of the EMMoU only requires that regulators obtain and share existing records – those that are ‘held or maintained’ by communications providers. No minimum retention period is referenced in the EMMoU for the storage of records by communications providers.

14. Will signatories to the EMMoU have to be able to intercept calls or conduct surveillance of calls?

No. The EMMoU does not ask for you to be able to intercept calls or conduct surveillance of calls.

15. Does the power to compel attendance for testimony provided at Article 3(2)(c) – the ‘C’ power - compromise an individual’s privilege against self-incrimination in my jurisdiction (where it exists)?

- No. The EMMoU does not compromise the privilege against self-incrimination. Conscious of the protections that many jurisdictions place on the privilege against self-incrimination, the EMMoU only requires that a signatory have the power to compel the “attendance or appearance” of an individual at a specified location for interview, not that the individual should have to answer the questions posed.
- This means that your organization should have the power to sanction (or seek to sanction) in the event that the individual does not appear, thereby breaching the requirement to attend. However, your organization does not have to have the power to sanction in the event that the individual appears and refuses to answer questions.

16. Does Article 3(2)(d) – the ‘F’ power - of the EMMoU require my organization to freeze assets at the request of another regulator?

No. The EMMoU does not require your organization to be able to freeze assets at the request of another regulator. Rather, it simply requires that those regulators without the power to freeze assets for another will help an overseas counterpart to understand their domestic law and the process by which any party might seek to freeze assets in their jurisdiction.

17. What is expected under the EMMoU if executing one or more of the enhanced powers would require the involvement of third parties in my jurisdiction?

Reliance on third parties is permitted by the EMMoU so long as the process of going via the third party satisfies the criteria on speed (when receiving a proper MMoU request, your organization must provide assistance in a timely manner), certainty (when receiving a proper MMoU request, your organization must have mechanisms ensuring that assistance will be provided without any impediment or assessment of the merits of the request or of the investigation itself), confidentiality (your organization will keep confidential requests, responses, and referrals and related communications, the contents of such communications, and any matters arising in connection with such communications) and limited recourse (when providing assistance, your organization shall not be obstructed by multiple recourses before judicial, civil or administrative courts/tribunals/bodies). In your application, you will have to describe how the third party satisfies these criteria.

18. On what basis is the information exchange taking place if an authority has signed the MMoU and the EMMoU and another authority has only signed the MMoU?

The basis for the information exchange is the instrument to which both authorities are parties. If both authorities are MMoU signatories and only one authority is an EMMoU signatory, the information exchange takes place on the basis of the MMoU.

19. Could an authority ask for information pursuant to the EMMoU, even though it is not a signatory to the EMMoU?

- An authority that is not a signatory to the EMMoU may not make a request for assistance pursuant to the EMMoU; only signatories to the EMMoU can make a request for assistance pursuant to the EMMoU.
- An authority which is only a MMoU signatory can make a request under the MMoU to an authority that is a signatory to both the MMoU and the EMMoU. In this scenario, the authority that is both a MMoU and EMMoU signatory is committed to provide assistance that falls under the MMoU and may also have enhanced powers to provide additional assistance under the MMoU's fullest assistance permissible provision (where this would be consistent with its legislative framework).

20. Will an EMMoU signatory be able to use the MMoU to make a request for non-ACFIT matters from another EMMoU signatory?

Given there is nothing in the MMoU that is not covered by the EMMoU, a request for assistance from an EMMoU signatory to another EMMoU signatory should be made pursuant to the EMMoU, regardless of the type of request (including a request for non-ACFIT information or a combined set of ACFIT and non-ACFIT information). This will apply to both Appendix A1 and A2 signatories of the EMMoU.

In other words, requests from an EMMoU signatory to another EMMoU signatory, whether they involve ACFIT information or not, should be issued pursuant to the EMMoU and will be considered as such even though the requesting authority mentions inadvertently the MMoU as a basis of the request. Where applicable, the requested authority will inform the requesting authority that it is executing the request pursuant to the EMMoU, and the latter will ensure that its annual statistics are reflected accurately in this regard.

21. Will there be two lists on the IOSCO website: ((1) signatories to Appendix A.1 of the EMMoU, and (2) signatories to Appendix A.2 of the EMMoU?

Yes.

22. How is the EMMoU related to the IOSCO Core Principles?

The EMMoU takes into account Principles 11, 12 and 13 on Cooperation in Regulation.¹

D. Application

¹ Principle 11: "The Regulator should have the authority to share both public and non-public information with domestic and foreign counterparts." Principle 12: "Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts." Principle 13: "The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers."

23. Who can apply to become a signatory to the EMMoU?

As noted in Appendix B to the EMMoU, if your organization is an MMoU signatory, then your organization is eligible to make an application to become an EMMoU signatory. If your organization is not an MMoU signatory (your organization is a securities regulator and is either an Ordinary or Associate member or applying to become one), your organization may apply to become a signatory to the MMoU and the EMMoU at the same time. It is not possible to become a signatory to the EMMoU without first, or simultaneously, signing the MMoU.

24. Is there a deadline to apply to become an EMMoU signatory? Does my organization face any repercussions for not becoming an EMMoU signatory? What are the practical implications of not becoming an EMMoU signatory?

No; the MMoU will remain in effect for as long as any signatories continue to wish to use it. However, the EMMoU is intended to be 'aspirational but achievable', and we encourage all members to seek the legislative changes necessary to obtain the enhanced powers necessary to become signatories to the EMMoU.

