



OICU-IOSCO

5th IOSCO/PIFS-HLS Global Certificate Program for Regulators of Securities Markets – Phase II

Session 16: Cross-Border Cooperation

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“The increasing internationalization of financial activities and the globalization of markets can put information beyond the immediate jurisdictional reach of one individual regulator. This puts an additional emphasis on the need for international cooperation.”

(Methodology, Preamble to IOSCO Principles relating to cooperation, 13-15)

Why Fragmentation Matters to Regulators

Importance of Cross-Border Cooperation in Globalized and Interconnected Capital Markets



Increase in cross-border business & Interconnectedness of global markets



Differences in implementations can lead to market fragmentation



Market fragmentation can impact the resilience of financial markets and raise investor protection concerns



Cross-border cooperation can mitigate those risks

What is Fragmentation?

1. **The Riddle of Global Markets:** Are there global markets at all?

(see *What's In a Name? That Which We Call Capital Controls* Prepared by Atish R. Ghosh, and Mahvash S. Qureshi, <https://www.imf.org/external/pubs/ft/wp/2016/wp1625.pdf>)

Takeaway: The key measure of global market integration is asset prices: similar asset/similar price? If 'yes': integrated!

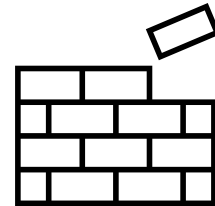
2. **Drivers of Fragmentation**

- culture and history of information flow channels for information that informs market participants;
- economics of cross border integration of key market participants;
- legal requirements for local presence/action;
- differences in response to innovation;
- economics of cross border integration of key market participants;
- obstacles to regulatory cooperation/deference; and
- differences in regulatory strategies

Globalization of Capital Markets & 'Fragmentation'

Examples of Regulatory Fragmentation

1. Data privacy, data localization and cybersecurity
2. Regulatory data sharing
3. Sustainable finance (new developing policy area)
4. Crypto-assets regulation (emerging issue)



Examples of Regulatory ‘Fragmentation’

1. Data privacy, data localization and cybersecurity

Two key drivers of market fragmentation: **explicit restrictions on cross-border transfer or handling of data**, including within firms, and **divergence and a lack of standards** across data privacy, data localisation, cybersecurity requirements and approaches to implementation and supervision.

2. Regulatory data sharing

Mandatory reporting of OTC Derivative trading activity exists in most G20 jurisdictions. **Fragmentation of reporting data standards, data sets and mechanisms**, between jurisdictions is common as all have been designed and implemented separately.

More Examples of Regulatory Fragmentation

3. Sustainable finance (new developing policy area)

Regulatory focus on sustainable finance is developing rapidly in some markets, but not others. There is extreme divergence between jurisdictions, regions and sectors and markets at different stages of economic development. Specifically, **to scale the climate finance market structure will require concerted and coordinated action by all stakeholders**—the public sector, the real economy sectors, the banking and capital markets sector, private and institutional investors and asset managers as well as the social sector.

4. Crypto-assets regulation (emerging issue)

A lack of international guidance in the regulatory approach to crypto-assets (which typically have cross-border reach) has resulted in a patchwork of regulatory regimes (or lack thereof) appearing across jurisdictions. **The absence of over-arching classifications from global standard-setters** could leave gaps in relation to consumer protection and possibly market integrity.

Regulatory Fragmentation – Why do we care?

In areas where cross-border cooperation is insufficient or absent, different regulatory approaches and requirements can lead to **inefficiencies, regulatory arbitrage** by market participants and **cross-border fraud**.

Regulatory fragmentation is costly and may **increase risks to the orderly functioning of financial markets** or **raise investor protection concerns** and may even **lead to systemic risk**.

Cross-border cooperation can mitigate these risks.

