



U.S. Commodity Futures Trading Commission

# Technical Assistance Program

## Cross-Border Cooperation Arrangements with Foreign Authorities

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# Disclaimer

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# Overview

- ▶ The CFTC's Office of International Affairs (OIA) drafts and negotiates supervisory arrangements in coordination with CFTC Divisions and the Office of the General Counsel
- ▶ OIA is also responsible for FinTech arrangements
- ▶ In addition, we respond to requests for technical assistance and work on related arrangements
- ▶ The Division of Enforcement handles cooperation and information sharing in an enforcement context

# Enforcement Cooperation

- ▶ Enforcement cooperation focuses on pending enforcement investigations and litigation
- ▶ In an enforcement context, the CFTC typically uses the International Organization of Securities Commissions Multilateral MOU (MMOU)
  - 121 signatories
  - May use bilateral enforcement MOUs or less formal arrangements
- ▶ On April 2, 2018, the CFTC became a full signatory to the Enhanced MMOU
  - Includes additional enforcement-related powers

# Supervisory Cooperation

- ▶ Supervisory cooperation focuses on ongoing assessment of compliance with regulatory requirements
- ▶ Regulated entities have become “borderless”
- ▶ Despite differences in legal systems, regulatory requirements, and supervisory approaches, each authority has a common interest in effective supervision
- ▶ Information sharing and cooperation are based on trust in another authority’s legal and regulatory framework and comfort in the mutual benefits of the relationship

# Options

- ▶ Cooperation may be: (1) bilateral or multilateral; (2) ad hoc or continuous; and (3) informal or formal:
  - ✓ Informal: An MOU or other formal arrangement is not required in order for the CFTC to share non-public information but, in the absence of such an arrangement, the CFTC must satisfy itself that confidentiality requirements are met
    - access letters, for sharing non-public information
  - ✓ Formal: A formal arrangement, which usually is signed by the CFTC Chairman, may be called a “memorandum of understanding”, “memorandum of cooperation”, “framework arrangement”, an “understanding”, etc.

# Considerations

- ▶ Negotiation of either an informal or formal arrangement requires time and staff resources
- ▶ The impetus to finalize an arrangement may be related to an external deadline
- ▶ Negotiation requires attention to detail
- ▶ Wording should reflect a “meeting of the minds”
- ▶ Variations across arrangements should not be accidental or unintended; instead, variations should be based upon understandings reached during negotiations
- ▶ Effective implementation requires an awareness of both the terms and the context of the arrangement

# Benefits

- ▶ Enhancing cross–border communication and potentially encouraging regulatory efficiency
- ▶ Helpful in routine supervision and in crisis situations
- ▶ Strengthens the ability to develop a more comprehensive and effective supervisory program
  - Conduct a more complete assessment of potential risks
- ▶ Develop shared understandings related to regulatory responsibilities
- ▶ Discuss and appreciate differences in legal frameworks and requirements



# Examples of Supervisory Cooperation

- ▶ An authority may:
  - ✓ Request and receive non-public information;
  - ✓ Receive notification of, *e.g.*, material events that could affect the financial or operational stability of a regulated entity;
  - ✓ Receive and discuss relevant information in regulatory filings or examination reports;
  - ✓ Obtain assistance in analyzing documents; and
  - ✓ Learn from another authority's experience in supervising a regulated entity

# Formal Arrangements

- ▶ When an authority has responsibility for the supervision of entities that are established or operate in another jurisdiction, it may wish to initiate negotiations with a foreign authority to establish a formal cooperative arrangement
- ▶ Enhance ongoing communication and cooperation
- ▶ Provide a means for notification of specified events
- ▶ Establish expectations with respect to on-site visits
- ▶ Set boundaries for the uses and confidentiality of non-public information

# Key Concepts for MOUs

- Reflect understandings related to mutual cooperation and information sharing between or among authorities
- Not intended to limit or condition an authority's discretion in the discharge of its regulatory responsibilities:
  - ✓ They do not affect the right of an authority to communicate with, conduct an on-site visit of, or obtain information or documents from any person subject to the authority's jurisdiction that is physically located in the territory of another authority
- Do not preclude an authority from sharing information or documents with respect to entities that are not covered by the MOU but may be subject to regulatory requirements
- They are non-binding arrangements and are interpreted in a manner consistent with domestic law

# Statutory Provision for Information Sharing

- ▶ The CFTC may, upon request, furnish information in its possession to:
  - ✓ Any foreign futures authority;
  - ✓ Any department, central bank, or ministry; or
  - ✓ Any agency of any foreign government or any political subdivision thereof
- ▶ Only if the CFTC is satisfied that the information will not be disclosed except in connection with an adjudicatory action or proceeding under foreign law to which the recipient is a party

