

MULTILATERAL MEMORANDUM OF UNDERSTANDING CONCERNING CONSULTATION AND CO-OPERATION AND THE EXCHANGE OF INFORMATION (MMoU)

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A. Background

1. What is the MMoU?

- A document signed by a number of IOSCO members facilitating the sharing of information when investigating possible securities violations.
- An international benchmark for co-operation and information sharing that builds on the many existing IOSCO Resolutions and Principles to enhance the level of co-operation and information exchange to combat cross-border fraud and other securities violations. In particular, the Resolution of the Presidents Committee of April 2005¹, confirms IOSCO Principles on Cooperation and the related sections of the Methodology and Enforcement Resolutions, as interpreted and applied by the IOSCO MMoU, as the international benchmark for enforcement-related cooperation and exchange of information.
- A commitment among signatories to provide each other with mutual assistance and co-operation in accordance with the terms and conditions set out in the MMoU.
- A practical tool which describes the particular types of information to be shared between securities regulators.

2. What are the objectives of the MMoU?

- Enhancing jurisdictions' ability and willingness to co-

¹ Resolution of the Presidents Committee on the International Benchmark for Enforcement Related Cooperation and Exchange of Information

operate internationally.

- To better ensure compliance with and enforcement of securities laws and regulations.
- Enhancing the ability of regulators to detect and deter cross-border financial crime.

3. Why was the MMoU established by IOSCO?

- Because of increasing international activity in the securities and derivatives markets, and the corresponding need for mutual co-operation among securities regulators to ensure compliance with, and enforcement of, their securities and derivatives laws and regulations.
- To strengthen the implementation of existing resolutions and agreements on exchange of information which were already approved and adopted by IOSCO members.
- To reinforce a message to the markets that regulators are co-operating and watching out for potential securities and derivatives fraud.

4. What does it mean to be a signatory to the MMoU?

- Being a signatory to the MMoU is a statement of your **commitment** with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of the relevant jurisdictions.
- Signatories must have the legal ability and willingness to:

- Gather information key to investigating and prosecuting enforcement matters.
- Provide information to foreign counterparts for the uses described in the MMoU.
- Protect the confidentiality of information.

5. What is the legal impact of the IOSCO MMoU?

- The provisions of the MMoU are not intended to create legally binding obligations or supersede domestic laws. Signatories can execute their responsibilities under the MMoU within their legal framework.
- It is necessary to note that since the MMoU does not supersede any existing bilateral MoUs, co-operation amongst IOSCO members is still expected, even between non-signatories.

B. MMoU Provisions

6. How were the MMoU provisions determined?

- The provisions of the MMoU are not new creations. They are merely the compilation of existing resolutions and agreements which were already voted for and adopted by IOSCO members. The MMoU draws from existing IOSCO work on exchange of information.

7. How is the MMoU related to the IOSCO Core Principles?

- The MMoU is a practical tool that takes into account

Principles 11, 12 & 13 on Co-operation in Regulation².

8. How is the MMoU organised? What is the structure of the MMoU?

- It is organised as follows:
 - **Preamble** - this sets out the purpose of the MMoU.
 - **Definitions**
 - **Substantive part on mutual assistance and the exchange of information** - contains sections on the following: - principles, scope of assistance, requests for assistance, execution of requests for assistance, permissible uses of information, confidentiality, consultation regarding mutual assistance and the exchange of information, unsolicited assistance.
 - **Final provisions** - includes provisions relating to date of entering into force and termination.
 - **Appendix A** - list of signatories.
 - **Appendix B** - contains the procedures under the MMoU.

² Principles for Co-operation in Regulation

- The regulator should have authority to share both public and non-public information with domestic and foreign counterparts
- Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts
- The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their power.

In particular these are:

- Application to become a signatory (the Questionnaire which needs to be filled in is section IV of Appendix B).
- Commitment to become a signatory.
- Monitoring of the operation of the MMoU.

Appendix B also has an **attachment** that lists, with their consent, members who currently are unable to become signatories but who are committed to obtaining the legal authority to sign the MMoU and who have completed the application process. This list is also publicly available on the IOSCO web site (www.iosco.org).