25. How do I apply?

- Appendix B sets out the requirements for applying. The matrix at the beginning of the Questionnaire is useful guidance as to which questionnaires and which questions are required. To apply for EMMoU status, you are required to submit a package to the IOSCO General Secretariat that contains: (i) a formally signed letter from your CEO\Chair (or equivalent) indicating your organization's application to become a signatory (appendix A.1 or A.2); (ii) a completed Questionnaire (the template for which is contained in Appendix B); (iii) the contact details of an appropriate person at your organization; and (iv) copies of the supporting legislation that informs the basis of your responses to the Questionnaire (alternatively, hyperlinks might be used); and, where relevant (vi) a letter from any third party referred to in the application as exercising a relevant power under the EMMoU.
- In addition, it would be helpful to provide as part of the application package a few brief, high level introductory paragraphs. These should set out the market structure in your jurisdiction, as well as the regulatory powers and applicable legislation that govern it. They should only cover elements of the market structure, regulatory powers, and legislation, such that the Verification Team and Screening Group can understand the rest of the application. Although the General Secretariat will check that this introductory element is provided, they are not obliged to review the content of it in deciding whether the application is complete.
- The Questionnaire is intended to draw out responses that confirm your organization's ability to comply with the EMMoU. It is important that your organization's Questionnaire responses are detailed and complete. In particular, your organization must provide concise extracts of the relevant supporting laws, rules, regulations, policies and practices (if any) and narrate how the legal authorities cited therein enable your organization to meet each of the areas of the Questionnaire. It is helpful to confirm, where you can, that in each instance of a properly made request under the EMMoU that does not require you to act in a manner that would violate domestic law, your organization will respond positively to a request for assistance from another EMMoU signatory. The Verification Team penholder assigned to your application will indicate any other information it needs to consider your organization's application.

- The Guidance for the EMMoU Questionnaire in Section I below should be read in conjunction with the EMMoU Questionnaire. Addressing the issues in Section I below in your application will enable a comprehensive Questionnaire response.

26. Can I repeat my responses from the MMoU Questionnaire in the EMMoU Questionnaire?

- Yes, where your answers are the same for an EMMoU question as for an MMoU question, you can reproduce your answer. Alternatively, you may state in your answer that the Verification Team should refer to your MMoU application.
- Your answer to the EMMoU Questionnaire however must additionally address those elements of the EMMoU question that have not been addressed by your MMoU answer.
- Particular attention should be paid to Questions 1.1 and 1.2 and Questions 4.1 and 4.2 in the EMMoU questionnaire. In these questions, there are five additional elements that address extra aspects of powers required under the EMMoU. These additional elements are in respect of the applicant's powers in relation to:
 - 'Orders', specifically 'whether or not executed' as specified in Article 3(2)(b)(i) (see Question 1.1 of the EMMoU);
 - 'Information that identifies or traces funds, or assets into which those funds are converted', as specified in Article 3(2)(b)(iii) (see Question 1.2 of the EMMoU);
 - 'Attempts to commit' the violations specified in Article 1(4)(a) of the EMMoU (see Question 4.1 of the EMMoU);
 - 'Mis-selling' as specified in Article 1(4)(a) of the EMMoU (see Question 4.1 of the EMMoU); and
 - 'The maintaining of accurate books and records' in relation to the activities specified in Article 1(4)(b) of the EMMoU (see Question 4.2 of the EMMoU).
- Each of these elements needs to be addressed in your answer to the EMMoU Questionnaire. For example, where your organization uses the same powers to obtain the information in Question 1(a) of the MMoU Questionnaire as the information in Question 1.1 of the EMMoU Questionnaire, your organization may reproduce your question 1(a) MMoU answer in response to question 1.1 of the EMMoU Questionnaire. Alternatively, you may state in your answer that the Verification Team should refer to your MMoU application.
- However, you should also specifically address the 'additional element' which is required by the EMMoU; in this example, your organization should explain your powers in relation to 'orders (whether or not executed)'.

27. Where I have reproduced my answer, will my reproduced answer be screened?

Prior MMoU responses will be screened only to the extent that they apply to the powers required by the EMMoU.

28. What supporting material does my organization need to send when my organization applies to become a signatory?

- Your organization needs to include copies of the specific provisions of the laws, rules, procedures, policies and practices in your jurisdiction, that form the legal

basis for, or otherwise support, your answers to the EMMoU Questionnaire. Question-by-question responses should include relevant and concise extracts of the most pertinent legislation supporting the narrative response but should not include lengthy recitations of entire legislative sections.

- It is helpful to summarise the intent and meaning of the legislation you have included so that the reader is able to clearly and quickly determine whether it fully answers the question. In some instances, a single extract of legislation may be responsive to more than one question, in which case it is helpful to cite it (possibly in the text or in a footnote), as concisely as possible, and to specifically note that it is, for example, responsive to Questions 1, 3, 4, 8, etc. In a separate document, you can include longer extracts, with context, of the legislation, policy, with definitions, etc. Please do not include materials that are not responsive. In some instances, real-life examples may help you clarify or illustrate your response. It is also critically important to include a frank discussion of where there may be shortcomings in your legislation and how you propose to address them.
- In some instances, the response may be affected by a particular court decision. This should be set out with a concise and clear explanation of how the decision affects your organization's ability to comply with the EMMoU.

29. Which language can I use in my response to the questionnaire?

Responses to the Questionnaire and essential supporting material (including laws, rules and regulations; and any relevant MoU with a third party) should be provided in English. While essential supporting documents – for example, key sections of legislation - should be provided in English as explained above, there is some flexibility in the provision of whole documents and other accompanying material, which may be submitted in the original language or one of the five official languages of IOSCO (English, French, Spanish, Portuguese or Arabic) where appropriate and necessary and agreed with your Verification Team during the screening process.

30. To whom do I send my application?

- Please e-mail your application, with supporting materials, including a signed accompanying letter from your CEO/Chair (or equivalent) addressed to the IOSCO General Secretariat to: emmou-applications@iosco.org.
- You will be notified by the IOSCO General Secretariat that your application has been received and whether more information is needed or it can be progressed to the review stage by a Verification Team. The Secretariat will inform you of your point of contact within the relevant Verification Team. If you have not received an acknowledgment from the IOSCO General Secretariat concerning your application within two weeks of submission, please reach out to them to confirm that it did in fact receive the application.