2. IOSCO and Cross-Border Cooperation and Information Sharing

IOSCO's Mission

- ✓ To cooperate in **developing, implementing and promoting adherence to internationally recognized and consistent standards of regulation, oversight and enforcement** to protect investors, maintain fair, efficient and transparent markets and seek to address systemic risks;
- ✓ To enhance investor protection and promote investor confidence in the integrity of securities markets, through **strengthened information exchange and cooperation in enforcement against misconduct and in supervision of markets and market intermediaries**; and
- ✓ **To exchange information** at both global and regional levels on their respective experiences in order to assist the **development of markets, strengthen market infrastructure and implement appropriate regulation.**

Source: Preamble to IOSCO's By-Laws

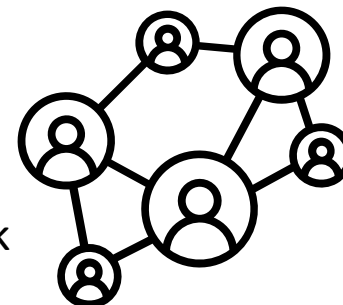
2. IOSCO and Cross-Border Cooperation and Information Sharing

IOSCO Networks and Experience Sharing

IOSCO members share information with their peers through the various Committees and Task Forces. To facilitate further experience sharing in specific areas, IOSCO established a number of **networks**, that meet regularly through calls, as well as **online portals** and **information repositories** that are being populated and used by IOSCO members.

Networks:

- FinTech
- ICO Consultation and Digital Asset Offering Support Framework
- Sustainable Finance
- SPAC

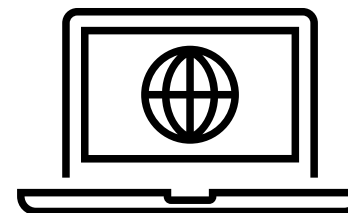


2. IOSCO and Cross-Border Cooperation and Information Sharing

Online portals and repositories

Portals:

- Investor Alerts Portal
- Emerging Digital Threats Portal
- Investor Education Portal
- Knowledge Sharing Platform



Repositories:

- Memoranda of Understanding
- Deference Assessments
- Responses to Covid-19
- Retail Market Conduct
- Greenwashing case studies
- Regulators' Statements on ICOs
- Cyber Framework Mappings
- IFRS Database
- Central Clearing Requirements
- Platform Trading Requirements
- Special Purpose Acquisition Company (SPAC)

2. IOSCO and Cross-Border Cooperation and Information Sharing

Promoting similar practices: Template Manuals

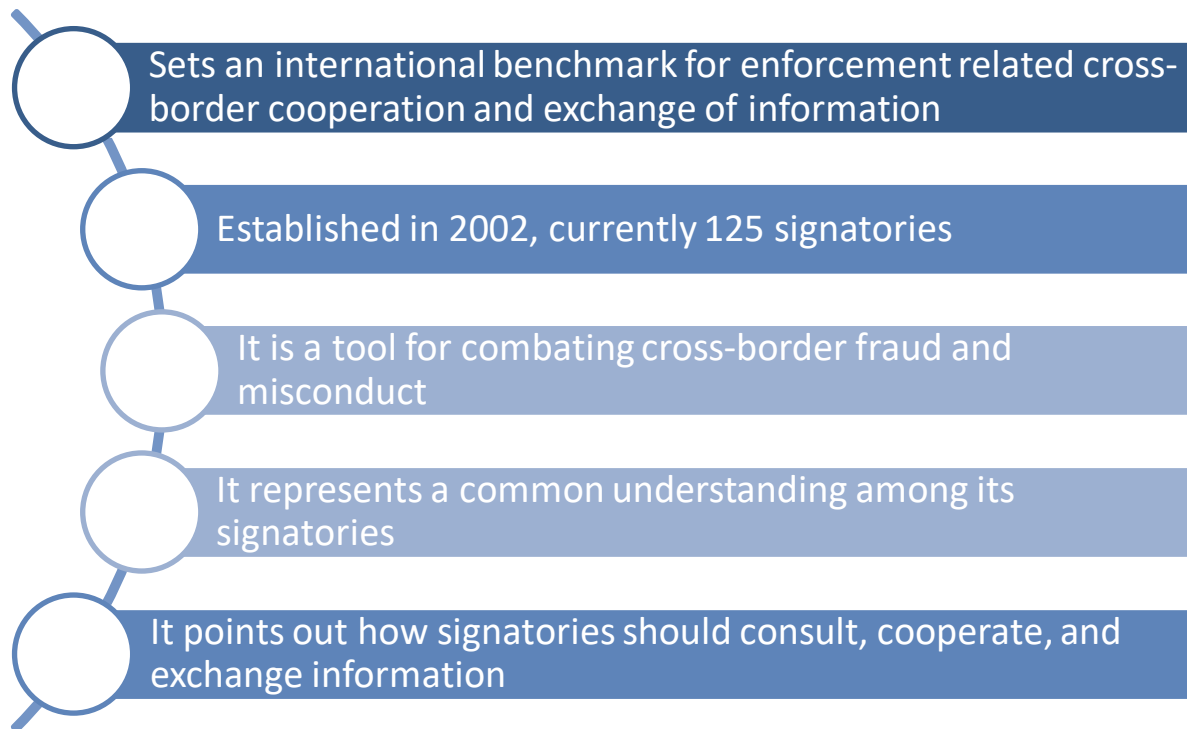
Through its capacity building work, IOSCO facilitates the peer-to-peer sharing of experience and knowledge and promotes good and similar practices. An example of this is the TA on **Onsite Inspection Manuals** and on **Enforcement Manuals**.