- **Appendix C** – form for drafting requests for information.

9. What does it mean to be committed under Appendix B and what are the benefits?

- Members that do not have the legal authority to meet the MMoU provisions may voluntarily express their commitment to seek the legal authority necessary to comply with the MMoU.
- Appendix B members demonstrate a desire to be part of the international regulatory community dedicated to enhancing information-sharing for enforcement matters.
- Through the application process, applicants will be directed to the precise legislative limitations which preclude them from meeting the MMoU standards. Thus, this process may be used by regulators to

facilitate seeking the legislative changes necessary to comply with international principles and standards for information-sharing.

C. Application

10. Who can apply to become a signatory?

- The MMoU is open to all securities regulators that are Ordinary or Associate Members of IOSCO.

11. Is there a deadline to apply to become a signatory?

- All IOSCO members that have not yet applied to become signatories should apply and complete the screening process as soon as possible and no later than 1 January 2010, and thereby become signatories to the MMoU or express a formal commitment to seek the necessary legal authority to enable them to become signatories to the MMoU.
- Applicants should be aware that the processing of an average application is expected to take several months.

12. How do I apply?

- You need to respond to the Questionnaire contained in section IV of Appendix B of the MMoU. The Questionnaire has 9 questions.
- Questions ask that you provide information indicating your ability to comply with the provisions of MMoU.

- A complete response to each question should be provided together with copies of supporting laws, rules and regulations.

13. What supporting material do I need to send when I apply to become a signatory?

- You need to send copies of the relevant provisions that support your responses. Specifically, provisions of legislation, rules and regulations that are relevant and clarify matters of your responses to the Questionnaire should be sent. Unrelated material is not necessary.
- Suggestions for presentation:
 - Arrange the material according to questions
 - Compile all provisions within a separate document

14. Which language can I use in my response to the questionnaire?

- Responses to the Questionnaire & accompanying material (including laws, rules and regulations) should be provided in 1 of the 4 IOSCO official languages (English, French, Spanish, Portuguese).

15. To whom do I send my application?

- You need to send your application signed by the head of your authority to the Secretary General of IOSCO to the following e-mail address iosco.mou@iosco.org.
- You will be notified by the General Secretariat that your application has been received, and review by the Screening Group will begin thereafter.

Until you have received this acknowledgement from the Secretary General, you should be aware that your application may not have been delivered effectively.

16. In which format should my application be sent?

- All complete applications (including both the response to the questionnaire and **ALL** accompanying material) should be sent in electronic format to the above e-mail address.

D. Review of Application/Decision-making

17. Who is involved in the processing of the application?

- Secretary General
- Screening Group
- Verification Teams
- Decision-making group

18. What is the role of each of them?

■ Secretary General

- Provides general administrative support for the application of the MMoU.
- Is your main point of contact apart from the Verification Team.
- Provides acknowledgment that application and the supporting material have been received and information on which Verification Team is handling it.
- Makes a first check of your application to verify

whether:

- All questions have been answered;
- All answers include one or more well-defined legal references to easily assess the accuracy of each answer;
- The corresponding legal texts/references are enclosed and easily identified;
- The exact location of any supporting material that is to be found on web page/s is clearly stated;
- The application includes details of at least one contact person together with complete contact details;

■ **Screening Group (SG).**

- Composed of the Technical Committee Standing Committee 4 volunteer members and the Emerging Markets Committee Working Group 4 volunteer members.
- Main responsibilities are:
 - to assess whether an applicant has the legal authority to comply with the specific MMoU provisions, and
 - to make an overall recommendation to the Decision-making group on the application
- Reviews the Verification Team's report on an application (see below).
- Notifies the applicant of the proposed recommendation prior to advising the Decision-making group and will give the applicant an opportunity to be heard if the applicant disagrees with the recommendation.

