

**2016**

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



**INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

## **PREAMBLE**

In 2002, IOSCO established its first Multilateral Memorandum of Understanding ("2002 MMoU") to serve and support its objectives of protecting investors and ensuring that markets are fair, efficient and transparent. The 2002 MMoU has become the global benchmark for international cooperation in the enforcement of securities and derivatives laws and regulations; yet, as technology and society evolve, enforcement and cooperation among securities regulators must also evolve.

Since the 2002 MMoU was established, 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.

For these reasons, IOSCO has now established this Enhanced Multilateral Memorandum of Understanding ("Enhanced MMoU") with the expectation that its signatories will, by availing themselves of new forms of assistance and providing each other with the Fullest Assistance Permissible, increase the effectiveness of their investigations and the enforcement of their jurisdiction's Laws and Regulations, whilst recognising the rights and privileges afforded to Persons in their respective jurisdictions.

## **ARTICLE 1: DEFINITIONS**

For the purposes of this Enhanced MMoU:

- (1)** "Authority" or "Authorities" means, respectively, a regulator or regulators listed in Appendix A.1 or A.2 (as relevant).
- (2)** "Fullest Assistance Permissible" means any form of assistance whether or not expressly referred to in this Enhanced MMoU, that

falls within the competence of the Authorities to provide to one another.

- (3)** “Information” includes, but is not limited to data, documents, metadata, recordings, images, in any form, and all data compilations that serve to identify, locate or link any such materials, such as file inventories, folders, and lists.
- (4)** “Laws and Regulations” mean the provisions of the laws of the jurisdictions of the Authorities, the regulations promulgated thereunder, and other regulatory requirements, that fall within the competence of the Authorities as securities and derivatives regulators, including but not limited to the following:

  - a. 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;
  - b. the registration, issuance, purchase, offer, or sale of securities and derivatives and other financial instruments, filing and reporting requirements, and the maintaining of accurate books and records related thereto;
  - c. market intermediaries, including investment and trading advisers, collective investment schemes, brokers, dealers, transfer agents, associated or affiliated Persons , and other market participants who are required to be licensed or registered or exempt therefrom; and
  - d. markets, exchanges, clearing and settlement entities, and financial market infrastructures, where applicable.
- (5)** "Person" means a natural or legal person or other entity including, but not limited to a corporation, a partnership or other arrangement such as a trust.

- (6) "Requested Authority" means an Authority to whom a request for assistance is made under this Enhanced MMoU.
- (7) "Requesting Authority" means an Authority making a request for assistance under this Enhanced MMoU.

## **ARTICLE 2: MUTUAL ASSISTANCE AND THE EXCHANGE OF INFORMATION**

- (1) **General Principles regarding Mutual Assistance and the Exchange of Information**
  - (a) This Enhanced MMoU sets forth the Authorities' intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the respective Laws and Regulations of the Authorities. The provisions of this Enhanced MMoU are not intended to create legally binding obligations or supersede the laws and regulations applicable in the jurisdictions of each Authority.
  - (b) The Authorities represent that no domestic secrecy or blocking laws or regulations should prevent the collection or provision of the information set forth in Article 3(2), and 3(3) as applicable, to the Requesting Authority.
  - (c) This Enhanced MMoU does not authorize an Authority to take, or prohibit an Authority from taking measures other than those identified herein to obtain information.
  - (d) Each Authority represents that where the assistance of a third party authority within their jurisdiction is necessary for the provision of assistance falling within the scope of this Enhanced MMoU, there is a process or instrument that provides for assistance to be given without undue delay and that provides for such authority to maintain the confidentiality of the request.
  - (e) This Enhanced MMoU does not confer upon any Person not an Authority, the right or ability, directly or indirectly to obtain, suppress or exclude any information or to challenge

the execution of a request for assistance under this Enhanced MMoU.

(f) The Authorities recognize the importance and desirability of providing the Fullest Assistance Permissible and exchanging Information for the purpose of investigating suspected violations of, securing compliance with, and enforcing the Laws and Regulations applicable in their respective jurisdictions.

(g) A request for assistance may be denied by the Requested Authority:

(i) where the request would require the Requested Authority to act in a manner that would violate any applicable law or regulation in its jurisdiction;

(ii) where a criminal proceeding has already been initiated in the jurisdiction of the Requested Authority based upon the same facts and against the same Persons, or the same Persons have already been the subject of final punitive sanctions on the same charges by the competent authorities of the jurisdiction of the Requested Authority, unless the Requesting Authority can demonstrate that the relief or sanctions sought in any proceedings initiated by the Requesting Authority would not be of the same nature or duplicative of any relief or sanctions obtained in the jurisdiction of the Requested Authority;

(iii) where the request is not made in accordance with the provisions of this Enhanced MMoU; or

(iv) on grounds of public or national interest.