31. In which format should my application be sent?

All complete applications (including both the response to the Questionnaire and **all** accompanying material) should be sent in electronic format to the e-mail address noted above. If possible, please provide a Microsoft Word version of your Questionnaire responses.

E. Review of Application/Decision-making

32. Who is involved in the processing of the application?

Typically:

- The Secretary General
- The Verification Teams
- The Screening Group
- The Decision Making Group

33. What is the role of each?

Secretary General

- The MMoU Team in the General Secretariat's office ("MMoU Team") provides general administrative support, and is available to answer many types of questions.
- The MMoU Team is your main point of contact apart from the Verification Team.
- The MMoU Team provides acknowledgment that your application and supporting materials have been received and information on which Verification Team is handling it.
- The MMoU Team completes a 'first check' of your application to ensure that:
 - All questions have been answered;
 - All answers include well-defined legal references to easily assess the accuracy of each answer;
 - The corresponding legal texts/references are enclosed and easily identified;
 - The exact location of any supporting material that is to be found on web pages is clearly stated; and
 - The application includes details of at least one contact person together with complete contact details.

Verification Teams

- For operational reasons, the SG is organised into 7 Verification Teams. Each team includes members with substantial expertise in reviewing applications, in the enforcement of securities and derivatives laws, and in cross border information sharing.
- A penholder from the Verification Team is assigned to each application and will be in direct, frequent and detailed contact with your organization to verify your organization's legal authority to comply with the EMMoU. The penholder will be your organization's primary contact with the Verification Team and the SG.
- The Verification Team prepares a report, with a positive or negative recommendation, regarding each applicant's ability to comply with the EMMoU. The Verification Team report is reviewed by the SG, which reviews and then discusses it in detail in relation to each response to the questions and the Verification Team's evaluation of those responses.
- The Verification Team will provide your organization with a draft of the Verification Team report before it goes to the SG and will provide your organization with an opportunity to comment on the accuracy of your legal framework described therein.

Screening Group (SG)

- The Screening Group is comprised of a number of jurisdictions. The individuals sitting on the SG have expertise in vetting applications, in the interpretation and operation of the MMoU and the EMMoU and in the exchange of information. Note that it is the same SG that will review EMMoU applications that has reviewed, and will continue to review, MMoU applications.
- The SG's main responsibilities are:
- to assess, on the basis of its review of the Verification Team's report on your organization's application, whether your organization has the legal authority to comply with the specific MMoU and/or EMMoU provisions;
- to notify your organization of the SG's proposed recommendation prior to advising the Decision Making Group of the SG's recommendation (including, in some instances, suggestions to your organization as to the legislative steps your organization might consider taking) and to allow your organization an opportunity to be heard if your organization disagrees with the SG's recommendation; and
- to make an overall recommendation to the Decision Making Group on your organization's application (whether positive or negative).

Decision Making Group (also known as the 'Committee of Chairs')

- The Decision Making Group is comprised of the Chairs of the IOSCO Board, the Growth and Emerging Markets Committee and the MMoU Monitoring Group.
- It is responsible for the final decision on an application.
- It will consult the Chair of the relevant Regional Committee prior to making a decision on your organization's application. Decisions by the Decision Making Group will be made in writing and will describe your organization's right of review of the decision.

34. What is the nature of the "screening procedure"? What can I expect from the process?

The "screening procedure" is designed to:

- Be fair and impartial (in order to avoid conflicts of interest);
- Be transparent;
- Give your organization the opportunity to present or share comments as appropriate; and
- Give your organization the opportunity to ask for a review of the decision.

35. How are conflicts of interest resolved?

Care is taken to ensure that actual and apparent conflicts of interest are avoided at each level. If any party perceives a potential conflict of interest, they should immediately advise the General Secretariat of this and the reasons for this.

Verification Team level - Conflicts of interest are avoided through the composition of the Verification Teams. Considerable effort has been made to ensure that the Verification Teams are appropriately balanced from the following perspectives:

- Geographical balance;

- Membership balance: the Board and the Growth and Emerging Markets Committee should ideally be represented in each Verification Team;
- Language skills; and
- Expertise in particular types of legal systems.

If a conflict of interest arises between your organization and any member of the Verification Team to which the application was first submitted, the application will be assigned to the next available Verification Team by the General Secretariat.

SG level - Any members of the SG, who are in a potential conflict of interest situation with respect to your organization's application, will not participate in the discussions and in the process of making recommendations to the Decision Making Group.

Decision Making Group level - Any members of the Committee of Chairs, who are in a potential conflict of interest situation with respect to your organization's application, will not participate in the discussions and decision-making process.

36. Who will contact my organization once my organization has submitted my application?

- The IOSCO General Secretariat's office will contact your organization to acknowledge receipt of your application and to advise as to which Verification Team the application has been assigned. The General Secretariat's office will also notify your organization as to the final decision regarding its application.
- During the "screening process" your organization will likely be contacted (by telephone or e-mail) by the penholder to which your organization's application has been allocated. It is likely that at the Verification Team level your organization will be asked to provide additional information and/or to clarify certain aspects of your organization's responses. This might happen more than once, and is a useful dialogue for the Verification Team to fully understand your organization's legal ability to meet the provisions of the EMMoU. This process may take several months. It is therefore important to deal quickly, fully, frankly and in a transparent way with questions raised. The Verification Team will contact your organization before making a draft recommendation to the SG.
- Your organization may also be contacted by the Chair(s) of the SG for similar purposes as described above once the Verification Team has submitted its report to the Screening Group on your organization's application.
- Finally, the SG will contact your organization prior to making a recommendation to the Decision Making Group. If the SG intends to report to the Decision Making Group that your organization is unable to meet the provisions of the EMMoU, the SG will provide your organization with notice. If this is the case, your organization will be advised of the specific EMMoU provisions that the SG has determined that your organization cannot meet, and your organization will be given the opportunity to provide comments to the SG.

