G20 DGI-2 Workshop on Recommendation II.20
“Promotion of Data Sharing”

Data Sharing in Cross-Border Enforcement in the Securities Markets: IOSCO MMoU/ EMMoU

IOSCO General Secretariat

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Outline

- Data Sharing Frameworks: IOSCO MMoU /EMMoU
  - What they are
  - How have they evolved
- Data sharing framework
- Motivation for data sharing
- Success factors/Lessons learned
Data sharing Frameworks: IOSCO MMoU and EMMoU

- Information sharing within the context of regulatory enforcement is conducted through the IOSCO MMoU and EMMoU.
- Established in 2002, the MMoU is a global framework for enforcement cooperation between securities regulators.
- The MMoU has 124 signatories and counting.
- The MMoU provides securities regulators with the tools for combating cross-border fraud and misconduct that can weaken global markets and undermine investor confidence.
- The Enhanced MMoU, adopted in 2016, provides for new powers: ACFIT.
- The EMMoU has 17 signatories and counting.
Requirements under the MMoU/EMMoU

- The cardinal requirement – signatories are legally authorised by domestic law to share information with foreign regulators

- The MMoU and EMMoU are non-binding instruments – rely on the voluntary cooperation of the signatories

- The MMoU and EMMoU set out the specific requirements for:
  - what information can be exchanged and how it is to be exchanged;
  - the legal capacity to compel information;
  - the types of information that can be compelled;
  - the legal capacity for sharing information;
  - the permissible use of information; and
  - Confidentiality of information exchanged
Progression in the number of MMoU signatories per year (2002-2019)
Why was the EMMoU adopted?

- significant increase in globalisation and the interconnectedness of financial markets
- to keep pace with technological, societal and market developments
- to raise the international standard
- to bolster deterrence
- to ensure that IOSCO continues to meet its objectives
What is the motivation for Data sharing?

- Securities regulators under the aegis of IOSCO raised the idea for a framework to expand cooperation and information sharing in the securities market regarding regulatory enforcement within cross-border contexts.
- This followed the events of September 2001 in the US for the MMoU and later, the 2008 global financial crisis for the EMMoU.
- Combating cross-border fraud and misconduct that can weaken global markets and undermine investor confidence.
- Bolster deterrence.
- Operationalisation of IOSCO’s standard-setting mandate.
- Meeting IOSCO’s objectives of securities regulation: protecting investors.
- Response to globalisation and interconnectedness of financial markets.
- Response to advances in technology and developments in markets.
What are the MMoU/EMMoU used for?

- Share information to assist in investigations regarding:
  - insider dealing and market manipulation;
  - misrepresentation of material information and other fraudulent or manipulative practices relating to securities and derivatives;
  - solicitation and handling of investor funds, and customer orders;
  - the registration, issuance, offer, or sale of securities and derivatives;
  - the activities of market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers, and transfer agents; and
  - the operations of markets, exchanges, and clearing and settlement entities.
Which types of Data are shared?

- Under the MMOU, information and assistance is provided:
  - to enable reconstruction of all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to these transactions;
  - that identify the beneficial owner and controller of an account; for transactions, including the amount purchased or sold; the time of the transaction; the price of the transaction; and the individual and the bank or broker and brokerage house that handled the transaction;
  - that identify persons who beneficially own or control companies; and
  - taking or compelling a person’s statement or, where permissible, testimony under oath, regarding the potential offence.
Which types of Data are shared?

Under the EMMoU, the following additional information and assistance should be provided:

- audit information
- physical attendance of a witness for testimony
- freezing of assets, if possible or information on how to freeze assets,
- internet service provider (ISP) records
- Telephone records (subscription information, call logs, etc) not including the content of telephone communication
How much Data has been shared?

- Under the MMoU, over 40,000 exchanges of information as of December 2020
- From 53 exchanges of information in 2003 to over 4,000 in 2020
- Under the EMMoU, over 2,000 exchanges of information as of December 2020
- From 210 exchanges of information in 2018 to over 1,000 in 2020
Uses of the MMoU (2003-2020)
Reasons for success

- **Shared values**
  - Preserving and enhancing capital markets
  - Protecting the investing public
  - Monitoring Group (existing signatories) monitors all information requests and compliance with the MMoU
  - Signatories are required to report MMoU/EMMoU failures by other signatories

- **Individual commitment by signatories that they have the legal authority and willing to cooperate with other signatories**

- **Global momentum and consensus**— strong and aligned interest of members — allowed IOSCO to find a solution with regard to information sharing in the context of the EU GDPR

- **Being an MMoU signatory is a pre-condition to being an IOSCO ordinary member and participate actively in the Organization**

- **Support from other international bodies (IMF, FSB, etc) who recognize the IOSCO MMoU as international benchmarks for international cooperation in the securities market**
Benefits Derived

- Enhanced ability to combat cross-border securities fraud
- Slimmer space for securities fraudsters and scammers
- Regulators are learning that cooperating with each other produces benefit their markets in several ways
Addressing EU Data Privacy

- IOSCO negotiated an Administrative Arrangement (AA) with the European Data Protection Board (EDPB) to provide sufficient safeguards for the privacy of personal data transferred by EEA authorities to their non-EEA counterparts.

- The AA has been signed by nearly all the EEA IOSCO authorities and by most of the largest users of the MMoU/EMMoU among non-EEA authorities.

- The key safeguards expected relate to:
  - transfer and processing of personal data;
  - Protection of security and confidentiality;
  - onward transfers to and sharing with third parties only in certain circumstances;
  - retention of personal data; and redress to the extent permitted by applicable legal requirements.
THANK YOU