

## **APPENDIX B**

### **Procedures Under the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information**

#### **I. Application to Become a Signatory to the MOU**

- (a) All governmental regulatory bodies that are Ordinary or Associate Members of IOSCO are eligible to apply to participate in the MOU at any time. Applications should be submitted to the IOSCO Secretary General.
- (b) All applicants must provide a complete response to the questionnaire, which is included in Part IV of this Appendix B, and provide copies of their supporting laws, rules and regulations as indicated in the questionnaire. Responses should identify and explain the applicant's legal authority to meet the specific MOU provisions cited in the questionnaire, which are essential to mutual assistance and the exchange of information in order to successfully enforce securities and derivatives laws.
- (c) Responses to the questionnaire will be verified by the Technical Committee's Standing Committee 4 and the Emerging Market Committee's Working Party 4 ("screening group"), with administrative support provided by the Secretary General. The screening group will establish verification teams that include members with substantial expertise in enforcement of securities and derivatives laws, as well as expertise in cross border information sharing. The screening group has discretion to invite other IOSCO members to participate in the verification teams.
- (d) The verification of the questionnaire responses will be limited to verification that the responses accurately reflect the legal authority of members to comply with the specific MOU provisions cited in the questionnaire based on the laws, rules and regulations cited in the responses. Based on their review of the questionnaire responses, the verification teams will make specific recommendations to the screening body concerning the ability of the applicant to comply with each MOU provision cited in the questionnaire.
- (e) The screening group will make recommendations concerning its verification of applicant responses to a decision making group. Prior to making any negative recommendation on an application, the screening group will notify the applicant in writing, identifying the specific MOU provisions for which the applicant lacks legal authority. The applicant will have an opportunity, upon request, to be heard by the screening group.
- (f) The decision-making group will be comprised of the Chairmen of the Technical, Emerging Markets, and Executive Committees ("Committee of Chairmen"). Together, this group, after consultation with the Chairman of the relevant Regional Committee, will decide whether to accept or reject applications to become an MOU signatory based on the screening group's recommendations.

Prior to making any negative decision, the decision making group will notify the applicant in writing, identifying the specific MOU provisions for which the applicant lacks legal authority. The applicant will have an opportunity, upon request, to be heard by the decision-making group.

- (g) Upon decision by the decision-making group of the applicant's legal authority to meet the MOU provisions cited in the questionnaire, as described in I(f) above, the applicant will be invited by IOSCO to be a signatory. Appendix A will contain the names and signatures of all Authorities to the MOU and will be maintained and updated by the IOSCO Secretary General. The responses of applicants that are so invited to be signatories will be posted on the IOSCO members-only website.
- (h) Decisions of the Committee of Chairmen shall be made under the authority of the Executive Committee. However, an applicant dissatisfied with the decision of the Committee of Chairmen may, by written notice to the Secretary General, request that the decision be reviewed by the Executive Committee. Such request will be referred by the Secretary General to the next meeting of the Executive Committee to be held at least thirty days following receipt of the request and shall be accompanied by such material and be dealt with under such procedures as the Executive Committee may from time to time decide. The Executive Committee may confirm the original decision of the Committee of Chairmen or may substitute a new decision or otherwise deal with the request as it considers fit.
- (i) An applicant notified of a negative decision pursuant to I(f) and I(h) above, may re-apply to become a signatory, in accordance with the procedures in Part II(e)-(g) below, once it obtains the legal authority that IOSCO has determined is lacking.

## **II. Commitment to Become a Signatory**

- (a) Members that do not have the legal authority to meet all the MOU provisions cited in the questionnaire, may nonetheless complete the questionnaire, and voluntarily express in their responses, where appropriate, that they are committed to seeking the legal authority necessary to enable them to do so.
- (b) All completed questionnaires will be reviewed in the same manner set forth in I(c) and (d) above. Such review will be limited to verification that the laws, rules, and regulations submitted support the member's legal authority to meet the MOU provisions cited in the questionnaire.
- (c) The screening group will notify the members in writing of the specific MOU provisions for which the member lacks legal authority.
- (d) Members that complete the questionnaire as provided for in Part II(a) above or that receive notification of a negative decision as provided for in Part I(f) above, may express to IOSCO their commitment to obtain the legal authority to meet all the MOU provisions cited in the questionnaire. Such members will be listed in an attachment to this Appendix B. This list will be maintained and updated

by IOSCO's Secretary General. The responses of such members, with their consent, will be posted on the IOSCO members-only website.