37. What could be the outcome of my application?

There are a number of possible outcomes by the Decision Making Group depending on the application that your organization is making (see Section 4 to Appendix B of the EMMoU):

For those who are not already EMMoU signatories and apply to Appendix A.1:

- A decision that your organization meets all the standards set out in Articles 3(2) and (3) of the EMMoU, and will be invited by IOSCO to become a signatory to Appendix A.1 of the EMMoU.
- A decision that your organization meets all the standards set out in Article 3(2) of the EMMoU but not Article 3(3) of the EMMoU and will be invited by IOSCO to become a signatory to Appendix A.2 of the EMMoU.
- A decision that your organization is unable to meet one or more of the standards of Article 3(2) of the EMMoU and will not be invited by IOSCO to become a signatory to the EMMoU.

For those who are not already EMMoU signatories and apply to Appendix A.2:

- A decision that your organization meets all the standards set out in Articles 3(2) of the EMMoU, and will be invited by IOSCO to become a signatory to Appendix A.2 of the EMMoU.
- A decision that your organization is unable to meet one or more of the standards of Article 3(2) of the EMMoU and will not be invited by IOSCO to become a signatory to the EMMoU.

For those who are already signatories to Appendix A.2 to the EMMoU and apply to Appendix A.1:

- A decision that your organization meets all the standards set out in Articles 3(3) of the EMMoU, and will be invited by IOSCO to become a signatory to Appendix A.1 of the EMMoU.
- A decision that your organization is unable to meet one or more of the standards of Article 3(3) of the EMMoU and will not be invited by IOSCO to become a signatory to Appendix A.1 to the EMMoU but can remain a signatory to Appendix A.2 to the EMMoU.

38. What happens if I disagree with the decision of the Decision Making Group (final decision)?

Section 1.11 of Appendix B of the EMMoU describes the steps your organization may take if you disagree with the decision of the Decision Making Group (whether you are applying to become an EMMoU signatory or applying to migrate from Appendix A.2 to Appendix A.1). Section 1.11 states: "...an applicant who is dissatisfied with the decision of the Decision Making Group may request, by written notice to the Secretary General, that the decision be reviewed by the IOSCO Board together with the reasons for such request for review. Within thirty days following the receipt of such request, the Secretary General will refer the request to the next meeting of the IOSCO Board to be held. The request shall be accompanied by such material and be dealt with under such procedures as the IOSCO Board may from time to time decide. The IOSCO Board may confirm the original decision of the Decision Making Group or may substitute a new decision or otherwise deal with the request as it considers fit."

F. Becoming a signatory

39. How will my organization be notified if my organization is invited to be a signatory the EMMOU?

Your organization will be notified in writing by the Secretary General that the Decision Making Group will invite you to become a signatory to the EMMoU. You will need to confirm with the Secretary General your interest in being listed on Appendix A.1 or Appendix A.2, as appropriate. Upon reception of the signature form from your organization, you will be listed on Appendix A.1 or Appendix A.2 and you will be considered to be a signatory.

40. How will my organization's participation as a signatory be made public?

- Your organization will be listed on Appendix A.1 or Appendix A.2 of the EMMoU.
- The list of signatories to the EMMoU will be posted on the public portion of the IOSCO Website (www.iosco.org). Your organization's participation as a signatory will be made public on the date of your formal signature; a signing ceremony is usually held each year at the IOSCO Annual Conference and the first official signing ceremony for the EMMoU is expected to take place at the 2018 Annual Conference.
- Your organization's response to the Questionnaire and the Screening Group's Report will be posted on the 'members only' section of the IOSCO Website. Questionnaire responses need to be updated as appropriate.
- As for the MMoU, there will be signing ceremonies that will be arranged as necessary for formal signings of the EMMoU. As set out above, your organization will become a signatory on the day your organization signs the signature form and sends it to the General Secretariat.

41. How and when can my organization start making requests from other EMMoU signatories?

Once your organization is listed in Appendix A.1 or A.2 of the EMMoU, you are considered a signatory to the EMMoU and can begin sending and receiving requests for cooperation under the EMMoU. Requests should be made in accordance with the request format in Appendix C of the EMMoU.

G. Monitoring of the EMMoU

For a detailed explanation see Section 3 of Appendix B of the EMMoU.

42. Who is responsible for the monitoring of the operation of the EMMoU?

All MMoU signatories are members of the **Monitoring Group**, which is responsible for monitoring the operation of the MMoU and EMMoU. The Monitoring Group is not a decision-making body. It makes recommendations to the Decision Making Group.

43. How will the operation of the EMMoU be monitored?

- The monitoring of the EMMoU is described in its Appendix B. It will be monitored by the existing Monitoring Group; however, only those regulators which are signatories to the EMMoU will be able to vote on EMMoU matters as noted in section 3.2 of Appendix B of the EMMoU: "Matters that are relevant to both the MMoU and the EMMoU will be discussed in the MMoU Monitoring Group; however, only signatories to the EMMoU within the Monitoring Group may vote on such

matters.”.

- The Monitoring Group will have periodic consultations about certain significant and enumerated matters of common concern to the EMMoU signatories with a view to improving operation of the EMMoU.
- A signatory can bring a matter to the Monitoring Group where it perceives a change in the willingness or the ability of another signatory to meet the EMMoU provisions. As noted in section 3.2 of Appendix B of the EMMoU: “Matters that are relevant to both the MMoU and the EMMoU will be discussed in the MMoU Monitoring Group; however, only signatories to the EMMoU within the Monitoring Group may vote on such matters.” The Monitoring Group may recommend a range of possible options to the Decision Making Group to encourage compliance with the EMMoU.

44. What happens if the Decision Making Group finds that a signatory has changed its willingness or ability to meet the standards of the EMMoU?