**(2)** Where a request for assistance is denied, the Requested Authority will first consult with the Requesting Authority and will notify the Requesting Authority of the denial in writing and provide

explanations as to why it is unable to provide the assistance requested.

### **ARTICLE 3: SCOPE OF ASSISTANCE**

- (1)** The Authorities will provide each other with the Fullest Assistance Permissible to investigate suspected violations of, ensure compliance with and enforce their respective Laws and Regulations.
- (2)** The assistance available under this Enhanced MMoU includes, but is not limited to:
  - (a) providing Information held in the files of the Requested Authority regarding the matters set forth in the request for assistance;
  - (b) obtaining and providing Information from any Persons regarding the matters set forth in the request for assistance, including, but not limited to:
    - (i) Information sufficient to reconstruct all orders (whether or not executed) 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;
    - (ii) Information that identifies, for each transaction: the beneficial owner and controller; the account holder; the Persons conducting the transaction; the amount purchased or sold; the time of the transaction; the price of the transaction; and any Persons involved in the transaction;
    - (iii) Information that identifies or traces funds, or assets into which those funds are converted;

- (iv) Information that identifies Persons who beneficially own or control Persons within the jurisdiction of the Requested Authority;
  - (v) Auditing Information including, but not limited to, audit work papers, communications and other Information relating to the audit or review of financial statements; and
- (c) 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;
- (d) Where permissible, requiring or requesting 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.
- (3)** In addition to the assistance available under Article 3(2) above, the assistance available under this Enhanced MMoU includes, but is not limited to, the following enhanced powers in respect of which authorities listed on Appendix A.1 are competent to provide assistance:
- (i) 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;
  - (ii) 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,

and session times\dates and durations; and

(iii) Recordings of telephone conversations or other electronic communications held or maintained by Persons regulated by the Requested Authority.

- (4) Assistance will not be denied based on the fact that the type of conduct described in the request for assistance would not be a violation of the Laws and Regulations of the Requested Authority.

#### **ARTICLE 4: REQUESTS FOR ASSISTANCE**

- (1) Requests for assistance will be made in writing in substantially the form set out in Appendix C, and may be transmitted in a mutually agreed format and by a mutually agreed means reflecting the confidentiality of the request. .
- (2) Requests for assistance will include:
- (a) a description of the facts underlying the matter that is the subject of the request, and the purpose for which the assistance is sought;
  - (b) a description of the assistance sought and why the Information sought will be of assistance;
  - (c) any Information known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in identifying either the Persons believed to possess the Information sought or the places from where such Information may be obtained;
  - (d) an indication of any special precautions that the Requested Authority should take in collecting the Information sought due to, for example, investigatory considerations;
  - (e) an explanation of the reasons for any deadlines or timing considerations relevant to the execution of the request; and
  - (f) a description of the Laws and Regulations that may have been violated and that relate to the subject matter of the request.
- (3) In urgent circumstances, requests for assistance may be effected orally, or by any other means such as a short emailed request, provided such request for assistance is subsequently confirmed in

writing, consistent with Article 4(2).

## **ARTICLE 5: EXECUTION OF REQUESTS FOR ASSISTANCE**

- (1)** Upon request, the Requested Authority will, in a timely manner, taking into account the complexity and nature of the assistance sought by the Requesting Authority and any particular timing considerations noted by the Requesting Authority in its request:

  - (a) provide Information held in its files;
  - (b) require the production of Information requested by the Requesting Authority from: (i) any Person designated by the Requesting Authority, or (ii) any other Person who may possess the requested Information;
  - (c) obtain and provide other Information relevant to the request; and
  - (d) compel the physical attendance of a Person 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.
- (2)** Unless otherwise provided for under the Laws and Regulations of the Requested Authority, the Requesting and Requested Authorities will discuss the procedures and the persons responsible for the taking or receiving of Information requested under this Enhanced MMoU. Information will otherwise be gathered in accordance with the procedures applicable in the jurisdiction of the Requested Authority and by persons designated by the Requested Authority. Both Authorities will discuss any particular legal requirements and/or impediments in their respective jurisdictions.
- (3)** The Requested Authority will send an acknowledgement of receipt of the request for assistance no later than seven (7) working days after its receipt, including the contact details of a designated contact person.
- (4)** No later than seven (7) working days after receiving a request for a status report by the Requesting Authority, the Requested Authority will provide to the Requesting Authority an update as to the progress of efforts to secure the assistance requested and of when it expects to be in a position to provide the assistance requested.

- (5) Where permissible under the Laws and Regulations of the Requested Authority, a representative of the Requesting Authority may be present at the taking of statements and testimony and may participate in the questioning.
- (6) Responses to requests for assistance will be made in writing, and may be transmitted in a mutually agreed upon format and by a mutually agreed means, reflecting the confidentiality of the request and the Information shared
- (7) In urgent circumstances, the response to requests for assistance may be effected orally, or by any other means such as an emailed response, provided such communication is subsequently confirmed in writing.