- (e) After obtaining the legal authority identified as lacking during the verification process, a member may apply to become a signatory to the MOU by: (1) submitting an updated response to the questionnaire identifying changes to the legal authority previously identified as lacking; and (2) confirming the continued accuracy of all other information previously submitted in response to the questionnaire.
- (f) The legal authority submitted in accordance with II(e)(1) will be verified in accordance with the procedures referenced in I(c) to I(g).
- (g) Upon verification of the legal authority submitted in accordance with II(e)(1), an applicant will be invited by IOSCO to be a signatory and to sign Appendix A of the MOU. The updated responses of such applicants will be posted on the IOSCO members-only website.

### **III. Monitoring of the Operation of the MOU**

- (a) In order to ensure the effective monitoring of the operation of the MOU, signatories will update as appropriate their responses posted on the IOSCO members-only website.
- (b) The MOU provides, in paragraph 12(a), for periodic consultation about certain significant, enumerated matters of common concern to the MOU signatories with a view to improving operation of the MOU. Such consultations will be conducted by the MOU signatories ("monitoring group"), with administrative support provided by the Secretary General. The monitoring group may establish procedures, in consultation with the Executive Committee, to facilitate their periodic consultations. Such procedures will include written notice to signatories of the issues to be considered during consultations, and an opportunity to be heard and respond. The monitoring group may obtain the assistance of other IOSCO bodies in performing its consultation and recommendation functions.
- (c) The monitoring group has discretion to consider and recommend a range of possible options to encourage compliance in the event that a signatory demonstrates a change in its willingness or ability to meet the standards of the MOU provisions. The options might include: Providing a period of time for the signatory to comply; full peer review of a signatory that may not be in compliance; public notice of non-compliance; suspension of a signatory from MOU participation; or termination from the MOU participation as provided in the MOU (section 16(b)).
- (d) If further action is necessary as a result of such consultations, the consultation group will forward recommendations to a decision-making group comprised of the Chairman of the Technical, Emerging Markets and Executive Committees. The decision-making group will consider the signatory group's recommendations and, where appropriate, take action.

- (e) If the IOSCO decision-making body determines, following notice and an opportunity to be heard, that there has been a demonstrated change in the willingness or ability of a signatory to meet the provisions of the MOU, as provided in paragraph 12(a)(ii) of the MOU, the decision-making body will notify the signatory of the determination and provide the signatory with a written explanation of the determination. The decision-making group will establish procedures to provide the signatory with an opportunity, upon request, to be heard and seek review of the determination. Upon a final determination, the decision-making body may take action to encourage the signatory's compliance with the MOU, or where appropriate, the decision-making body may terminate the signatory's participation in the MOU as provided in paragraph 16(b) of the MOU.
- (f) Decisions of the decision-making body shall be made under the authority of the Executive Committee. In case of a decision of termination, an applicant dissatisfied with the decision of the decision-making body may, by written notice to the Secretary General, request that the decision be reviewed by the Executive Committee. Such request will be referred by the Secretary General to the next meeting of the Executive Committee to be held at least thirty days following receipt of the request and shall be accompanied by such material and be dealt with under such procedures as the Executive Committee may from time to time decide. The Executive Committee may confirm the original decision of the decision-making body or may substitute a new decision or otherwise deal with the request as it considers fit.
- (g) Any decision involving an amendment to the MOU requires a unanimous recommendation from the signatories to the MOU.

#### **IV. Questionnaire**

##### **GENERAL INSTRUCTIONS:**

The responses and the accompanying material (including laws, rules and regulations) should be provided in one of the four official languages of IOSCO (English, French, Spanish or Portuguese).

The following questions ask for information indicating your ability to comply with the provisions of the IOSCO Multilateral Memorandum of Understanding cited below. Please provide a complete response to each question, and copies of the laws, rules and regulations that support each response.

Responses to the questionnaire should be sent to the IOSCO Secretary General.