- Please see section 3 of Appendix B of the EMMoU for details.
- If the Decision Making Group determines that there has been a demonstrated change in the willingness or ability of a signatory to meet the standards of the EMMoU, the signatory will be notified and will be given an opportunity to be heard.
- Upon a final determination of the matter, the Decision Making Group may accept or reject the Monitoring Group’s recommendation or may decide to take other action. A member, if dissatisfied with the decision of the Decision Making Group, may request that the decision be reviewed by the IOSCO Board which may “confirm the original decision of the Decision Making Group or may substitute a new decision or otherwise deal with the request as it sees fit.”

H. Support

45. Who does my organization talk to if my organization needs any practical support on submitting my organization’s application?

IOSCO has set up the following e-mail address to which your organization can address any queries your organization might have MMoUTeam@iosco.org. Please do not hesitate to raise your query, and to make multiple queries if necessary.

I. Guidelines for Filling in the Questionnaire

- When filling in the Questionnaire remember that the Decision Making Group, the Screening Group and the Verification Team members are not experts in your legislation. The most helpful answers will be those that are detailed, directly responsive to the question, and that go to the issue of your ability to render assistance. Likewise, such answers are less likely to attract additional questions being raised. Where you think there could be a weakness in your application, it is important and helpful to raise it frankly and early.
- Applicants to Appendix A.1 of the EMMoU (i.e. applicants applying on the basis of all of the Article 3(2) and 3(3) powers) must respond to all parts of all nine questions. Applicants to Appendix A.2 of the EMMoU (i.e. applicants applying on the basis of the Article 3(2) powers only) must respond to all parts of all nine questions except for those noted as “Article 3(3) only” (i.e. Question 1.5, 1.6,

1.7, 3.5, 3.6, 3.7, 7.5, 7.6 and 7.7). Applicants who are signatories to Appendix A.2, and are seeking to migrate to Appendix A.1, are required to answer only those questions noted as "Article 3(3) only."

- Where your response is complex or nuanced, it may be helpful to illustrate your response by including 'real life' examples of how an issue has been handled in your jurisdiction.

46. Question 1 - Ability to Obtain Information

- Please note that applicants to Appendix A.1 must answer all of the sub-parts of Question 1. Applicants to Appendix A.2 are not required to answer those sub-parts of Question 1 (i.e. 1.5, 1.6 and 1.7) which are denoted "Article 3(3) only".
- Additionally, please note that there is significant overlap between questions 1 and 6. Thus, it may be helpful for you to consider your response to Question 6 (which addresses the types of records required to be kept by an individual or entity) concurrently with your response to Question 1 (which addresses the types of records a regulator can obtain).
- While you may not have the authority to directly obtain the information discussed in Question 1, you may nonetheless be able to obtain the information indirectly through another body in your jurisdiction. Please identify in your response where this is the case, clarifying whether the other body will automatically render assistance (for example, pursuant to a memorandum of understanding), or whether the other body will exercise any discretion before rendering such assistance. Please provide all information relevant to: any limitation to recourse when providing assistance; the speed with which you can respond; the certainty with which you can obtain information and the confidentiality arrangements in place when the information may only be obtained indirectly.

Purpose of the question

To assess your organization's ability to:

- Obtain information sufficient to reconstruct all orders (including unexecuted orders) and transactions involving securities, derivatives and other financial instruments, including records of all funds or assets transferred into and out of bank, brokerage or other financial accounts relating to these transactions; to obtain detailed identification of the person(s) (whether natural or legal) on whose behalf such transactions are executed; and to assess your authority to determine who is behind an entity that carries out a transaction in the securities and derivatives markets. That is to say, you should be able to determine the identity of the natural person(s) that control the entity that performs on the markets or the person beneficially owning the account. It is important to show your ability to obtain information about the shareholders, administrators, directors, etc. of any entity (e.g. market participants, corporations, trusts, funds, partnerships, syndicates, etc.) carrying out transactions on the securities or derivatives markets;
- Obtain information that identifies or traces funds, or assets into which those funds are converted (for example, funds which could be used to purchase real property, cars or art);
- Obtain auditing information, including audit work papers, communications and other information relating to the audit and review of financial statements;
- Where permissible, (a) require or request the freezing or sequestration of funds

or assets located in your jurisdiction, or, if such assistance is not available, (b) inform the authority requesting the assistance about the relevant funds or assets located in your jurisdiction, and, to the fullest extent possible, assist with the use of legal procedures and other means to freeze or sequester those funds or assets;

- Obtain subscriber records held or maintained by telephone service providers who are located within your jurisdiction that identify subscribers (for example by their name and address), payment details and incoming and outgoing communications with date, time, duration and identification of phone numbers from which communications are made or received;
- Obtain subscriber records held or maintained by internet service providers, and other electronic communication providers, who are located within your jurisdiction, that identify subscribers (for example by their name and address), payment details, length of service, type of service utilized, network addresses, and session times, dates and durations; and
- Obtain recordings of telephone conversations or other electronic communications held or maintained by Persons (as that term is defined in the EMMoU) regulated by your organization.

For a complete response to this question, the following issues should be addressed:

- An explanation of whether your organization is the regulator for securities markets and for derivatives markets in your jurisdiction, and, if not, who the regulator is. If derivatives markets do not exist in your jurisdiction, or if your organization does not have authority over the derivatives markets, you should provide an explanation as to whether you can assist a foreign regulator investigating possible illegal derivatives activity.
- Identification of the person or entity who keeps the records of orders (whether or not executed) and transactions (intermediaries, stock exchanges, the applicant itself, etc.) and a description of the means by which this information is available to your organization (in real time, daily, under an unenforceable request or under an enforceable requirement).
- An explanation of your organization's ability to compel information about these orders or transactions, including from non-regulated entities or individuals (including individuals or entities who should be registered but fail to register). This entails an explanation of your ability to access records that must be kept by market intermediaries on transactions ordered (whether or not executed in the market), including full details of the content of such records.
- An explanation of your organization's ability to access bank, brokerage and other financial institution records. An explanation of your organization's ability to obtain the identity of the person or entity who is obliged to keep every category of information described in Question 1. For example, some intermediaries are obliged to keep some categories of the information (client identification, amount, price, etc.) while other types of information are kept by stock exchanges (time of the transaction, price, etc.).
- An explanation of your organization's ability to access information that identifies or traces funds, or the assets into which those funds are converted.
- An explanation of your organization's ability to access records identifying the client behind an account.
- An explanation of the different kinds of entities that can be established in your

organization's jurisdiction (e.g. private and public limited companies, trusts, international business companies, partnerships, etc.).