Through **template manuals**, drafted **based on good practices and input from IOSCO members from around the globe**, IOSCO assists GEM members in the different regions to develop their own onsite inspection and enforcement manuals. These practical manuals are meant to be used during respectively the onsite inspection process for the supervision of investment firms and asset managers as well as the enforcement process in their specific jurisdictions.

2. IOSCO and Cross-Border Cooperation and Information Sharing

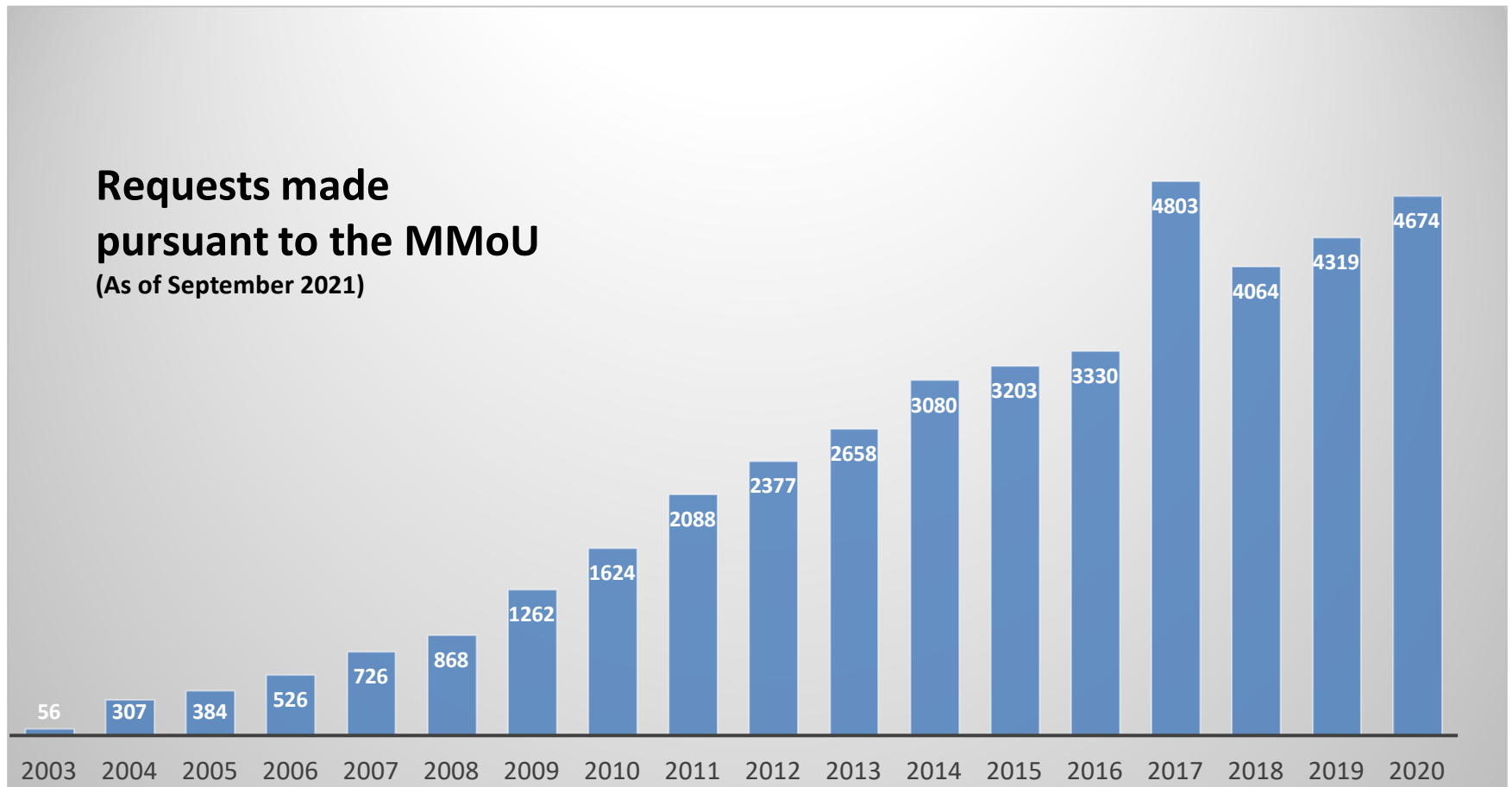
Enforcement Cooperation: IOSCO MMoU & EMMoU

Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU)



Also the **IOSCO Investor Alerts & Emerging Digital Threats Portals** are critical tools to share information regarding (potential) cross-border fraud and misconduct

2. IOSCO and Cross-Border Cooperation and Information Sharing



2. IOSCO and Cross-Border Cooperation and Information Sharing

Establishing the Enhanced MMoU

To keep pace with technological, societal and market developments, in 2017, IOSCO launched the EMMoU, which refers to **additional enforcement powers (ACFIT)** as follows:

A

- To obtain and share **AUDIT** work papers, communications and other information relating to the audit or review of financial statements

C

- To **COMPEL** physical attendance for testimony (by being able to apply a sanction in the event of non-compliance)

F

- To **FREEZE** assets if possible, or, if not, advise and provide information on how to freeze assets, at the request of another signatory

I

- To obtain and share existing **INTERNET** service provider records (not including the content of communications) including with the assistance of a prosecutor, court or other authority, and to obtain the content of such communications from authorized entities

T

- To obtain and share existing **TELEPHONE** records (not including the content of communications) including with the assistance of a court, prosecutor or other authority, and to obtain the content of such communications from authorized entities

Note: The EMMoU envisages the obtaining and sharing of existing communications records held by regulated firms.

2. IOSCO and Cross-Border Cooperation and Information Sharing

Administrative Arrangement for the transfer of personal data between EEA Authorities and Non-EEA Authorities