#### **ARTICLE 6: PERMISSIBLE USES OF INFORMATION**

- (1) The Requesting Authority may use non-public Information furnished in response to a request for assistance under this Enhanced MMoU solely for:
  - (a) the purposes set forth in the request for assistance, including investigating suspected violations of, ensuring compliance with and enforcing the Laws and Regulations related to the request; and
  - (b) a purpose within the general framework of the use stated in the request for assistance, including conducting a civil or administrative enforcement proceeding, assisting in a self-regulatory organization's surveillance or enforcement activities (insofar as that organization is involved in the supervision of conduct that is the subject of the request), assisting in a criminal investigation or prosecution, or conducting any investigation or any enforcement proceeding, which may or may not be public, as authorized by the Laws and Regulations of the Requesting Authority, for any general charge applicable to the violation of the provision specified in the request, subject to any applicable restrictions on the use of testimony/statements obtained under Article 3(2)(c).
- (2) If a Requesting Authority intends to use Information furnished under this Enhanced MMoU for any purpose other than those stated in Article 6(1), it must obtain the written consent of the Requested Authority before doing so.

#### **ARTICLE 7: CONFIDENTIALITY**

- (1) Each Authority will keep confidential requests, responses, referrals and related communications made to it under this Enhanced MMoU, the contents of such communications, and any matters arising in connection with such communications, including consultations between or among the Authorities, and unsolicited assistance. However, the Requested Authority may disclose the fact that a Requesting Authority has made a request with the written consent of the Requesting Authority.
- (2) The Authorities will not disclose non-public Information, including the confidential information described in Article 7.1. above, received under this Enhanced MMoU, except as contemplated herein or in response to a legally enforceable demand that the non-public Information be disclosed. In the event of a legally enforceable demand, the Authority which receives the demand will notify the other Authority prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to the Information as may be available. Each Authority will use its best efforts to protect the confidentiality of non-public Information received under this Enhanced MMoU.
- (3) Prior to providing Information to a self-regulatory organization in accordance with Article 6(1)(b), the Requesting Authority will ensure that the self-regulatory organization is able to, and will comply on an ongoing basis with the confidentiality and use provisions set forth in this Enhanced MMoU.

## **ARTICLE 8: CONSULTATION REGARDING ASSISTANCE AND THE EXCHANGE OF INFORMATION**

- (1) The Authorities will consult periodically with each other regarding this Enhanced MMoU about matters of common concern with a view to improving the operation of the Enhanced MMoU and resolving any issues that may arise. In particular, the Authorities will consult in the event of:
  - (a) a significant change in market or business conditions or in legislation where such change is relevant to the operation of this Enhanced MMoU;
  - (b) a demonstrated change in the willingness or ability of an Authority to meet the provisions of this Enhanced MMoU as relevant to such Authority's status as a signatory to Appendix A.1 or Appendix A.2; and

(c) any other circumstance that makes it necessary or appropriate to consult, amend or extend this Enhanced MMoU in order to achieve its purposes.

- (2) The Authorities will consult with one another in matters relating to specific requests made, or unsolicited assistance provided, pursuant to this Enhanced MMoU (for example, where a request may be denied, or if it appears that responding to a request will involve a substantial cost).
- (3) The Authorities will define the terms herein in accordance with the relevant laws and regulations of the jurisdiction of the Requesting Authority unless such definition would require the Requested Authority to exceed its legal authority or otherwise be prohibited by the laws and regulations applicable in the jurisdiction of the Requested Authority. In such cases, the Requesting Authority and Requested Authority will consult and provide feedback when requested.

#### **ARTICLE 9: UNSOLICITED ASSISTANCE**

Each Authority will make all reasonable efforts to provide, without prior request, the other Authorities with any Information that that Authority considers is likely to be of assistance to those other Authorities in investigating suspected violations of, securing compliance with, or enforcing, the Laws and Regulations applicable in their jurisdiction, and such Information may be used for any of those purposes.

#### **ARTICLE 10: FINAL PROVISIONS**

- (1) An Authority may be listed on Appendix A.1 or A.2 in accordance with the procedures set forth in Appendix B. Authorities listed on Appendix A.2 may make a further application to be listed on Appendix A.1 and removed from Appendix A.2 in accordance with the procedures set forth in Appendix B.
- (2) **Date of commencement**

Cooperation in accordance with this Enhanced Memorandum of Understanding will begin on the date of its signing by the Authorities. The Enhanced Memorandum of Understanding will be effective as to

additional Authorities as of the date of that Authority's signing of Appendix A1 or A2.

**(3) Amendments to the Enhanced MMoU**

This Enhanced MMoU can be amended, varied or terminated pursuant to the procedures set forth in Appendix B.

**(4) Termination of the Participation of an Authority**

(a) An Authority may terminate its participation in this Enhanced MMoU, or transfer from Appendix A.1 to Appendix A.2, at any time by giving at least 30 days' prior written notice to each other Authority.