- An explanation of the ways in which ownership in these entities can be held (for example nominative shares, bearer shares), including information on the relevant processes for changing ownership (whether the change must be intermediated by a notary or a registered intermediary or credit institution, whether the change is registered in a public registry, etc.).
- Identification of the place where information on beneficial owners or individuals controlling non-natural persons is available (the company itself through a shareholders registry, transfer agent, companies registry, trust registry, etc.) and the content of the information kept in such registries.
- An explanation of the measures available to your organization (including penalties) to obtain the information if the individual or entity (regulated or non-regulated) in possession of the information refuses to provide it to your organization when requested or required. The Screening Group would like to ensure that your organization is able to enforce your laws with effectiveness.
- An explanation of how your organization is able to obtain existing telephone records held or maintained by telephone service providers who are located within your jurisdiction that identify subscribers (for example by their name and address), payment details and incoming and outgoing communications with date, time, duration and identification of phone numbers from which communications are made or received.
- An explanation of how your organization is able to obtain existing subscriber records held or maintained by internet service providers, and other electronic communication providers, who are located within your jurisdiction, that identify subscribers (for example by their name and address), payment details, length of service, type of service utilized, network addresses, and session times, dates and durations.
- An explanation of how your organization is able to obtain existing recordings of telephone conversations or other electronic communications held or maintained by Persons (as that term is defined in the EMMoU) regulated by your organization.
- An explanation that sets out that your organization may, where permissible (a) require or request the freezing or sequestration of funds or assets located in your jurisdiction, or, if such assistance is not available, at least (b) inform the authority requesting the assistance about the relevant funds or assets located in your jurisdiction, and, to the fullest extent possible, assist with the use of legal procedures and other means to freeze or sequester those funds or assets. The explanation does not need to describe how assets are frozen in your organization's jurisdiction but it may be helpful to include some additional detail to support confirmation of (a) or (b).

Basic laws, rules and regulations required

- Legislation requiring that information required in Question 1 be kept by your organization, or by persons which you can require the information from (with sanctions for failure to comply with such a requirement).
- Legislation that establishes the power to access orders and transaction information and ownership information.
- Where necessary, banking legislation. If your legislation clearly states that your organization can obtain banking or other financial institution records directly,

then banking legislation will likely not be necessary.

- Legislation that establishes rules about the communication and disclosure of shareholders (and changes thereto) of listed companies to your organization.
- Legislation that establishes rules regarding the ownership of entities (including listed and non-listed companies). Please describe the different ways in which ownership can be held (bearer shares, nominatives, etc. – noting that the relevant legislation may be set forth in a mercantile code or in company law) and how this information is recorded.
- Legislation that enables your organization to identify or trace funds, or assets into which those funds are converted.
- Legislation that enables your organization to obtain auditing information, including audit work papers, communications and other information relating to the audit and review of financial statements.
- Legislation that enables your organization to require or request the freezing or sequestration of funds or assets located in your jurisdiction where it is the case, or showing that your organization may at least advise other regulators on the funds and assets and assist on the legal procedure to freeze those funds or assets.
- Legislation that enables your organization to obtain existing subscriber records held or maintained by telephone service providers located within your jurisdiction, and the details of the information that you can obtain. Please note that in relation to the information identified in 1.5 and 1.6, there is no minimum requirement for how long subscriber records must be held by telephone service providers, and therefore a description of how long these records are held is not required.
- Legislation that enables your organization to obtain existing subscriber records held or maintained by internet service providers located within your jurisdiction, and the details of the information your organization can obtain. Please note that in relation to the information identified in 1.5 and 1.6, there is no minimum requirement for how long subscriber records must be held by internet service providers, and therefore a description of how long these records are held is not required.
- Legislation that enables your organization to obtain existing recordings of telephone conversations or other electronic communications held or maintained by Persons (as that term is defined in the EMMoU) regulated by you.
- Any other legislation mentioned in the response to this question.

47. Question 1.3 - Ability to obtain auditing information

- An applicant to the EMMoU must be able to obtain auditing information from auditors and other persons and not only from the entities supervised by securities regulators. The applicant must also be able to share the auditing information with a foreign regulator in connection with the foreign regulator's investigation, consistent with the EMMoU.
- Article 3(2)(b)(v) of the EMMoU text provides "The assistance available under this Enhanced MMoU includes, but is not limited to: obtaining and providing Information from any Persons regarding the matters set forth in the request for assistance, including, but not limited to: Auditing information including, but not limited to, audit work papers, communications and other Information relating to the audit or review of financial statements." (emphasis added)

- Based on the particular phrasing used in the EMMoU, applicants must be able to require the auditing information from 'any persons', i.e. all entities in the applicant's jurisdiction, regardless of whether they may be supervised by a regulator or not. The applicant also must be able to share the auditing information with a foreign regulator in connection with the foreign regulator's investigation.
- For example, in case that the auditing information of an advertising agency not supervised by the securities regulator is relevant to the investigation of the Requesting Authority, the Requested Authority must be able to require the advertising agency to produce the auditing information. Moreover, the auditing information of a supervised company's subsidiaries or affiliates might be relevant to Requesting Authority's investigation and as such, the Requested Authority must have the power to obtain the auditing information from these subsidiaries or affiliate companies even if they are not regulated by the Requested Authority. Also, auditing information obtained directly from the auditor is critical to many investigations, and the Requested Authority must be able to obtain auditing information directly from the auditor, even if the company being audited and the auditor are not supervised by the Requested Authority. In all cases, the Requested Authority must be able to share the auditing information with the Requesting Authority for the Requesting Authority's investigation.

