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International Organization of Securities Commissions
Organisation internationale des commissions de valeurs
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The MMoU: Ten years of Enhancing Cross-border Enforcement Cooperation

The Annual Conference of the International Organization of Securities Commissions (IOSCO) in Beijing marks the 10th anniversary of the Multilateral Memorandum of Understanding¹, the instrument used by securities regulators to help ensure effective global regulation and preserve and strengthen securities markets around the globe.

In Beijing, the MMoU is being hailed as the pre-eminent standard for international enforcement cooperation and information sharing. Established in May 2002, the MMoU has provided securities regulators with the tools for combating the cross-border fraud and misconduct that can weaken global markets and undermine investor confidence.

“The MMoU has created a groundswell change in what securities regulators are able to do,” said Mark Steward, Executive Director of Enforcement at the Hong Kong Securities and Futures Commission.

“Cross-border cases that could not have been investigated 10 years ago can now be investigated and brought before relevant courts and tribunals. This is happening with increasing frequency in Hong Kong, with a number of insider-dealing and market-manipulation cases involving foreign defendants before the courts and tribunals in Hong Kong,” Mr. Steward said.

¹ The full name is Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

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He added: “This would not have been conceivable before the MMoU. It is sending a powerful message.”

That sentiment was echoed by Ethiopis Tafara, Director of the Office of International Affairs of the US Securities and Exchanges Commission, who said, “Throughout the ten years that the US SEC has been a signatory to the IOSCO MMoU, the ability to turn to an increasing number of information-sharing partners through the MMoU has been critical to the success of many of our investigations and proceedings. Now with more than 80 signatories, the MMoU's breadth spans the globe many times over telling fraudsters there is nowhere to hide.”

The MMoU provides a mechanism through which securities regulators share with each other essential investigative material, such as beneficial ownership information, and securities and derivatives transaction records, including bank and brokerage records. It sets out specific requirements for the exchange of information, ensuring that no domestic banking secrecy, blocking laws or regulations prevent the provision of enforcement information among securities regulators.

Georgina Philippou, the Co-Chair of the MMoU Screening Group, said: “The MMoU has made a real difference in the world of international enforcement, raising the standards of enforcement action, encouraging cooperation among international regulators and making it more difficult to conduct market misconduct in an increasingly cross border environment.”

Four IOSCO members signed the MMoU today during a ceremony in Beijing, bringing to 86 the total number of signatories. Together these participants cover more than 94% of the world's securities markets. The new signatories include:

- The Labuan Financial Services Authority
- The Peruvian Superintendencia del Mercado de Valores
- The Egyptian Financial Supervisory Authority
- The Mauritius Financial Services Commission

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The increase in the number of signatories over the last decade has led to a sharp upsurge in cross-border cooperation, enabling regulators to investigate a growing number of insider traders, fraudsters and other criminal offenders. In 2006, a total of 520 requests for assistance were made pursuant to the MMoU; by 2010, the annual figure had exceeded 1,600 and use of the MMoU continues to increase as the list of signatories expands.

The MMoU “has enhanced the SC's supervision and enforcement capabilities in dealing with cross-border market abuse, particularly in the area of financial fraud and insider trading, and has raised the level of overall investor protection in our market,” said Neetasha Rauf the head of International Affairs at the Securities Commission Malaysia (SC).

Ms. Rauf added: “It has enabled the SC’s investigators to obtain valuable information and evidence to support our enforcement actions, including obtaining securities and banking records, recording statements on behalf of foreign regulators, procuring affidavits and locating key witnesses.”

IOSCO is committed to eradicating any potential safe havens for wrong-doers, by ensuring that those of its members who are yet to become signatories to the MMoU do so as quickly as possible.

To further expand its network for cross-border cooperation, IOSCO today approved a resolution that allows it to take tougher measures to encourage compliance by IOSCO members who have not yet signed the MMoU. The new resolution is designed to assist these non-signatories in overcoming the obstacles they often encounter in securing support from their governments or legislatures for implementing the legal and regulatory changes required for compliance with the MMoU.

The resolution calls for the following measures:

- IOSCO will ensure that a comprehensive program of technical assistance and political support is made available to non-signatory members to enable them to make the changes necessary to sign the MMoU.

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- From 1 January 2013, IOSCO will publish on its website a *watch list* of those members who have not become MMoU signatories and;
- will consider further measures to persuade non-signatory members to sign the MMoU, such as limiting their ability to influence IOSCO decision making.