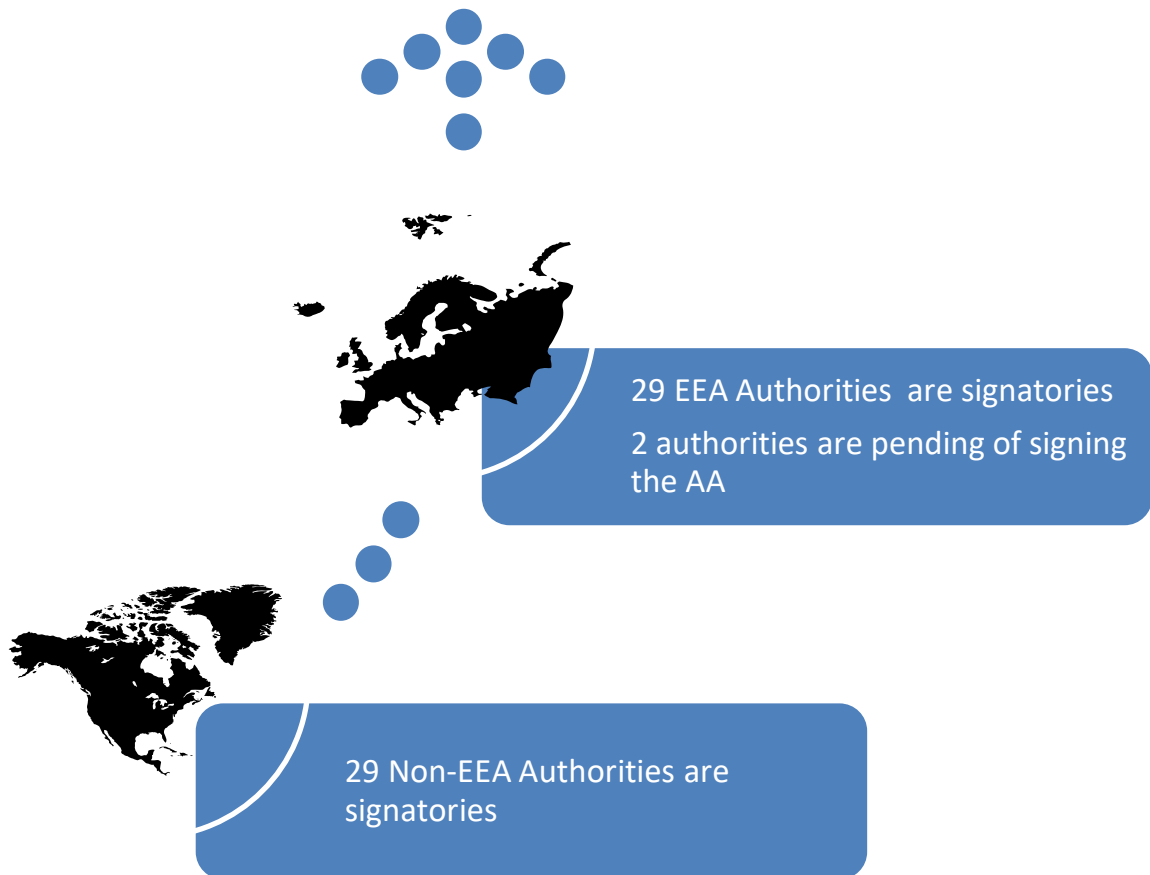
Under the EU's General Data Protection Regulation 2016/679 (GDPR), personal data cannot be transferred from the European Economic Area (EEA) to a third country.

In order for MMoU signatories to continue to be able to share information under the MMoU between EEA authorities and non-EEA authorities, IOSCO established an Administrative Arrangement that was endorsed by the European Data Protection Board.

It provides a new mechanism for the transfer of personal data between European Union (EU) financial supervisory authorities and securities agencies and their non-EU counterparts.

2. IOSCO and Cross-Border Cooperation and Information Sharing

Signatories of the Administrative Arrangement (as of Nov. 2021)



2. IOSCO and Cross-Border Cooperation and Information Sharing

Deference and Cross-Border Regulation to Mitigate Fragmentation

What is deference?

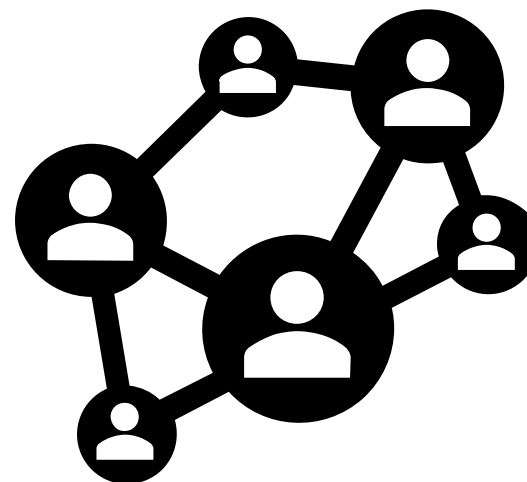
Overarching umbrella concept...