(b) If, in accordance with the procedures set forth in this Enhanced MMoU, the Chairmen of the IOSCO Board, the Growth and Emerging Markets Committee and the Monitoring Group (the "Decision-Making Group") determine, following notice and opportunity to be heard, that there has been a demonstrated change in the willingness or ability of an Authority to meet the provisions of this Enhanced MMoU, as set forth in Article 8(1)(b), the Decision-Making Group may, after consultation with the Chairman of the relevant Regional Committee, terminate that Authority's participation in this Enhanced MMoU or transfer the Authority from Appendix A.1 to Appendix A.2, subject to a possible review by the IOSCO Board.

(c) In the event that an Authority decides to terminate its participation in this Enhanced MMoU, cooperation and assistance in accordance with this Enhanced MMoU will continue until the expiration of 30 days after that Authority gives written notice to the other Authorities of its intention to discontinue cooperation and assistance hereunder. If any Authority gives a termination notice, cooperation and assistance in accordance with this Enhanced MMoU will continue with respect to all requests for assistance that were made, or Information provided pursuant to this Enhanced MMoU before the effective date of notification (as indicated in the notice but no earlier than the date the notice is sent) until the Requesting Authority terminates the matter for which assistance was requested.

(d) In the event of the termination of an Authority's participation in

the Enhanced MMoU, the use and confidentiality provisions set forth herein will continue to apply.

APPENDIX A.1 LIST OF SIGNATORIES TO THE POWERS REFERRED TO IN ARTICLE 3(2) AND (3).

APPENDIX A.2 LIST OF SIGNATORIES TO THE POWERS REFERRED TO IN ARTICLE 3(2).

## APPENDIX B

### **Procedures to Apply to Become a Signatory under the 2016 Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (known as the “EMMoU”)**

#### **Section 1. Application to Become a Signatory to the EMMoU**

1.1 Eligible members: Governmental regulatory bodies that are Ordinary or Associate Members of IOSCO who are already signatories to the MMoU are eligible to make an application to become a signatory to the EMMoU, at any time. Members who are not already signatories to the MMoU must first or simultaneously make an application to the MMoU to become a signatory to the EMMoU. Applications must be submitted to the IOSCO Secretary General. In addition, non-members who are securities regulatory bodies and who wish to become IOSCO Ordinary Members are also eligible to make an application to become a signatory to the EMMoU simultaneously with, or subsequent to, their application to become a signatory to the MMoU, with actual signing contingent upon membership.

1.2 Application to the EMMoU only: An applicant who is already a signatory to the MMoU may apply to become a signatory to the EMMoU, or an applicant who is already a signatory to Appendix A.2 of the EMMoU may apply to become a signatory to Appendix A.1 of the EMMoU, by submitting an application that must provide a complete response to all relevant questions in the EMMoU Questionnaire contained in Section 4 of this Appendix B and copies of the applicant’s supporting laws, rules and regulations as indicated in the questionnaire. Responses should identify and explain the applicant’s legal authority to meet the specific provisions cited in the questionnaire.

1.3 Application to both the MMoU and the EMMoU: An applicant may apply, at the same time, to become a signatory to both the MMoU and the EMMoU by submitting (1) a complete response to the questionnaire for Appendix B of the MMoU, (2) a complete response for the relevant section of the EMMoU Questionnaire contained in Section 4 of this Appendix B, and (3) copies of the applicant’s supporting laws, rules and regulations as indicated in the respective questionnaires. Responses should identify and explain the applicant’s legal authority to meet the specific provisions cited in the questionnaires.

1.4 Verification of applications: The Screening Group, with administrative support provided by the Secretary General, will verify questionnaire responses utilizing existing Screening Group verification teams, which include members with substantial expertise in enforcement of securities and derivatives laws, as well as expertise in cross-border information sharing. The Screening Group may establish additional verification teams or adjust the composition of the verification teams, as necessary. The Screening Group has discretion to invite other IOSCO members to participate in the verification teams.

1.5 The verification of the questionnaire will be limited to verification that the questionnaire responses accurately reflect the legal authority of the applicant to comply with the relevant EMMoU provisions based on the laws, rules and regulations cited in the responses and any supplemental information provided by the applicant. Based on a verification team’s review of an applicant’s

questionnaire responses and any follow-up communications with the applicant, it will make a recommendation to the Screening Group concerning the applicant's ability to comply with each relevant EMMoU provision.

1.6 Screening Group recommendations: The Screening Group will make recommendations concerning its verification of an applicant's responses to a decision making group comprised of the Chairpersons of the IOSCO Board, the Growth and Emerging Markets Committee and the MMoU Monitoring Group (the "Decision Making Group" also known as the "Committee of Chairs"). Prior to making any negative recommendation on an application, the Screening Group will notify the applicant in writing, identifying the specific EMMoU provisions for which the Screening Group has determined the applicant lacks legal authority. The applicant will have an opportunity, upon request, to be heard by the Screening Group.

