



ASIC
Australian Securities &
Investments Commission

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and Investments Commission**

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20TH ANNIVERSARY IOSCO MMOU

ASIC Chair: Joseph Longo

This Multilateral MOU has proven itself to be a truly practical and effective mechanism to support ASIC's investigative and enforcement work – it allows us to ask for information from multiple jurisdictions, establishes a standard for the assistance provided, and makes our investigations more efficient. For ASIC it has been a key tool for combatting cross-border misconduct.

Background to ASIC signing the MMOU

ASIC is very pleased that we were one of the first signatories to the MMOU.

The MMOU was signed when ASIC was dealing with a new type of scam. The early 2000's saw the emergence of boiler room share scams.

While investment scams were not new, boiler room scams were global operations, which posed significant challenges for regulators.

These scams involved:

- Overseas operators making unsolicited phone calls to Australian investors;
- These call centres would typically be based in Asia but operated by foreign nationals;
- The callers would falsely claim to be from well known financial institutions;
- The callers would also make false representations about the profits to be made from purchasing speculative stocks trading on US OTC markets;
- The shares would be purchased through electronic funds transfer to an overseas bank located in well known financial centres;

Investors would then become victims of a “pump and dump” scheme.

Each part of the scam was in a different jurisdiction. No one regulator could use their investigative powers to gather the evidence needed to take effect enforcement action.

The MMOU was a much needed tool.

It enabled ASIC to request assistance from regulators in each of the jurisdictions being used for these types of scams, with an expectation that the assistance would be provided.

The MMOU also introduced efficiencies into ASIC's investigations. ASIC could use a template letter for all its MMOU requests for an investigation and didn't have to tailor request to the requirements of each bilateral MOU.

Adapting to change

The MMOU has also adapted well to market developments and emerging trends.

The growth of the internet has meant that the boiler room scams of the early 2000 have evolved and moved on-line globally.

Pop up ads appear on web pages offering opportunities to invest or trade in OTC derivatives, foreign currency or crypto.

A high proportion of these offerings are scams. Even if they aren't, no mention is made on the slick web sites promoting these products of how risky these products are.

One such web-site “Titantrade” offered trading in binary options.

ASIC's investigation into Titantrade identified that funds were transferred offshore within 48 hours of being deposited into an Australian bank account by Australian investors in these binary options.

In August 2016, ASIC made MMOU requests to 24 jurisdictions. These requests sought from each regulator:

- any information the regulator held on file about 27 recipients of funds transferred;
- any information the regulator held on file about Titantrade and the persons of interest;
- any information about the location of the persons of interest;
- any information about the location of the web site;

- information about whether trading in binary options required a licence in their jurisdiction.

The assistance provided helped ASIC identify that the website was operated by a company based in the Seychelles and then the Marshall Islands, locate the persons of interest and provide key evidence to establish that Titantrade was a scam.

The investigation resulted in ASIC issuing a public warning and successful enforcement action.

The Court found that an Australian company and 2 Australian residents who were providing payment agency services to the operators of Titantrade web site, were engaged in providing unlicensed financial services. They were also found to have failed to provide disclosure statements to Australian investors for the binary options.

The Court also made findings against the offshore company operating the web site, finding that it had engaged in unconscionable conduct and had misled and deceived Australian investors.

ASIC's public warning also prompted a number of jurisdictions whose residents were also targeted by Titantrade to contact ASIC.

MMOU referrals

Proactive MMOU referrals are also a valuable tool in bringing to ASIC's attention potential misconduct by our regulated population.

In April 2019, ASIC issued a media release with a warning to Australian Financial Services Licensees offering OTC derivatives to retail investors located overseas.

The warning was that they may be providing unlicensed or unauthorised services in those jurisdictions; and that ASIC would consider whether breaching overseas laws is consistent with their obligations under Australian law.

We advised these licensees to seek legal advice about making these offers to overseas investors and to cease any non-compliant activity immediately.

This media release was a direct result of concerns raised by some of our overseas counterparts.

Regulatory engagement

One of the key benefits of the MMOU is that it has enabled ASIC to obtain enforcement assistance from jurisdictions that we had never dealt with before.

ASIC recently needed to contact regulators who had provided assistance under the MMOU with an investigation of alleged breaches of continuous disclosure requirements.

We contacted regulators in 11 jurisdictions.

This included jurisdictions such as Singapore, UK and US that we regularly engage with given geographical proximity or market integration.

Others such as Czech Republic and Romania, we may never have had any engagement with, but for the MMOU.

We have found that the MMOU is the point of first contact - the success of which encourages further engagement beyond enforcement cooperation.

MMOU: Going Forward

The MMOU is still a key tool for combatting cross border misconduct. ASIC has already received MMOU requests concerning crypto currency and “digital assets” scams and misconduct.

Combatting scams remains one of ASIC's strategic priorities.


JOSEPH LONGO
CHAIR