



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



The screenshot displays the CFTC website's navigation and content. At the top left is the CFTC logo, followed by the text "U.S. COMMODITY FUTURES TRADING COMMISSION" and "Ensuring the Integrity of the Futures & Swaps Markets". On the top right, there are links for "Transparency", "International", and "Contact Us", along with a search bar containing the word "Search" and a magnifying glass icon. A blue navigation bar below contains links for "Industry Oversight", "Law & Regulation", "Market Data & Analysis", "Forms & Submissions", "Learn & Protect", "About the CFTC", and "News & Events". The main content area features a "International" section with a sub-menu on the left containing "International Publications", "Foreign Markets, Products, & Intermediaries", and "Memoranda of Understanding". The main content area has three articles: "International Publications" (describing CFTC's participation in international initiatives), "Foreign Markets, Products, & Intermediaries" (explaining products traded on foreign exchanges), and "Memoranda of Understanding" (describing cooperation with other authorities).

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**International**

- International Publications
- Foreign Markets, Products, & Intermediaries
- Memoranda of Understanding

**International Publications**

The CFTC participates in a wide range of international initiatives and contributes to a number of international publications.

**Foreign Markets, Products, & Intermediaries**

Learn what products traded on foreign futures and options exchanges may be offered or sold in the United States and who may offer and sell foreign products to U.S. customers.

**Memoranda of Understanding**

The CFTC cooperates with authorities through formal Memoranda of Understanding (MOUs) and other arrangements for enforcement, supervisory, and other purposes.