48. Question 2 - Ability to Take Statements

Purpose of the question:

- To assess your organization's ability to compel the physical attendance to take or, where permissible, compel and provide a statement or testimony under oath of, a natural person or representative of a legal person or other entity, including, for example, corporations and trusts.

For a complete response to this question, the following issues should be addressed:

- An explanation of whether your organization has the ability to compel a person's physical attendance for the purpose of taking testimony or a statement and/or whether you have the ability to take statements under oath.
- If your organization is not empowered to take a person's statement directly, but the statement can be taken in your jurisdiction through another body (e.g. court, governmental body, etc.), please indicate which body has this power, the basis for that body's power, how you can request that body to take the statement and any conditions or requirements that may or will accompany that body's agreement to assist.

Basic laws, rules and regulations required

- Legal basis establishing your organization's ability to compel a natural person's physical presence for the purpose of taking testimony/statements.

49. Question 3 - Ability to Share Information

Please note that applicants to Appendix A.1 must answer all of the sub-parts of Question 3. Applicants to Appendix A.2 are not required to answer those sub-parts of Question 3 (i.e. 3.5, 3.6 and 3.7) which are denoted "Article 3(3) only".

Purpose of the question:

- To assess your organization's ability to share the information, described in the previous questions, with other foreign regulators that are signatories to the EMMoU.

For a complete response to this question, the following issues should be addressed:

- An explanation of whether your organization has the ability to share information that is already in its files.
- An explanation of whether your organization has the ability to produce specific information pursuant to a properly made request under the EMMoU.
- An explanation of the conditions, if any, under which the assistance requested can be rendered (e.g., does the offence being investigated by the foreign authority need to be recognised in your jurisdiction; is there a notice requirement (e.g. to potential respondents or third parties) that you must fulfil before you can render the assistance in question).
- If the information can only be gathered by another body (including a governmental body) in your jurisdiction, an explanation of whether your organization can, in fact, provide the information to the foreign authority and any conditions or requirements that attach.

Basic laws, rules and regulations required

- Legislation that establishes your organization's ability to share information with foreign regulators and the conditions of such exchange of information, if any.

50. Question 4 - Powers of the Applicant

Purpose of the question:

- To assess whether your organization has the ability to provide assistance to other EMMoU signatories in response to requests for information regarding these matters. This includes an assessment of your organization's authority to address the matters referred to in the Question in relation to, among other things: (i) misconduct, including insider dealing and trading, market manipulation, misrepresentation or omission of material information, dissemination of misleading information and other fraudulent or manipulative practices or devices and attempts to commit such violations, including solicitation practices, mis-selling, handling of investor funds and customer orders; (ii) initial public issuances of securities, derivatives and other financial instruments, ongoing reporting and filing requirements, books and records requirements, etc.; (iii) market intermediaries and other market participants who are required to be licensed or registered, or are exempt from such requirements, etc.; and (iv) markets, exchanges, clearing and settlement entities, and financial market infrastructures.

For a complete response to this question, the following issues should be addressed:

- An explanation of whether your organization is the competent authority in your jurisdiction for all the matters to which the question refers, and the legal basis

for this authority.

- If your organization is not the competent authority for these matters, an explanation of whether or not your organization can provide assistance to other EMMoU signatories when information is requested concerning investigations that the foreign regulator is conducting concerning such matters.

Basic laws, rules and regulations required

- Identification of the legal provisions which establish that your organization is the competent authority for the matters to which this question refers.
- Legislation that establishes your organization's powers to provide assistance to the foreign regulators (this can be answered by referring to the answer to Question 3).

51. Question 5 - Independent Interest

Purpose of the question:

To assess your organization's ability to provide the assistance requested by a foreign regulator regardless of whether a violation occurred in your jurisdiction.

For a complete response to this question, the following issues should be addressed:

- An explanation of whether assistance can be provided regardless of whether there has been, or could be, a breach of your jurisdiction's laws.
- An explanation of whether assistance can be provided regardless of whether the facts under investigation by the requesting authority are, or could be, the basis for making out a breach of your jurisdiction's laws.

Basic laws, rules and regulations required

- Legislation, if any, that establishes that you can still render assistance in response to a properly made request under the EMMoU, even when the facts under investigation, or the laws which the requesting authority are concerned may have been breached, are not a breach of, or a recognized basis for the breach of, your own jurisdiction's laws.

52. Question 6 - Records Maintenance

Purpose of the question:

To assess whether records of the information required in Question 1 are required to be maintained in your jurisdiction, including the period of time records are required to be kept. Note that your response to Question 6 may have been incorporated in your response to Question 1, in which case you should note this fact. The following issues should be addressed:

- Identification of the period of time that the information identified in 1.1 and 1.2 must be maintained.
- Penalties for failure to maintain such information, identifying the supporting legislation established in your jurisdiction, and identifying the competent authority to impose such penalties and the amount of such penalties.
- Please note that a period of 5 years is regarded as the norm for the maintenance of such records.

Basic laws, rules and regulations required

- Legislation that establishes the record-keeping requirements for, amongst others, banks and brokerage firms, and for all legal entities recognised within the jurisdiction, as well as rules about the length of time in which to keep records of the information set out in Question 1. This information may form part of the banking or corporate legislation (as distinct from the securities legislation) in your jurisdiction.