■ **Verification Teams (VTs)**

- For operational reasons the SG also is organised into six Verification Teams.
 - Include members with substantial expertise in enforcement of securities and derivatives laws and in cross border information-sharing.
 - In direct contact with applicants to verify that applicants' responses accurately reflect their legal authority to comply with the MMoU.
 - Prepare reports to the SG in which they make recommendations to the SG concerning the ability of the applicant to comply with the MMoU, based upon the VT's review of the response to questionnaire and supplemental material.
 - The applicant will be provided with a draft of the VT report before it goes to the SG and will be afforded an opportunity to respond as the applicant deems appropriate.
- **Decision Making Group** (also called **Committee of Chairs or Three Chairs**)
- Comprised of the Chairmen of the Technical Committee, Emerging Markets Committee and Executive Committee.
 - Responsible for the final decision on an application.
 - Will consult with the Chairman of the relevant Regional Committee prior to taking any decision.
 - Decisions will be made in writing and will describe an applicant's right of appeal.

19. What is the nature of the "screening procedure"? What can I expect from the process?

- The "screening procedure" has been designed to:

- Be fair (in order to avoid conflicts of interest)
- Be transparent
- Give the applicant the opportunity to be heard
- Give the applicant the opportunity to ask for a review of the decision

20. How are conflicts of interest solved within the procedure to become signatories?

- Conflicts of interest are avoided at all levels. In particular:
 - **Verification Team level.** Conflicts of interest will be avoided through the composition of the VTs. Great effort has been made to ensure that the VTs are appropriately balanced from the following perspectives:
 - Geographical balance
 - Membership balance: the Technical Committee and the Emerging Markets Committee need to be represented in each VT
 - Language skills
 - Expertise in particular types of legal systems
 - In any case, if a conflict of interest arises between the applicant and any member of the VT to which the application was first submitted, the application will be assigned to the next available VT.
 - **Screening Group level.** Any members of the Screening Group, who are in a potential conflict of interest situation with respect to an application, will not participate in the discussions and in the process of making recommendations to the Decision Making Group.

- **Decision Making Group level.** Any members of the Committee of Chairmen, who are in a potential conflict of interest situation with respect to an application, will not participate in the discussions and decision-making process.

21. Who will contact me once I have sent my application?

- You will be contacted by the IOSCO General Secretariat to acknowledge receipt of your application and to advise you which VT is assigned to your application.
- Also, the Secretary General is responsible for notification of the final decision regarding your application.
- During the "screening process" you might be contacted (by telephone or e-mail) by a member of the VT to which your application has been allocated. It is likely that at the VT level you will be asked to provide additional information and/or clarify certain aspects of your responses. This might happen more than once, and is a useful dialogue for the VT to fully understand an applicant's legal ability to meet the provisions of the MMoU. This process may take several months and it is therefore important to deal quickly and fully with any such questions. The VT will contact you before making a draft recommendation to the SG.
- You might also be contacted by the Co-Chairs of the SG for similar purposes as described above once the VT has submitted its report on your application.

- Finally, the SG will contact you prior to making a recommendation to the Decision-making group. If the SG is intending to report to the Decision-making group that you are unable to meet the provisions of the MMoU, the SG will provide you with notice. In this instance, you will be advised of the MMoU provisions that the SG has deemed cannot be met, and you will be given the possibility to be heard by the SG.

22. What could be the outcome of my application?

- There are basically two possible outcomes by the Decision-making group:
 - **DECISION** that you can meet all the standards set out in the MMoU and will be invited by IOSCO to become a signatory to the MMoU.
 - **DECISION** that you are unable to meet one or more of the standards of the MMoU, and an invitation, if applicable, to be listed on Appendix B as a member committed to attaining the legal authority necessary to meeting the standard(s).

23. What happens if I disagree with the decision of the Decision-making group (final decision)?

- You can request through the Secretary General that your case be reviewed by the Executive Committee.
- The Executive Committee may confirm the original decision of the Decision-making group, may substitute a new decision or otherwise deal with the request as it considers fit.

E. Appendix A

24. How will I be notified if I have met all the MMoU provisions and am invited to be a signatory?

- You will be notified in writing by the Secretary General that the Decision-making group has decided to invite you to become a signatory to the MMoU.
- You will need to confirm with the Secretary General your interest in being listed on Appendix A.