As more IOSCO members sign the MMoU, they expand the network for cooperation and information gathering that works to improve the enforcement activities of each and every one. “Like a fine wine, the power of the MMoU to benefit investors grows better with age,” said Mr. Tafara of the US SEC.

The Australian Securities & Investments Commission’s “ability to regulate financial markets, financial service providers and protect investors is greatly enhanced by the continued cooperation of its international counterparts,” said Mr. David McGuinness, Senior Executive Leader of Financial Services at the Australian Securities and Investments Commission (ASIC).

He added: “The IOSCO MMoU is the benchmark for international cooperation in securities and derivatives enforcement activities and is crucial in enabling ASIC to target, investigate and obtain the international assistance it needs to pursue enforcement action when insider trading, illegal fundraising and other financial services misconduct have international connections.”

Before the MMoU existed, IOSCO members relied upon bilateral agreements to obtain cross-border information and technical assistance. Those accords were both limited in scope and hampered by legal impediments to the free flow of information between jurisdictions.

For signatories of the MMoU, those legal obstacles to compliance have been removed. Examples of successful enforcement cooperation now abound throughout the world. Here are three involving regulators in Europe, Latin America, North America and Asia-Pacific:

- In 2010-11, ASIC “was significantly assisted in its enforcement of insider trading misconduct, by the co-operation under the MMoU of six international regulators. ASIC’s investigation

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involved off shore trading by a former fund manager employed by Macquarie Bank, Mr. Oswyn de Silva. As a result of the urgent assistance provided by the overseas jurisdictions, ASIC was successful in obtaining, within less than seven months, civil restraining orders and criminal conviction for insider trading which had resulted in a gross profit to Mr. de Silva of approximately AUD 1.41m.” *David McGuinness, Senior Executive Leader Financial Services, Australian Securities and Investments Commission (ASIC).*

- In 2011, the US Securities and Exchanges Commission (SEC) filed an action against Highview Point Partners, LLC, a US-based investment advisor, for engaging in a multi-year Ponzi scheme involving hundreds of millions of dollars. Highview was added as a defendant to a case that the SEC filed previously, which alleged that Francisco Illarramendi and his unregistered investment advisory firm, MK Capital Management LLC, had misappropriated at least \$53 million in investor assets and misused two hedge funds they managed for Ponzi-like activity. The SEC subsequently announced that \$230 million had been returned from accounts located overseas, assistance having been provided by the Netherlands Authority for the Financial Markets and Swiss Financial Market Supervisory Authority. <http://www.sec.gov>
- In April 2012, the Commissione Nazionale per le Società e la Borsa of Italy (Consob) “decided to sanction Mr. Andre Esteves, the CEO and controlling shareholder of Banco BTG Pactual, a major Brazilian investment bank. The sanctions, which included a fine, a six-month disqualification and confiscation of assets, were related to a case of insider trading carried out in 2007. Consob obtained the assistance of the Comissão de Valores Mobiliários (CVM) to formally notify Mr Esteves in Brazil. At the same time, BTG Pactual had a major public offering pending in Brazil, subject to registration with the CVM. Based on information provided by Consob, the CVM were able to act quickly to order the updating of the prospectus for the offering, the publication of a material event notice and the granting of a five-day withdrawal right period for retail investors with acquisition reservations.”² *Eduardo Gomes, Head of International Affairs, Comissão de Valores Mobiliários (CVM) Brasil.*

² Mr. Esteves may be appealing the decision.

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NOTES FOR EDITORS

1. The list of signatories to the IOSCO MMoU can be found [here](#).
2. IOSCO is the leading international policy forum for securities regulators. The organization's membership regulates more than 95% of the world's securities markets in over 100 jurisdictions and its membership is steadily growing.
3. IOSCO aims through its permanent structures:
 - to cooperate in developing, implementing and promoting adherence to internationally recognised and consistent standards of regulation, oversight and enforcement in order to protect investors, maintain fair, efficient and transparent markets, and seek to address systemic risks;
 - to enhance investor protection and promote investor confidence in the integrity of securities markets, through strengthened information exchange and cooperation in enforcement against misconduct and in supervision of markets and market intermediaries; and
 - to exchange information at both global and regional levels on their respective experiences in order to assist the development of markets, strengthen market infrastructure and implement appropriate regulation.

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Carlta Vitzthum

Outside office hours

Email:

Website:

Follow IOSCO on Twitter [here](#).

34 91 787 0419

34 697 449 639

carlta@iosco.org

www.iosco.org