# Statutory Protection

- ▶ The CFTC shall not be compelled to disclose any information or data obtained from a foreign futures authority, except in connection with legally enforceable demands (congressional, administrative, judicial, receivership, or bankruptcy proceedings), if:
  - ✓ The authority has in good faith determined and represented to the CFTC that disclosure of such information or data by the authority would violate the laws applicable to that authority; and
  - ✓ The CFTC obtains such information pursuant to a CFTC procedure or an MOU with that authority

# MOU Structure

- ▶ Definitions
- ▶ General Provisions
- ▶ Scope of Supervisory Consultation, Cooperation, and Exchange of Information
- ▶ Execution of Requests for Information
- ▶ On-Site Visits
- ▶ Permissible Uses of Information
- ▶ Confidentiality of Information and Onward Sharing
- ▶ Amendments
- ▶ Execution
- ▶ Termination

# CFTC MOUs

- ▶ The CFTC has supervisory MOUs that vary in scope and cover applicants, registered entities, or exempt entities, generally:
  - ✓ Broad in scope – regulated markets and organized trading platforms, central counterparties (CCPs), trade repositories (TRs), and intermediaries, dealers, and other market participants
  - ✓ Focused on clearing – CCPs, clearing firms, and clearing participants
  - ✓ Narrow in scope – dealers, fund operators and advisors, etc.
- ▶ In an enforcement context, the CFTC typically uses the IOSCO Multilateral MOU, but also may use bilateral enforcement MOUs or less formal arrangements as appropriate

# Current Issue: Personal Data

- ▶ The EU General Data Protection Regulation (GDPR) has raised challenges with respect to the sharing of personal data
- ▶ The GDPR provides for various means of transferring personal data, including pursuant to safeguards in “administrative arrangements” (AAs)
- ▶ The AA supplements existing arrangements and is applicable in both enforcement and supervisory contexts
- ▶ The AA covers transfers of personal data between EEA and non-EEA signatories



# FinTech Arrangements

- ▶ Provide a framework for cooperation, information sharing, and referrals between authorities to advance the authorities' FinTech programs
- ▶ The arrangements are intended to
  - Enhance mutual understanding
  - Identify market developments and trends
  - Facilitate FinTech innovation
  - Foster the use of technology for more effective and efficient regulation and oversight of financial markets and participants
- ▶ The arrangements describe potential support for Innovator Businesses
- ▶ The CFTC has entered into arrangements with:
  - UK Financial Conduct Authority
  - Monetary Authority of Singapore
  - Australian Securities and Investments Commission

# Examples of Cooperation

- ▶ Supervisory
- ▶ Technical assistance
- ▶ Enforcement
- ▶ International Forums

# Examples of Cooperation

## ▶ Supervisory

- An authority may request and receive information, including non-public information, to assist in supervision of entities that are regulated and/or seek registration, authorization, licenses, and/or approvals.

## ▶ Technical assistance

- Consultations and training regarding regulation of futures and derivatives markets

# Examples of Cooperation

## ▶ Enforcement

- IOSCO MMOU – scope of activities includes:
  - Insider dealing and market manipulation
  - Misrepresentations of material information and other fraudulent or manipulative practices relating to securities and derivatives
  - Solicitation and handling of investor funds and customer orders
  - Registration, issuance, offer, or sale of securities and derivatives
  - Activities of market intermediaries
  - Operations of markets, exchanges, and clearing and settlement entities

# Examples of Cooperation

## ▶ Enforcement

- IOSCO MMOU – information and assistance that may be provided:
  - To enable reconstruction of transactions
  - That identifies the beneficial owner and controller of an account
  - For transactions, such as amount, timing, price, parties
  - That identifies persons who beneficially own or control companies
  - Taking or compelling a person's statement, or, where permissible, testimony under oath, regarding the potential offence

# Examples of Cooperation

## ▶ Enforcement

### ◦ IOSCO EMMOU

- Addresses additional information sharing and cooperation between IOSCO members to address technological, societal, and market developments since the 2002 establishment of the MMOU
- “ACFIT”
  - Audit work papers
  - Compel physical attendance for testimony
  - Freezing of assets
  - Obtain and share existing internet service provider records
  - Obtain and share existing telephone records
- Two tiers of signatories (all ACFIT powers, ACF powers)

# Examples of Cooperation

## ▶ Enforcement

- The CFTC has brought enforcement actions against foreign based entities in context of FX activity, acknowledging the assistance of relevant foreign regulators
- For example, the CFTC filed an enforcement action against Tallinex Limited
  - An Estonian company licensed in St Vincent and the Grenadines that has operated as an FX broker/dealer.
  - Tallinex fraudulently solicited business with U.S. retail FX customers.
  - The CFTC acknowledged assistance received from the Estonian Financial Supervision Authority, Bulgarian Financial Supervision Commission, and the Czech National Bank

# Examples of Cooperation

- ▶ International Forums
  - International Organization of Securities Commissions (IOSCO)
  - Financial Stability Board (FSB)



# CFTC Website