25. How will my participation as a signatory be made public?

- You will be listed on Appendix A of the MMoU.
- The [list of signatories](#) will be posted on the public portion of the IOSCO Website.
- Your response to the Questionnaire will be posted on the IOSCO Website, members-only section. Questionnaire responses need to be updated as appropriate.

26. How and when can I start making requests of other MMoU signatories?

- Once you are listed on Appendix A of the MMoU, you are considered a signatory to the MMoU and can begin sending and receiving requests for co-operation under the MMoU. Requests should be made in accordance with the request format in Appendix C of the MMoU.

F. Appendix B

27. If I do not have the legal authority to meet all the provisions of the MMoU, what are my options?

- Having the legal authority necessary to become a signatory is not required in order to apply. IOSCO encourages all members to apply to the MMoU either to Appendix A or to Appendix B. Members should respond to all questions in the Questionnaire in accordance with the application procedures.
- If members are aware in advance that their legal framework does not allow them to meet all the MMoU provisions cited in the Questionnaire they may voluntarily express in their responses, where appropriate, that they are committed to seeking the legal authority necessary to comply with the MMoU and wish to be considered for Appendix B.
- The VT will send its proposed report to the applicant, which should verify the accuracy of the report and may comment on any aspect of the report. These comments can be taken into account by the VT, and the report amended accordingly, or not. Only after receiving the feed-back from the applicant, will the VT make a recommendation to the SG together with the applicant's comments that were not included in the report.
- The SG will carefully study the report from the VT and will notify the applicant of the area(s) where the applicant may not have the legal authority necessary to meet all the MMoU provisions before making its recommendation to the Decision-making group.

- If the Decision-making group decides to invite the applicant to be listed on Appendix B, the Secretary General will contact the applicant for a letter of commitment that the applicant will seek the legal authority necessary to comply with the MMoU.

28. If an authority commits to become a signatory, will it have to seek changes to its laws in order to fully comply with the MMoU provisions?

- Committed members listed on Appendix B are those who lack the legal authority necessary to fully comply with the MMoU provisions. Thus, in order to be able to fully comply with the MMoU provisions, committed members may have to amend or seek new laws, rules or regulations.
- However, the manner in which it changes the laws, rules or regulations is within the discretion of the applicant. There is no need to follow a specific legal scheme applicable in all jurisdictions.

29. Will my participation as a member listed in Appendix B be made public?

- If you agree, your name will be added to the list of Appendix B members which is posted on the public portion of the IOSCO Website. If you would prefer your Appendix B status to remain confidential, that is your prerogative.
- Your response to the Questionnaire will be posted with your consent on the IOSCO Website, members-only section. Questionnaire responses need to be updated as appropriate.

30. If I am listed in Appendix B and the legal situation changes and I feel that I can be a signatory, what do I do?

- If you are listed in Appendix B, and the legal conditions change in a manner that indicates that you can become signatory to the MMoU, you should re-apply.
- This can be done at any time.
- You should submit an updated response to the questionnaire identifying the changes to the legal authority.
- Also you should confirm the continued accuracy of all other information in the previously submitted response.
- The verification process will be identical to that described in Section D of this FAQ (see above).

31. Are there any advantages to be listed in Appendix B, considering that you are not a signatory to the MMoU?

- Appendix B members demonstrate a desire to be a part of the international regulatory community dedicated to enhancing information sharing for enforcement matters.
- Through the application process, applicants will be alerted to the precise legislative limitations which preclude them from meeting the MMoU standards. Thus, this process may be used by regulators to facilitate seeking the legislative changes necessary to comply with international principles and standards for information sharing.

- In many jurisdictions, the willingness of a requesting authority to cooperate is taken into account in deciding whether to grant assistance. Being listed on Appendix B may indicate to others that the applicant is willing to be a part of the international information-sharing community. Thus, being listed on Appendix B may serve to facilitate the ability of Appendix B members to obtain cooperation from foreign counterparts.