1.7 Decision Making Group decision: The Decision Making Group, after consultation with the Chairperson of the relevant Regional Committee, will decide whether to accept or reject an application to become a signatory to the EMMoU, or whether to accept or reject an application to transfer from Appendix A.2 to Appendix A.1 of the EMMoU, based on the Screening Group's recommendations.

1.8 Decision Making Group acceptance: Upon an affirmative decision by the Decision Making Group of an applicant's legal authority to meet all of the relevant requirements of the EMMoU, the applicant will be invited by IOSCO to become a signatory to Appendix A.1 or Appendix A.2 of the EMMoU, as appropriate.

1.9 Decision Making Group rejection: Prior to making any negative decision, the Decision Making Group will notify the applicant in writing, identifying the specific EMMoU provisions for which it has been determined the applicant lacks legal authority. The applicant will have an opportunity, upon request, to be heard by the Decision Making Group.

1.10 Signatories: Signatories means a signatory to the EMMoU which is either a signatory to Appendix A.1 or A.2 (known as the "Signatories"). Appendix A.1 to the EMMoU will contain the names of the Signatories that hold all of the EMMoU powers contained in Article 3 of the EMMoU and the date each Authority signed. Appendix A.2 to the EMMoU will contain the names of the Signatories that hold all of the EMMoU powers contained in Article 3 of the EMMoU, except those contained in Article 3(3) of the EMMoU, and the date each Authority signed. The IOSCO Secretary General will maintain and update Appendix A.1 and Appendix A.2 of the EMMoU, including the date each Authority became a signatory to the relevant appendix. The responses of all Signatories provided in support of their applications will be posted on the IOSCO members-only website.

1.11 Review of Decision Making Group: Decisions of the Decision Making Group shall be made under the authority of the IOSCO Board. However, 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. 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.

1.12 Any applicant who has not been successful in becoming a signatory to the EMMoU, or in transferring from Appendix A.2 to Appendix A.1 to the EMMoU, may re-apply to become a signatory or to transfer, in accordance with the procedures in Section 2, once it obtains the legal authority that the Screening Group determined the applicant lacked in its prior application(s).

## **Section 2. Reapplication to Become a Signatory to the EMMoU**

2.1 After obtaining the legal authority identified as lacking during the application to become a signatory under Section 1, a member may again apply to become a signatory to the EMMoU, or to transfer from Appendix A.2 to Appendix A.1 to the EMMoU, by submitting an updated response to all the relevant questions in the EMMoU Questionnaire contained in Section 4 of this Appendix B, identifying changes to the legal authority previously identified as lacking and confirming the continued accuracy of all other information previously submitted.

2.2 A re-application under Section 2.1 will be subject to the same review and verification process described in Section 1. In the event that review and verification determine the applicant meets all of the requirements, then the applicant will be invited by IOSCO to become a signatory and to sign Appendix A.1 or Appendix A.2 of the EMMoU, as appropriate. The updated response provided in support of the application will be posted on the IOSCO members-only website.

## **Section 3. Monitoring of the Operation of the EMMoU**

3.1 Updating responses: In order to ensure the effective monitoring of the operation of the EMMoU, Signatories will update their responses to the EMMoU Questionnaire posted on the IOSCO members-only website, as appropriate.

3.2 Periodic consultations: The EMMoU, in Article 8(1), provides for periodic consultation about certain significant, enumerated matters of common concern to the Signatories, respectively, with a view to improving their operation. Such consultations will be conducted by the Signatories within the MMoU Monitoring Group ("Monitoring Group"), with administrative support provided by the Secretary General. Matters that are relevant to both the MMoU and the EMMoU will be discussed in the MMoU Monitoring Group. The MMoU Monitoring Group may also discuss matters of sole relevance to the EMMoU; however, only the Signatories to the EMMoU within the Monitoring Group may vote on such matters. The Monitoring Group may, in consultation with the IOSCO Board, establish further separate procedures to facilitate periodic consultations regarding the EMMoU, as appropriate. Such procedures will include written notice to the Signatories of the issues to be considered during consultations, and an opportunity to be heard and respond. The Monitoring Group may obtain the assistance of other IOSCO bodies, including the Screening Group, in performing its consultation and recommendation functions.

3.3 Demonstrated change in willingness or ability to comply: The Signatories to the Monitoring Group have discretion to consider and recommend a range of possible options to encourage compliance in the

event that a signatory to the EMMoU demonstrates a change in its willingness or ability to meet the standards of the relevant provisions of the EMMoU. Recommendations might include: full peer review of an EMMoU signatory that may not be in compliance; providing a period of time for the EMMoU signatory to comply; public notice of non-compliance; suspension from participation in the EMMoU; transfer from Appendix A.1 of the EMMoU to Appendix A.2 of the EMMoU; or termination from participation in the EMMoU, as provided in Article 10(4)(b) of the EMMoU.