53. Question 7 - Secrecy or Blocking laws

Please note that applicants to Appendix A.1 must answer all of the sub-parts of Question 7. Applicants to Appendix A.2 are not required to answer those sub-parts of Question 7 (i.e. 7.5, 7.6 and 7.7) which are denoted "Article 3(3) only".

Purpose of the question:

- To assess whether there are any secrecy or blocking laws, rules or regulations in your jurisdiction that prevent or restrict you from obtaining and providing information to foreign authorities.

For a complete response to this question, the following issues should be addressed:

- An explanation of whether there are any secrecy or blocking laws (e.g. bank secrecy provisions, etc.) in your jurisdiction, and, if so, an explanation of whether such laws would prevent, restrict or delay the assistance necessary to respond to a properly made request under the EMMoU, and the basis on which you can (even on a delayed basis, if necessary) provide the assistance. This should also cover other laws that may have the same effects but are not specifically related to domestic secrecy or blocking.
- It is sufficient to state that "there are no domestic secrecy or blocking laws" to confirm that there are also no other laws that may have the same effects but are not specifically related to domestic secrecy or blocking that affect the ability to comply with the EMMoU.

Basic laws, rules and regulations required

- Legislation that addresses restrictions on sharing information with a requesting authority in response to a properly made request under the EMMoU.

54. Question 8 - Uses of the Information

Purpose of the question:

- To assess whether legislation in your jurisdiction contains any provisions that prevent or restrict the permissible uses of the information contemplated in the EMMoU.
- You must demonstrate that the information your organization provides in response to a properly made request (in accordance with the rights and privileges afforded by the laws and regulations in your jurisdiction) can be used:
(i) to ensure compliance with (including the investigation of potential violations

of) laws pertaining to each of the matters set forth in Question 4; and (ii) for the purpose of conducting civil or administrative enforcement proceedings, assisting in a self-regulatory organization's surveillance or enforcement activities, or assisting in a criminal prosecution.

- The screening process is not screening rights and privileges under your jurisdiction's law.

You should address the following issues:

- An explanation of whether there are provisions that prevent or restrict such permissible uses of the information, and whether such restrictions distinguish between documents and statements/testimony.

Basic laws, rules and regulations required

- Legislation that deals with the prevention of the use of, or restrictions on the use of, information contemplated in Article 6(1) of the EMMoU.

55. Question 9 - Confidentiality

Purpose of the question:

To assess your organization's ability to maintain the confidentiality of non-public information. Your organization must be able to protect the confidentiality of requests for assistance made by foreign authorities and any matters arising from, and information exchanged in connection with, such requests.

For a complete response to this question, the following issues should be addressed:

- An explanation of the confidentiality regime to which your organization's current and former staff, officers, or others acting on its behalf are subject to, and an explanation of the penalties such persons face if they breach the confidentiality requirements (administrative or criminal penalties or even penalties under employment/labour legislation).
- An explanation of whether, and the circumstances under which, other bodies in your jurisdiction might have access to the information expected to be kept confidential, the uses which may be made of the information by such bodies, as well as the confidentiality requirements (if any) that these bodies are bound to.
- An explanation of whether your organization may face any legally enforceable demands for the information that is expected to be kept confidential, and what protections your organization may assert to resist such demands.

Basic laws, rules and regulations required

- Legislation, rules, regulations, policies or practices (including a note identifying which it is (i.e. whether it is a law or a policy)) setting out confidentiality requirements.
- Provisions that allow other persons or authorities to access the information expected to be held in confidence.
- The internal Code of Conduct for your organization's staff, if any.
- Laws or practices pertaining to your organization's ability to resist legally enforceable demands, and the extent to which you organization can do so.

56. Accessing information through other governmental bodies

The information described in Questions 1, 2, 3 and 4 may, in certain instances, be accessible not by your organization directly, but through other bodies.

In such cases, the answer should clearly indicate:

- The identity of the bodies (including any public institutions) responsible for obtaining the information.
- The conditions under which such bodies can assist your organization in obtaining the information.
- The anticipated length of time it would take for such bodies to assist your organization in obtaining the information.
- Whether the body in question can also assist your organization in obtaining the information pursuant to a properly made request under the EMMoU.
- Whether the criteria used by such bodies to provide or to deny the assistance are in compliance with the criteria stated in the EMMoU.
- Whether the information obtained through the other body can be used by foreign authorities for the permissible uses of the information contemplated under the EMMoU, and any conditions attached thereto.
- Whether the confidentiality regime to which the other body is subject to is in compliance with the confidentiality requirements contemplated under the EMMoU.

Basic laws, rules and regulations required

- Legislation that regulates the relationship between your organization and the other body.
- Most of the time, a written commitment (for example, an undertaking) from the other body stating the criteria to provide or to deny assistance, the rules applicable to that body, and confirmation that the permissible uses of, and the confidentiality regime attaching to, the information shared by that body, comply with the EMMoU.

J. Timing for Process

57. When can my organization expect to receive the invitation to become a signatory to the EMMoU?

With applications that do not present issues, the verification process (once assigned to a Verification Team) can take several months. This process can be accelerated when:

- Your organization has appointed a contact person with the expertise and authority to deal with the screening process.
- Your organization promptly answers additional questions that may be raised by the Verification Team or the SG.
- The answers provided by your organization to additional questions are clear to the Verification Team or the SG, taking into account that the members of the

Verification Team and the SG are not experts in the legal framework of your organization.

- The references to legal texts are clear and detailed, and as appropriate, illustrated by example. References should be made to the specific article(s) of the relevant laws and regulations.
- Your organization is ready, able and willing to quickly implement changes in its legislation and practices in response to recommendations made by the Verification Team and/or the SG.

K. Reference Material

58. Is there any reference material that I can look at?

- IOSCO Enhanced MMoU
- IOSCO Objectives and Principles of Securities Regulation
- IOSCO Guide on Joint Cross-Border Investigations and Related Proceedings (Feb 2009)
- EMMoU applications already on IOSCO members-only website
