

**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

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

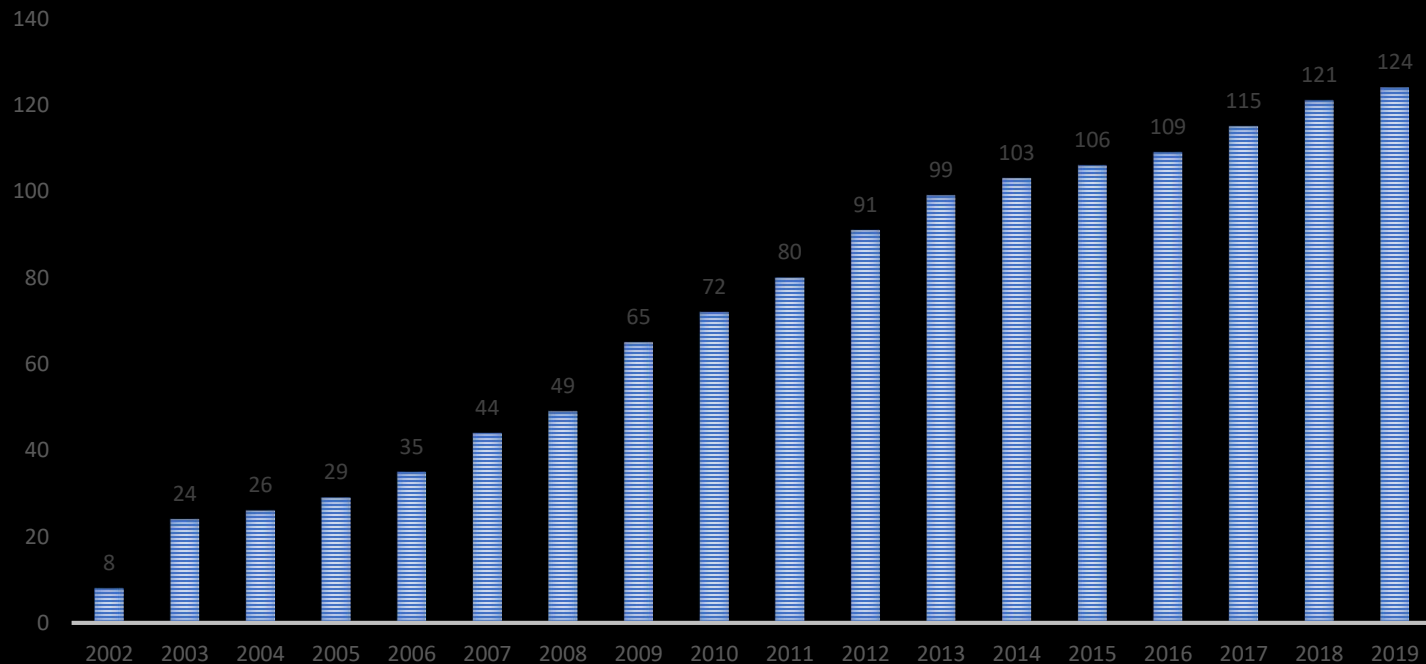
Data sharing Frameworks: IOSCO MMoU and EMMoU

- ❑ 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.

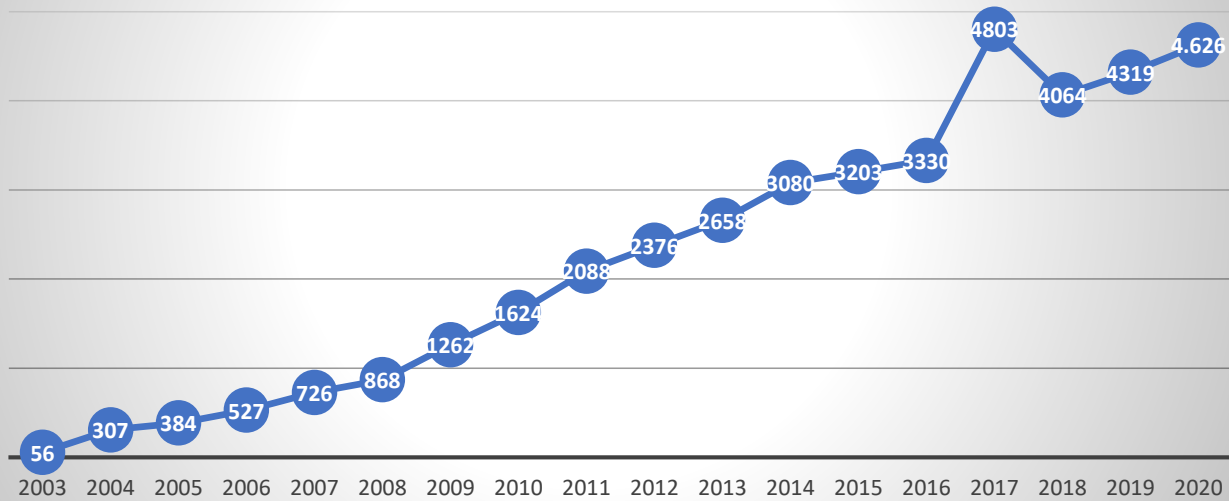
Which types of Data are shared?

- 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.