3.4 Recommendations to Decision Making Group: If further action is necessary as a result of such consultations, the Monitoring Group will forward its recommendation to the Decision Making Group. The Decision Making Group will consider the Monitoring Group's recommendations and, where appropriate, take action. Prior to making any negative determination on such a Monitoring Group recommendation, the Decision Making Group, after consultation with the Chairperson of the relevant Regional Committee, will notify the EMMoU signatory in writing, identifying the specific standards or provisions of the EMMoU which the Monitoring Group has determined the signatory is either unwilling or unable to meet. The signatory will have an opportunity, upon request, to be heard by the Decision Making Group.

3.5 Decision Making Group determinations: If the Decision Making Group determines, following notice and an opportunity to be heard, that there has been a demonstrated change in the willingness or ability of a signatory to the EMMoU to meet the relevant provisions of the EMMoU as provided in Article 8(1)(b) of the EMMoU, the Decision Making Group will notify the signatory of the determination and provide the signatory with a written explanation of the determination. The Decision Making Group will establish procedures to provide the signatory with an opportunity, upon request, to be heard and seek review of the determination. Upon a final determination, the Decision Making Group will decide whether to accept or reject the recommendation of the Monitoring Group, to take other action to encourage the signatory's compliance with the EMMoU, or where appropriate, to transfer a signatory from Appendix A.1 of the EMMoU to Appendix A.2 of the EMMoU, or to terminate the signatory's participation in the EMMoU as provided in Article 10(4)(b) of the EMMoU.

3.6 Review of Decision Making Group: Decisions of the Decision Making Group shall be made under the authority of the IOSCO Board. In case of a decision of a transfer from Appendix A.1 of the EMMoU to Appendix A.2 of the EMMoU or termination of participation in the EMMoU, if dissatisfied with the decision of the Decision Making Group, the member who is the subject of that decision may request, by written notice to the Secretary General, that the decision be reviewed by the IOSCO Board. 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.

3.7 Amendments: Any decision involving an amendment to the EMMoU requires a unanimous decision by the Signatories.

## Section 4. Questionnaire

### GENERAL INSTRUCTIONS:

The responses and the accompanying material (including laws, rules and regulations) should be provided in English.

Being a signatory to the MMoU is a requirement to signing the EMMoU. If you are not already a signatory to the MMoU, you must submit a separate application for the MMoU prior to or simultaneously with your EMMoU application. The EMMoU Questionnaire asks only for information indicating your ability to comply with the provisions of the EMMoU.

Your current MMoU/EMMoU signatory status and the EMMoU appendix to which you are applying determine which questionnaires and which questions you should complete. The table below provides guidance as to which questionnaires and which questions are required:

<b>Current Status:</b>	<b>Submitting an application to become:</b>	<b>Complete responses must be provided to the following:</b>
Non-members who are securities regulatory bodies who wish to become IOSCO Ordinary Members	Signatory to the MMoU (may only sign after being accepted as an IOSCO member)	Appendix B to the MMoU
	Signatory to the MMoU and Appendix A.1 to the EMMoU (may only sign after being accepted as an IOSCO member)	Appendix B to the MMoU and each question in the EMMoU Questionnaire below
	Signatory to the MMoU and Appendix A.2 to the EMMoU (may only sign after being accepted as an IOSCO member)	Appendix B to the MMoU and each question in the EMMoU Questionnaire below except those marked "Article 3(3) only"
Eligible member that is neither a signatory to the MMoU nor the EMMoU	Signatory to the MMoU	Appendix B to the MMoU
	Signatory to the MMoU and Appendix A.1 to the EMMoU	Appendix B to the MMoU and each question in the EMMoU Questionnaire below
	Signatory to the MMoU and Appendix A.2 to the EMMoU	Appendix B to the MMoU and each question in the EMMoU Questionnaire below except those marked "Article 3(3) only"
Signatory to the MMoU	Signatory to Appendix A.1 to the EMMoU	Each question in the EMMoU Questionnaire below
	Signatory to Appendix A.2 to the EMMoU	Each question in the EMMoU Questionnaire below except those marked "Article 3(3) only"
Signatory to the MMoU and Appendix A.2 to the EMMoU	Signatory to Appendix A.1 to the EMMoU	Only those questions in the EMMoU Questionnaire below that are marked "Article 3(3) only"

In each case, please provide copies of the laws, rules and regulations that support your responses.

Responses to the questionnaire should be sent to the IOSCO Secretary General. Completed questionnaires will be reviewed by the Screening Group in a manner authorized by IOSCO.