G. Monitoring of the MMoU

32. Who is responsible for the monitoring of the operation of the MMoU?

- All MMoU signatories are members of the **Monitoring Group** (MG), which is responsible for monitoring the operation of the MMoU.
- However, the MG is not a decision-making body. It makes recommendations to the Decision-making group, which is the same body that decides on MMoU applications.

33. How will the operation of the MMoU be monitored?

- The Monitoring Group will have periodic consultations about certain significant, enumerated matters of common concern to the MMoU signatories with a view to improving operation of the MMoU.
- A signatory can bring a matter to the MG where it perceives a change in willingness or ability by another signatory to meet the MMoU provisions. The MG can

recommend a range of possible options to the Decision-making group to encourage compliance in the event that a signatory demonstrates a change in its willingness or ability to meet the standards of the MMoU provisions.

34. What happens if the Decision-making body finds that a signatory has changed its willingness or ability to meet the MMoU provisions?

- If the Decision-making body determines that there has been a demonstrated change in the willingness or ability of a signatory to meet the MMoU provisions, the signatory will be notified and will be given the chance to be heard.
- Upon a final determination of the matter, the Decision-making group may take action to encourage the signatory's compliance or decide to terminate the signatory's participation in the MMoU.
- If termination is the decision of the Decision-making group, the signatory can request a revision of the decision by the Executive Committee.
- The Executive Committee may either confirm the previous decision, take a new decision or take action as considered appropriate.

H. Support

35. Who do I talk to if I need any practical support on submitting my application?

- IOSCO has set up the following e-mail address to which you can address all your queries iosco.mou@iosco.org.

I. Guidelines for Filling in the Questionnaire

When filling in the Questionnaire you must be aware that neither the Decision-making group, nor the Screening Group, nor the Verification Teams' members are experts in interpreting your legislation. Thus, the more complete and detailed your answer is, the less additional questions will be needed and the quicker the verification process will be.

36. Question 1. Ability to Obtain Information.

Please note that there is significant overlap between questions 1 and 6. Thus, it may be useful for the applicant to deal with its response to question 6 (which inquires about the types of records to be kept by an individual or entity) within its response to question 1 (which inquires about the types of records a regulator can obtain).

While the applicant may not have the authority to obtain directly the information in question 1, the applicant may nonetheless be able to obtain the information indirectly through another governmental body in the applicant's jurisdiction. Please identify in your response where this is the case.

36. 1 Question 1a.

Purpose of the question

To assess the ability of the regulator to obtain records to reconstruct any transaction in securities or derivatives, as well as the ability to access related bank or brokerage accounts.

For an accurate response to this question, the following issues should be addressed:

- Explanation of whether the applicant is the regulator for the securities markets and for the derivatives markets, and, if not, who is the regulator.
- When derivatives markets do not exist in the jurisdiction of the applicant or if the applicant does not have authority over the derivatives markets, explanation whether the applicant can assist a foreign regulator investigating possible illegal derivatives activity.
- Identification of the person or entity who keep the records of the transactions (intermediaries, stock exchanges, the applicant itself, etc) and description of the means by which this information is available to the applicant (in real time, daily, under request, etc).
- Explanation of the applicant's ability to compel information on these transactions, including from non-regulated entities or individuals (e.g., brokers who should be registered but fail to register).
- Explanation of the applicant's ability to access bank records and brokerage records.
- Explanation of the measures available to the applicant (including penalties) to get the information if the person (regulated or non-regulated) in possession of the information refuses to provide it to the applicant when

requested.

Basic laws, rules and regulations required

- Legislation requiring that trading information as detailed in 1(a) be kept by the market participants and/or by the applicant itself.
- Legislation that establishes the power to access transaction information and bank accounts.
- Banking legislation, when necessary (when the securities or derivatives markets legislation states clearly that the applicant can obtain bank records directly, then banking legislation might not be necessary).
- Any other legislation mentioned in the response to this question.

36.2 Question 1b

Purpose of the question

To assess the ability of the applicant to obtain detailed identification of the person (natural or legal) on whose behalf the transaction was executed and detailed information on the transaction itself.