...describes **reliance** that authorities place on **one another...**

...when carrying out **regulation or supervision** of participants operating **cross-border...**

Deference covers **regulatory tools** like:

- **Passporting**
- **Recognition/Equivalence**
- **Substituted Compliance**



2. IOSCO and Cross-Border Cooperation and Information Sharing

IOSCO's report on Market Fragmentation and Cross-border Regulation (2019) – Findings

Positive developments...

- Increase in deference
- Increase in supervisory cooperation

... but challenges remain

- Transparency, clarity and understanding of the process
- Understanding one another's framework
- Keeping up-to-date

2. IOSCO and Cross-Border Cooperation and Information Sharing

Underpinned by 10 Good Practices:

Pre-assessment

- Be transparent about your deference process generally
- Engage with the authority you are going to assess to explain how the procedure will work

During the assessment

- Criteria for an outcomes-based process
- Considerations about the nature of risks
- Constructive communication and check-ins
- Scope consideration where full deference is not possible
- Provide feedback

After the assessment

- Update one another on changes to legislative frameworks
- Where revocation is envisaged, provide time for remedial actions or consider other actions
- If revocation is the only option, think about Cliff-Edge effects in implementing it

2. IOSCO and Cross-Border Cooperation and Information Sharing

Supervisory Colleges

Global supervisory colleges have been implemented in different areas (e.g. CCPs and CRAs), but they are not yet regular features of securities markets.

As a follow-up to IOSCO's report on Market Fragmentation and Cross-border Regulation (2019) as well as building on IOSCO's report on Supervisory Colleges for Credit Rating Agencies (2013), IOSCO is in the process of identifying **good practices in the establishment and conduct of supervisory colleges**.

2. IOSCO and Cross-Border Cooperation and Information Sharing

Good practices

Building on the earlier CRA recommendations, this work includes **good practices** on:

- ✓ the **role of supervisory colleges** as a forum for the exchange of information, collective risk assessment and for cooperation with regard to supervisory activities;
- ✓ having written cooperation and information sharing arrangements underpinning the **governance of colleges**;
- ✓ **minimum criteria** to become a member of a college;
- ✓ the specific **role the chair of a college** could undertake; and
- ✓ the **frequency of meetings**.

Also good practices for the following **additional areas** have been identified: **crisis management, transparency, membership, emerging risks, and effectiveness monitoring**.

2. IOSCO and Cross-Border Cooperation and Information Sharing

Areas of consideration for new global supervisory colleges

This work identified several areas as examples of potential sectors where the use of global supervisory colleges could either be increased or developed:

- Market Intermediaries;
- Asset management;
- Financial benchmarks administrators; and
- Crypto-asset platforms.

(These areas were selected on the basis that (i) market participants in this sector are doing business across multiple jurisdictions and/or conduct activities which could have spillover effects on other jurisdictions and (ii) market participants could be involved in emerging areas where supervisory knowledge has perhaps not yet been fully developed.)

3. Challenges and Frontiers?

Challenges to Cross-Border Cooperation

- **Complexity and speed of globalization and digitalization** of financial services and intermediation (e.g. online trading platforms)
 - **Fast-growing new areas** that may fall outside of the regulatory scope (e.g. crypto-assets)
 - **Legislative challenges** including data privacy and banking secrecy laws
 - **Administrative barriers** and protectionist policies
 - **Lack of transparency, clarity and understanding** of deference mechanisms
 - **Lack of accessible and complete information** about illegal cross-border activities and fraudulent schemes
- These and other challenges increase the **risk of market fragmentation** and can give rise to **regulatory arbitrage and cross-border fraud**



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