The IOSCO Enhanced Multilateral Memorandum of Understanding. February 2017

NEW MMOU APPROVED (EMMoU)

The IOSCO Annual Conference held in Lima, Peru, in May 2016, approved the new "Enhanced" Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, known as the EMMoU.

The EMMoU introduces major updates to IOSCO's current Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information (MMoU 2002).

The new Memorandum will be open for signature by all of IOSCO's hundred and forty ordinary and associate members once certain operational details have been settled, such as procedures to verify that Authorities have all the powers required and the possibility of phasing-in or partial endorsement if not.

IMPORTANCE OF THE IOSCO MMOUs

The 2002 IOSCO MMoU has been accepted as a global standard for enforcement cooperation by the World Bank, International Monetary Fund and Financial Stability Board. The MMoU sets a general framework for exchanges of information and joint investigations by signatory securities regulators. One hundred and nine Authorities are currently signatories, carrying out around 3,000 information exchanges annually. This makes the MMoU an essential tool for effective supervision of the world's increasingly international and interconnected capital markets.

IMPROVEMENTS IN THE EMMOU: THE "ACFIT" POWERS

The new Enhanced Memorandum or EMMoU expands the scope for cooperation and information exchange to include five new items or areas that the 2002 MoU had not considered and which IOSCO members felt were key to assuring market integrity and stability, protecting investors and countering misconduct and fraud.

Prospective EMMoU signatories must have the necessary powers to carry out these new cooperative actions on request by another signatory member and to share the results of such actions with the member concerned.

The powers required, known as the "ACFIT" powers, are as follows:

(A)udit papers

- Power to obtain audit information, including audit work papers, communications and other related information, and to share such information with other signatory Authorities.

(C)ompel attendance for testimony

- Power to compel a person's physical attendance to testify.
- Also, provided that national law permits, signatory authorities undertake to compel the individual not only to appear in person but also to cooperate in an effective manner, providing statements or testimony under oath, subject to statutory rights and privileges in the jurisdiction of the Authority concerned.
- The Agreement does not require physical compulsion to be used to enforce these obligations. Specifically, a regulator is considered to have the power to compel attendance if it can impose a fine or sanction in the event of non-attendance.

(F)reeze assets

- EMMoU signatory Authorities undertake to implement the freezing or sequestration of funds or assets in their jurisdiction when another signatory so requests. Specifically, the Memorandum states that the requested Authority must enact or directly instigate asset freezes only if their law so permits. If not, it must provide information on the location of the funds or assets concerned and assist to the fullest extent possible with legal proceedings and other measures to freeze or sequester the assets.

(I)nternet records. (T)elephone records

- This means the power to obtain and share with other signatory members the telephone and Internet traffic records (not recordings) held by telecommunications companies. In other words, not the content, but only the metadata or data associated with the phone calls and Internet connections (identification of subscribers, date, time and duration of sessions, payment details for the line concerned, etc.).

- Such data are indispensable if the competent national Authorities are, as part of their supervisory role, to be able to detect and sanction misconduct such as insider trading, fraud or embezzlement by unauthorised firms, which could seriously undermine public confidence in market integrity.

- This power must be exercised in accordance with the constitution and law in each signatory Authority's jurisdiction. It is not expected that Authorities should be able to obtain the information for themselves, but only via procedures involving the authorisation, cooperation or support of the local Courts, Prosecutors or other Authorities.

- In addition, the EMMoU provides for the sharing of telephone recordings and communication records kept by authorised firms (such as telephone or email orders placed by a client with their securities broker or agent).

COEXISTENCE OF THE TWO MEMORANDUMS AND PHASING IN OF THE EMMOU

IOSCO considers the ACFIT powers crucial to ensuring effective supervision and they have therefore been included in the new EMMoU, which aspires to become the new global standard for enforcement cooperation addressing the new needs of regulators confronted by recent market developments.

However, IOSCO members are also aware of the legal, technical and political difficulties that may arise in many jurisdictions when it comes to obtaining the five powers, particularly those relating to the access to telephone and Internet records.

As a result, it has been decided that the 2002 MMoU and the new EMMoU will run alongside each other for an indefinite period.

IOSCO is also working on the details of a two-tier approach to implementation which would allow each Authority, in light of its specific circumstances, to sign up to the Memorandum either in its entirety including all ACFIT powers, or in part, including just the first three (the ACF tier: audit papers, compulsory testimony and freezing of assets) while postponing signature of the telephone and Internet powers to a later date (IT tier).

Links:

For further information, please see the IOSCO website.

IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information: press release.

Original 2002 Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information: text of the MMoU.