For an accurate response to this question, the following issues should be addressed:

- Explanation of the ability of the applicant to access records that must be kept by market intermediaries on transactions ordered and executed in the market, including full detail of the content of such records.

- Explanation of the ability of the applicant to obtain the identification of the person or entity who is obliged to keep every category of information described in question 1b (sometimes for instance, intermediaries are obliged to keep some categories of the information (client identification, amount, price, etc) while other categories are kept by the stock exchange (time of the transaction, price, etc)).
- Explanation of the ability of the applicant to access records identifying the client of the account.
- Explanation of the measures available to the applicant (including penalties) to get the information if the person (regulated or non-regulated) in possession of the information refuses to provide it to the applicant when requested.

Basic laws, rules and regulations required

- Legislation that establishes the ability of the applicant to obtain the information set forth in this question (including records on orders received from clients and their execution).
- Any other legislation mentioned in the response to this question.

36.3 Question 1c

Purpose of the question:

To assess the applicant's authority to determine who is behind an entity that carries out a transaction in the securities and derivatives markets. That is to say, the

applicant should be able to know who is the natural person(s) that control the entity that performs on the markets or the person beneficially owning the account.

It is important here to show the ability to obtain information about the shareholders, administrators, directors, etc of all kinds of entities (including listed and non listed companies) carrying out transactions on the securities or derivatives markets.

For an accurate response to this question, the following issues should be addressed:

- Explanation of the different kind of entities that can be established in the jurisdiction of the applicant (private and public limited companies, trusts, international business companies, partnerships, etc.).
- Explanation of the ways in which ownership in these entities can be held (nominative shares, bearer shares), including information on the relevant processes for changing ownership (whether the change must be intermediated by a notary or a registered intermediary or credit institution, whether the change is registered in a public registry, etc.)
- Identification of the place where information on beneficial owners or individuals controlling non-natural persons is available (the company itself through shareholders registry, companies registry, trust registry, etc.) and the content of the information kept in those registries.
- Explanation of whether the applicant has the ability to obtain this information.

- Explanation of the measures available to the applicant (including penalties) to get the information if the person (regulated or non-regulated) in possession of the information refuses to provide it to the applicant when requested.

Basic laws, rules and regulations required

- Legislation that establishes the rules about the communication and disclosure of significant shareholders of listed companies to the applicant.
- Legislation that establishes the rules about the ownership of entities (including listed and non listed companies). It is very useful to describe the different ways in which ownership can be held (bearer shares, nominatives, etc.; the legislation of this matter in a country may be regulated by the Mercantile Code or Company Law) and how this information is recorded.
- Legal basis establishing the ability of the applicant to access this information.

37. Question 2. Ability to Take Statements.

Purpose of the question:

To assess the applicant's ability to take statements from any individual who may be in possession of information relevant to an investigation.

For an accurate response to this question, the following issues should be addressed:

- Explanation of whether the applicant has the ability to take a person's statement (on a voluntary basis),

whether the applicant has the ability to compel it and/or whether the applicant has the ability to take statements under oath.

- Explanation of the circumstances for taking the statements (upon request, after commencing an investigation)
- Explanation of the form in which statements are taken (tape recorded, written transcription)

At least, the applicant should have the ability to take statements on a voluntary basis.

When the applicant is not empowered to take a person's statement directly, not even on a voluntary basis, but the statement can be taken in its jurisdiction through another governmental body, it should be explained which governmental body has this power, the basis of the governmental body's power, how the applicant can appeal to this body to take statements and under what conditions.

Basic laws, rules and regulations required

- Legal basis establishing the applicant's ability to take voluntary statements.

38. Question 3. Ability to Sharing Information.

Purpose of the question:

To assess the applicant's ability to share the information, described in the previous questions, with other foreign regulators that are signatories to the MMoU.

For an accurate response to this question, the following issues should be addressed:

- Explanation of whether the applicant has the ability to share information already in its files.
- Explanation of whether the applicant has the ability to produce specific information upon request of other foreign regulators.
- Explanation of the conditions, if any, under which the assistance requested can be rendered (e.g., does the offence being investigated by the foreign authority need to be recognised in the applicant's jurisdiction).
- If the information in question 3 can only be gathered by another governmental body in the applicant's jurisdiction, explanation of whether the applicant can provide the information to the foreign authority and any conditions.

