

Enhanced MMoU

The background to the E-MMoU

Established in 2002, the current Multilateral Memorandum of Understanding on cooperation and the exchange of information has provided securities regulators with a vital tool for combating cross-border fraud and misconduct. However, capital markets have undergone sweeping changes in recent years, driven by technology, and presenting fresh challenges to regulators.

IOSCO resolved in 2010 to respond to these challenges by developing *“A further standard beyond the existing IOSCO MMoU, taking into account developments in market and supervisory and enforcement practices.”*

IOSCO has since drafted the text of the new Enhanced MMoU (‘E-MMoU’), which will be submitted for approval to its Presidents Committee during the IOSCO Annual Conference in May 2016.

The E-MMoU will sit alongside, and co-exist with the MMoU. The MMoU will remain in effect as long as, and until, any signatories continue to wish to use it. The E-MMoU is simply an optional extra standard for those who can and wish to sign it!

What are the key new E-MMOU powers?

The additional “ACFIT” powers that IOSCO believes are necessary to ensure the MMoU’s continued effectiveness in safeguarding market integrity and stability, protecting investors and deterring misconduct and fraud, are referred to as the “ACFIT” powers. These include:

A: To obtain and share Audit papers

C: To Compel attendance for testimony ¹⁾(by being able to apply a sanction in the event of non-compliance)

F: To Freeze assets if possible, or, if not, advise and provide information on how to Freeze assets, at the request of another signatory

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

T: To obtain and share existing telephone records (not including the content of communications) including with the assistance of a court, prosecutor or other authority

Additionally, the EMMoU envisages the obtaining and sharing of existing communications records held by regulated firms.

1) It means compel attendance only, not compel testimony or compel answers to questions.

Why is the new standard important ?

The ACFIT powers will foster greater cross-border enforcement cooperation and assistance among securities regulators, enabling them to respond to the risks and challenges posed by globalisation and advances in technology since 2002. In particular, access to the 'IT' powers is important, because so many market abuse investigations rely on subscriber records and traffic data to show the passage of information.

IOSCO is heartened by the efforts signatories have made to reform legislation and achieve compliance with the current MMoU. The enhanced standard can enable IOSCO to serve as an important agent for further change, to ensure enforcement and co-operation remain effective.

How will the E-MMoU be implemented ?

The IOSCO board is currently discussing potential arrangements for implementation of the EMMoU. That discussion will consider whether the EMMoU should be implemented on the same basis as the IOSCO MMoU in that all signatories must be able to exercise the powers referred to in the MMoU – or whether other arrangements, for example a modular approach focussing on incremental implementation, may be more appropriate. Following consultation with the GEM and regional committees the board will make a recommendation on implementation which will be presented to the Presidents' Committee

Further information

IOSCO seeks to usher in a new era of improved international enforcement cooperation. Implementation of the E-MMoU will be supported by a number of IOSCO initiatives, including technical assistance programs, political support and an on-going communication strategy.

- IOSCO members will have the opportunity to gain a better understanding of the E-MMoU at IOSCO events, committee meetings and relevant seminar training programmes.
- Screening Group members are liaising with their regional peers to raise awareness which can strike a balance between driving a new standard for enforcement co-operation, and giving comfort to members who may fear that they will be left behind.
- The Chair of the IOSCO Screening Group, Georgina Philippou and the Secretary General, Paul Andrews will be doing a tour of the GEM and regional committees to answer any further questions you may have.