\* \* \* \* \*

#### **EMMOU QUESTIONNAIRE:**

**Applicants to Appendix A.1 of the EMMoU who are not already signatories to Appendix A.2 must provide complete responses to each question below. Applicants to Appendix A.2 of the EMMoU must provide complete responses to each question below except those questions identified as “Article 3(3) only.” Applicants to Appendix A.1 of the EMMoU who are already signatories to Appendix A.2 must provide complete responses only to those questions identified as “Article 3(3) only”.**

Question 1 Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you, or a separate governmental body in your jurisdiction, to provide the following assistance from any Persons regarding the matters set forth in the request for assistance, including, but not limited to:

1.1 Obtaining Information sufficient to reconstruct all orders (whether or not executed) 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;

(as required by Article 3(2)(b)(i) of the EMMoU)

1.2 Obtaining Information that identifies or traces funds, or assets into which those funds are converted;

(as required by Article 3(2)(b)(iii) of the EMMoU)

1.3 Obtaining auditing information including, but not limited to, audit work papers, communications and other information relating to the audit or review of financial statements;

(as required by Article 3(2)(b)(v) of the EMMoU)

1.4 Where permissible, (a) requiring or requesting the freeze or sequestration of funds or assets located in your jurisdiction, or, if such assistance is not available, (b) informing the authority requesting 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;

(as required by Article 3(2)(d) of the EMMoU)

- 1.5 **Article 3(3) only:** Obtaining subscriber records held or maintained by telephone service providers who are located within your jurisdiction 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; and

(as required by Article 3(3)(i) of the EMMoU)

- 1.6 **Article 3(3) only:** Obtaining subscriber records held or maintained by internet service providers, and other electronic communication providers, who are located within your jurisdiction, that identify subscribers (name and address), payment details, length of service, type of service utilized, network addresses, and session times/dates and durations;

(as required by Article 3(3)(ii) of the EMMoU)

- 1.7 **Article 3(3) only:** Obtaining recordings of telephone conversations or other electronic communications held or maintained by Persons regulated by you.

(as required by Article 3(3)(iii) of the EMMoU)

Question 2 Please identify and explain the general or specific provision of your laws, rules and regulations (and provide copies of these provisions) that enable you to compel the physical attendance to take or, where permissible, compel and provide the statement or testimony under oath of, a natural person or representative of a legal person or other entity including, but not limited to, a corporation, a partnership or other arrangement such as a trust, 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 your jurisdiction;

(as required by Article 3(2)(c) of the EMMoU)

Question 3 Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you to provide to foreign authorities:

- 3.1 Information to reconstruct all orders as described in 1.1, above;

- 3.2 Information to trace funds as described in 1.2, above;

- 3.3 Audit work papers as described in 1.3, above;

- 3.4 Asset freeze assistance as described in 1.4(a) or asset freeze guidance as described in 1.4(b), above;

- 3.5 **Article 3(3) only:** Telephone subscriber records as described in 1.5, above; and

- 3.6 **Article 3(3) only:** Internet Service Provider records as described in 1.6, above;

- 3.7 **Article 3(3) only:** Recordings held by registered entities as described in 1.7, above;
- 3.8 Compelled physical attendance for statement or testimony under oath as described in 2 above.

Question 4 Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you to provide the information and documents and other assistance referenced in Questions 1 and 2 above, as applicable, to foreign authorities in response to requests concerning the following:

- 4.1 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;
- 4.2 The registration, issuance, purchase, offer, or sale of securities and derivatives and other financial instruments, filing and reporting requirements, and the maintaining of accurate books and records related thereto;
- 4.3 Market intermediaries, including investment and trading advisers, collective investment schemes, brokers, dealers, transfer agents, associated or affiliated Persons, and other market participants who are required to be licensed or registered or exempt therefrom; and
- 4.4 Markets, exchanges, clearing and settlement entities, and financial market infrastructures, where applicable.

(as required by Article 1(4) of the EMMoU)

Question 5 Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you to provide assistance referenced in Question 4 above to a foreign authority, regardless of whether you have an independent interest in the matter.

(as required by Article 3 of the EMMoU)

Question 6 Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that require maintenance of the following Information (including the period of time for which such information or documents are required to be maintained).

- 6.1 Information to reconstruct all orders as described in 1.1, above; and
- 6.2 Information to trace funds as described in 1.2, above.

(as required by Article 3(2) of the EMMoU)

Question 7 Please identify and explain (and provide copies of) any domestic secrecy or blocking laws, rules or regulations that relate to the collection for, or provision to, foreign authorities of:

- 7.1 Information to reconstruct all orders as described in 1.1, above;
- 7.2 Information to trace funds as described in 1.2, above;
- 7.3 Audit work papers as described in 1.3, above;
- 7.4 Asset freeze guidance as described in 1.4, above;
- 7.5 **Article 3(3) only:** Telephone subscriber records as described in 1.5, above; and
- 7.6 **Article 3(3) only:** Internet Service Provider records as described in 1.6, above;
- 7.7 **Article 3(3) only:** Recordings held by registered entities as described in 1.7, above;
- 7.8 Compelled attendance for testimony as described in 2 above;