Basic laws, rules and regulations required

- Legislation that establishes the ability of the applicant to share information with foreign regulators and the conditions of such exchange of information, if any.

39. Question 4. Powers of the Applicant.

Purpose of the question:

To assess whether the applicant has the ability to provide assistance to other MMoU signatories in response to requests for information on these matters, including if relevant an assessment of the applicant's authority for the matters referred in this question (market abuse,

insider dealing, issues, initial public offers, intermediaries, markets supervision, etc.).

For an accurate response to this question, the following issues should be addressed:

- Explanation of whether the applicant is the competent authority in its jurisdiction for all the matters to which the question refers, and the basis for its authority.
- Even if the applicant isn't the competent authority over these matters, explanation of whether the applicant can provide assistance to other MMoU signatories when information is requested concerning investigations that the foreign regulator is conducting concerning such matters.

Basic laws, rules and regulations required

- Identification of the legal provisions where it is established that the applicant is the competent authority for the matters to which this question refers.
- Legislation that establishes the powers of the applicant to provide assistance to the foreign regulators (this part can be answered by referral to answer in question 3).

40. Question 5. Independent Interest.

Purpose of the question:

To assess the applicant's ability to provide the assistance requested by a foreign regulator regardless of whether a violation occurred in the applicant's jurisdiction.

For an accurate response to this question, the following issues should be addressed:

- Explanation of whether assistance can be provided regardless of whether there has been or could be a breach of domestic legislation in the applicant's jurisdiction.
- Explanation of whether assistance can be provided regardless of whether the facts under investigation by the requesting authority are or could be a breach of domestic legislation in the jurisdiction of the applicant.

Basic laws, rules and regulations required

- Legislation, if any, that establishes rules that do not allow the provision of assistance when the facts under investigation are not a breach of the domestic securities legislation of the applicant.

41. Question 6. Records Maintenance.

Purpose of the question:

To assess whether records of the transactions mentioned in question 1 are required to be maintained in the applicant's jurisdiction, including the period of time to keep the records. Note that the applicant's response to question 6 may have been incorporated in its response to question 1. The following issues should be addressed:

- Identification of the period of time that the files or registries containing all the records identified in question 1 a), b) and c) must be maintained.
- Penalties for failure in the records maintenance

legislation or policy established in the jurisdiction of the applicant, identifying who is the competent authority to impose those penalties and the amount of the penalties.

- Please note that a period of 5 years is regarded as the norm for maintenance of such records.

Basic laws, rules and regulations required

- Legislation that establishes the record keeping requirements for bank and brokerage firms, and for all legal entities recognised within the jurisdiction, as well as rules about the period of time to keep records on information, files and documents related to question 1.
- Any mercantile code or company law and securities and banking legislation provisions as well as any other laws and regulations, where relevant.

42. Question 7. Secrecy or Blocking Laws.

Purpose of the question:

To assess whether the domestic legislation of the applicant has any blocking provisions that prevent or restrict the applicant from obtaining and providing information to foreign authorities.

For an accurate response to this question, the following issues should be addressed:

- Explanation of whether there are any secrecy or blocking laws (bank secrecy provisions, etc).
- If there are secrecy or blocking laws, explanation of whether the laws would prevent or restrict the applicant

from assisting a foreign authority. If the laws would limit or restrict the applicant from providing assistance, please provide an explanation of the basis on which the applicant can provide assistance.

Basic laws, rules and regulations required

- Legislation that prevents or establishes restrictions to getting and/or sharing information with foreign authorities.

43. Question 8. Uses of the Information.

Purpose of the question:

To assess whether the legislation of the jurisdiction of the applicant has any provision that prevents or restricts the permissible uses of the information stated in the MMoU.

In other words, the information provided by the applicant can be used to ensure compliance with the securities legislation in the jurisdiction of the foreign authority; to conduct an administrative or civil enforcement proceeding; or to cooperate in the supervision and oversight activities made by the SRO's or to provide assistance to judges or prosecutors in criminal proceedings.