Completed questionnaires will be reviewed by in a manner authorized by IOSCO.

QUESTIONS:

1. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you, or a separate governmental body in your jurisdiction, to obtain:
  - (a) contemporaneous records sufficient to reconstruct all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to those transactions;  
*(as required by Paragraph 7(b)(ii) of the MOU)*
  - (b) records for securities and derivatives transactions that identify:
    - (1) the client:
      - i. name of the account holder; and
      - ii. person authorized to transact business;
    - (2) the amount purchased or sold;
    - (3) the time of the transaction;
    - (4) the price of the transaction; and
    - (5) the individual and the bank or broker and brokerage house that handled the transaction.  
*(as required by Paragraph 7(b)(ii) of the MOU)*
  - (c) information located in your jurisdiction identifying persons who beneficially own or control non-natural persons organized in your jurisdiction.  
*(as required by Paragraph 7(b)(ii) of the MOU)*
2. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you, or a separate governmental body in your jurisdiction, to take or compel a person's statement, or, where permissible, testimony under oath.  
*(as required by Paragraph 7(b)(iii) of the MOU)*
3. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you to provide to foreign authorities:
  - (a) the information identified in 1(a) above;
  - (b) the information identified in 1(b) above;
  - (c) the information identified in 1(c) above;
  - (d) the information obtained through the powers described in 2 above; and
  - (e) information and documents held in your files.  
*(as required by Paragraph 7(b)(i) of the MOU)*
4. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you to provide the information and documents referenced in 3 above to foreign authorities in response to requests concerning the following:

- (a) insider dealing, market manipulation, misrepresentation of material information and other fraudulent or manipulative practices relating to securities and derivatives, including solicitation practices, handling of investor funds and customer orders;
  - (b) the registration, issuance, offer, or sale of securities and derivatives, and reporting requirements related thereto;
  - (c) market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers, and transfer agents; and
  - (d) markets, exchanges, and clearing and settlement entities.  
*(as required by Paragraph 7 of the MOU)*
5. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you to provide assistance referenced in 4 above to a foreign authority, regardless of whether you have an independent interest in the matter.  
*(as required by Paragraph 7 of the MOU)*
6. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that require maintenance of the following information and documents (including the period of time for which such information or documents are required to be maintained):
- (a) information identified in 1(a) above;
  - (b) information identified in 1(b) above; and
  - (c) information identified in 1(c) above.  
*(as required by Paragraph 7 of the MOU)*
7. Please identify and explain (and provide copies of) any domestic secrecy or blocking laws, rules and regulations that relate to the collection for, or provision to, foreign authorities of:
- (a) the information identified in 1(a) above;
  - (b) the information identified in 1(b) above;
  - (c) the information identified in 1(c) above;
  - (d) the information identified in 2 above; and
  - (e) the information identified in 3(e) above.  
*(As required by Paragraph 6(b) of the MOU)*

8. Please identify and explain (and provide copies of) any specific or general provisions of your laws, rules and regulations which restrict or limit the following uses by foreign authorities of information and documents identified above in 1(a)-(c), 2 and 3(e) provided by you:

(a) for the purpose of ensuring compliance with (including investigation of potential violations of) laws and regulations related to:

- (1) 4(a) above;
- (2) 4(b) above;
- (3) 4(c) above; and
- (4) 4(d) above.

(b) for the purpose of conducting a civil or administrative enforcement proceeding, assisting in a self-regulatory organization's surveillance or enforcement activities or assisting in a criminal prosecution.

*(As required by Paragraph 10(a) of the MOU).*

9. Please identify and explain (and provide copies of) any general or specific provisions of your laws, rules and regulations that provide for the confidentiality of:

(a) requests for assistance made to you by foreign authorities, the contents of such requests, and any matters arising under such requests, including consultations between or among the authorities, and unsolicited assistance; and

*(As required by Paragraph 11(a) of the MOU)*

(b) documents and information received from foreign authorities.

*(As required by Paragraph 11(b) of the MOU)*

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Attachment to Appendix B

List of members committed to becoming signatories to the IOSCO Multilateral Memorandum of Understanding concerning consultation and cooperation and the exchange of information.