(as required by Article 2(1)(b) of the EMMoU)

Question 8 Please identify and explain (and provide copies of) any specific or general provisions of your laws, rules and regulations which restrict or limit the following uses by foreign authorities of the information or assistance identified in 1.1 – 1.4 and 2, 1.5 - 1.7 if applicable, and provided by you to another authority:

- 8.1 for the purpose of ensuring compliance with (including investigation of potential violations of) laws and regulations related to:
  - (a) Misconduct as described in 4.1 above;
  - (b) Registration, issuance, purchase, offer, or sale, etc. as described in 4.2 above;
  - (c) Market intermediaries as described in 4.3 above; and
  - (d) Markets, exchanges, clearing and settlement entities, and financial market infrastructures as described in 4.4 above.

(as required by Article 1(4) of the EMMoU)

- 8.2 for the purpose of conducting a civil or administrative enforcement proceeding, assisting in a self-regulatory organization's surveillance or enforcement activities or assisting in a criminal prosecution.

(as required by Article 6(1) of the EMMoU)

Question 9 Please identify and explain (and provide copies of) any general or specific provisions of your laws, rules and regulations that provide for the confidentiality of:

- 9.1 requests for assistance made to you by foreign authorities, the contents of such requests, any matters arising under such requests, including consultations between or among the authorities, and unsolicited assistance;

(as required by Article 7(1) of the EMMoU)

and

- 9.2 documents and information received from foreign authorities.

(as required by Article 7(2) of the EMMoU)

\* \* END OF QUESTIONNAIRE \* \*

#### APPENDIX C

<b>FORM FOR DRAFTING REQUESTS FOR INFORMATION</b>
This request is being made pursuant to the provisions of the IOSCO Enhanced MMOU concerning consultation and cooperation and the exchange of information.
<b>Background:</b>
Description of the facts underlying the matter or investigation (Article 4(2)(a)), including, but not limited to: <ul style="list-style-type: none"><li>• The entities/individuals involved and whether regulated or not by the Requesting Authority and/or Requested Authority (if known);</li><li>• The type of scheme;</li><li>• The location of investors;</li><li>• The location of affected markets and whether regulated or not by the Requesting Authority and/or Requested Authority (if known);</li><li>• The timeframe of the suspected misconduct;</li><li>• The nature of the suspected misconduct;</li><li>• The location of assets; and</li><li>• A chronology of relevant events.</li></ul>
Description of the information needed or assistance sought (e.g., account opening documents, periodic account statements, trade confirmations, etc.) (Article 4) including, but not limited to:

<ul style="list-style-type: none"> <li>• Time period for which documents should be gathered; and</li> <li>• Information useful for identifying the relevant documents (e.g., account number, name, email address, address, date of birth of account holder, names of entities believed to control the accounts).</li> </ul>
<p>Description of information that might be of assistance to the Requested Authority in fulfilling the request (Article 4(2)(c)), including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Sources of information (e.g., regulated individuals and entities, investors, knowledgeable insiders);</li> <li>• Information useful for identifying the individual(s) from whom statements are needed (e.g., name, address, telephone number, email address); and</li> <li>• Preferred form in which information should be gathered (e.g. video recording, audio recording, file in original format, transcript).</li> </ul>
<p>Description of the purpose for which the information or assistance is sought (Article 4(2)(a) and (b)).</p>
<p><b>Laws and regulations:</b></p>
<p>Description of the securities or derivatives laws that may have been violated (Article 4(2)(f)), including:</p> <ul style="list-style-type: none"> <li>• A brief description of the provisions; and</li> <li>• An explanation of how the activities being investigated may have constituted, <i>or are otherwise related to</i>, violations of such provisions.</li> </ul>
<p><b>Execution</b></p>
<p>Desired time for response, including an explanation of any special timing considerations (Article 4(2)(e)).</p>
<p>Explanation of any special interview considerations (Article 4(2)(d)) including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Whether compulsion is specifically requested or not;</li> <li>• Whether an oath is requested;</li> <li>• Whether the Requesting Authority has any particular legal requirements/impediments that should be taken into consideration;</li> <li>• Whether the Requesting Authority seeks to participate in an interview; and</li> <li>• Language considerations.</li> </ul>
<p>Explanation of any other special precautions that should be taken in the collection of the information sought (4(2)(d)).</p>
<p>Description of the uses for which consent is sought under Article 6(2).</p>
<p>Dates of previous requests in the same matter.</p>
<p>Preferred manner in which information is to be transmitted (e.g., telephone, courier, secure e- mail, pdf, file transfer protocol site.)</p>

<b>Other</b>
Contact information of Requesting Authority including, at a minimum: <ul style="list-style-type: none"><li>• Name of contact and Position;</li><li>• Telephone number; and</li><li>• E-mail address;</li><li>• Address.</li></ul>
Other relevant information.