

Presidents Committee
of the
International Organization of Securities Commissions

Resolution on the Implementation of the Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

(Resolution 1/2017)

CONSIDERING that in May 2016 the Presidents Committee endorsed the text of the IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO EMMoU);

CONSIDERING the mandate from the Presidents Committee to the IOSCO Board to develop, in consultation with the Growth and Emerging Markets Committee and the four Regional Committees, a proposal on arrangements for implementation of the IOSCO EMMoU, for approval by the Presidents Committee;

CONSIDERING the decision of the IOSCO Board in October 2016 to recommend to the President's Committee a modular two-tier implementation approach;

Considering that the Annex to the May 2016 Resolution expressly provided that sections of the IOSCO EMMoU relevant to implementation were potentially subject to drafting changes, dependent on the arrangements ultimately agreed; and

Considering the changes to the relevant sections of the IOSCO EMMoU in the Annex I to this Resolution, to take into account the Board recommended two-tier implementation approach;

IT IS HEREBY RESOLVED that:

1. The Presidents Committee approves the implementation of the IOSCO EMMoU as set forth in the text of the IOSCO EMMoU attached as Annex I to this Resolution, pursuant to which:
 - a. The IOSCO EMMoU will have three appendices. Appendix A will have two tiers: Appendix A.1 listing signatories that hold the whole set of enhanced powers referred to in Article 3 (2) and (3); and Appendix A. 2 listing signatories that hold the powers referred to under Article 3 (2), but not the powers under Article 3 (3);
 - b. A jurisdiction will be an IOSCO EMMoU signatory if it is accepted as signatory of either of the two appendices;

- c. Eligible Members of IOSCO will be able to sign the EMMoU once the related procedure, including the questionnaire for applications to Appendix A.1 or Appendix A.2 have been established.
2. The Presidents Committee delegates to the Board the approval of Appendix B of the IOSCO EMMoU which will set forth the procedures to become a signatory, including the related questionnaires and matters related to the monitoring of the operation of the IOSCO EMMoU, and Appendix C containing a template for drafting the requests for information, as well as any other necessary operational or administrative aspects, which need to be in place by 31 March 2017.
3. The IOSCO EMMoU will be published on the IOSCO website.

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).