For an accurate response to this question, the following issues should be addressed:

- Explanation of whether there are provisions that prevent or restrict such permissible uses of the information
- Explanation of whether these provisions cover documents and/or statements.

Basic laws, rules and regulations required

- If any, legislation that prevents or establishes restrictions on the use of information permitted by the MMoU (e.g., provisions stating that the information provided to foreign regulators can not be used by them in criminal proceedings, etc).

44. Question 9. Confidentiality.

Purpose of the question:

To assess the applicant's ability to maintain the confidentiality of non-public information. In particular, the applicant should be able to protect the confidentiality of requests for assistance made by foreign authorities and any matters arising from the requests, and documents and information received from foreign authorities.

Here, it is important that the confidentiality regime will be consistent with the relevant provisions in the MMoU.

For an accurate response to this question, the following issues should be addressed:

- Explanation of the confidentiality regime to which the staff of the applicant (including Chairman and members of the Board and individuals acting on behalf of the applicant) are subject to.
- Explanation of the penalties for the breach of the confidentiality regime that can be imposed upon the staff of the applicant (administrative or criminal penalties or even penalties under the labour legislation).

- Explanation of whether other authorities in the jurisdiction of the applicant might have access to the information provided by a foreign regulator, under which circumstances, what will be the uses of the information in those cases, as well as the confidentiality provisions applicable to these other authorities.
- Explanation of whether the applicant may face any legally enforceable demands, and what protections the applicant may assert to resist such demands.

Basic laws, rules and regulations required

- Legislation where the confidentiality regime is stated.
- Provisions that allow other persons or authorities to access the information provided to the applicant by a foreign regulator.
- Internal Code of Conduct for the staff of the applicant, if any.

45. Accessing information through other governmental bodies

The MMoU foresees that the information described in questions 1 a) to c), 2, 3 and 4 can also be accessible not by the applicant directly but through other public institutions.

In those cases, the answer should state clearly:

- The identification of the public institutions in charge and responsible for obtaining the information.
- The conditions under which this public institution can assist the applicant in obtaining such information.

Frequently Asked Questions ("FAQ")

- Whether this public institution can also assist the applicant in obtaining this information when it is requested on behalf of a foreign regulator.
- Whether the criteria used by the public institution to provide or to deny the assistance are in compliance with the criteria stated in the MMoU.
- Whether the information obtained through the public institution can be used by foreign authorities for the permissible uses of the information under the MMoU, and conditions imposed by the governmental body, if any.
- Whether the confidentiality regime to which the public institution is subject to is in compliance with the confidentiality regime of the MMoU.

Basic laws, rules and regulations required

- Legislation that regulates the relationship among the public institution and the applicant.
- Most of the time, in such situations a written commitment from the public institution stating the criteria to provide or to deny assistance and rules applicable to that public institution regarding the uses of the information and that the confidentiality regime are in compliance with the provisions of the MMoU.

J. Timing of the Process

46. When can we expect to receive the invitation to become a signatory of Appendix A or invitation to be listed in the attachment to Appendix B?

The whole verification process can take a few months. This process can be speeded up when:

- The applicant has appointed a contact person with expertise to deal with the verification process.
- The applicant answers quickly the additional questions that may be raised by the VT or the SG.
- The answers provided by the applicant to the additional questions are clear to the VT or the SG, taking into account that neither the VT's nor the SG's members are experts in the legal framework of the applicant.
- The references to legal texts are clear and detailed. References should be made to the specific article(s) of the relevant laws and regulations.

The timing of the whole process also depends on the number of meetings of the SG (the SG meets three times a year) and on the number of meetings of the decision-making group.

K. Reference Material

47. Is there any reference material that I can look at?

- IOSCO Multilateral MOU, IOSCO Report, May 2002
- IOSCO MOU PROTOCOL
- IOSCO MULTILATERAL MOU "SCREENING GROUP" PROCEDURE
- IOSCO MULTILATERAL MOU "MONITORING GROUP" PROCEDURE
- Applications already on members-only website
