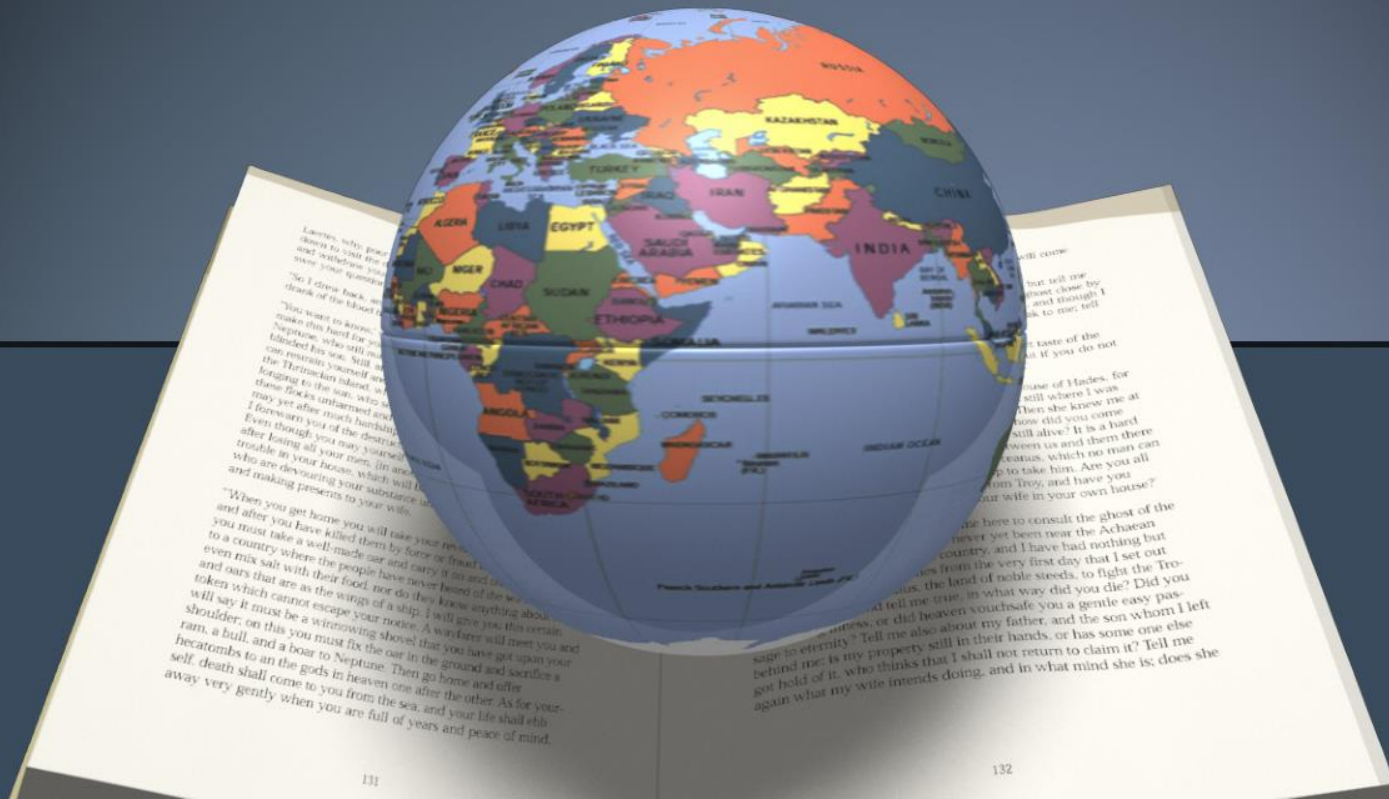


4th SEC-PSE Corporate Governance Forum

Improving the Philippine Investment Climate by Balancing Bank Secrecy and Transparency

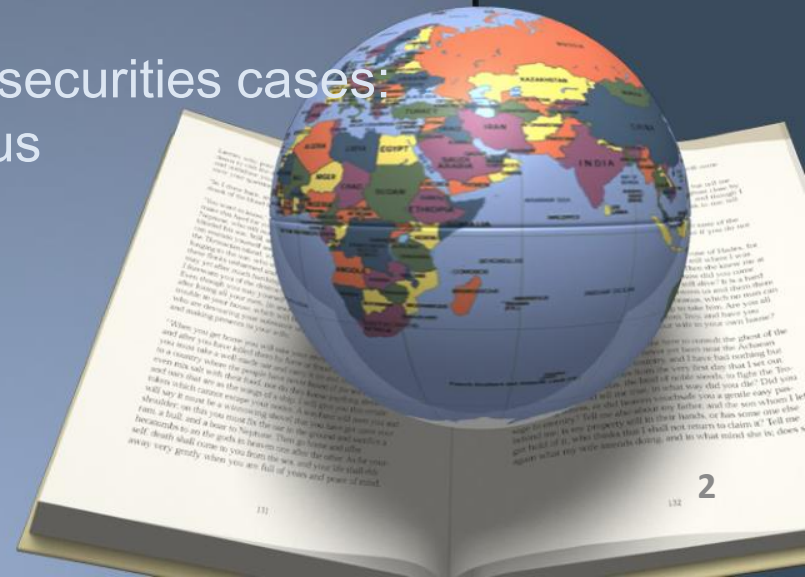
22 November 2017, Manila

Isabel Pastor
IOSCO General Secretariat

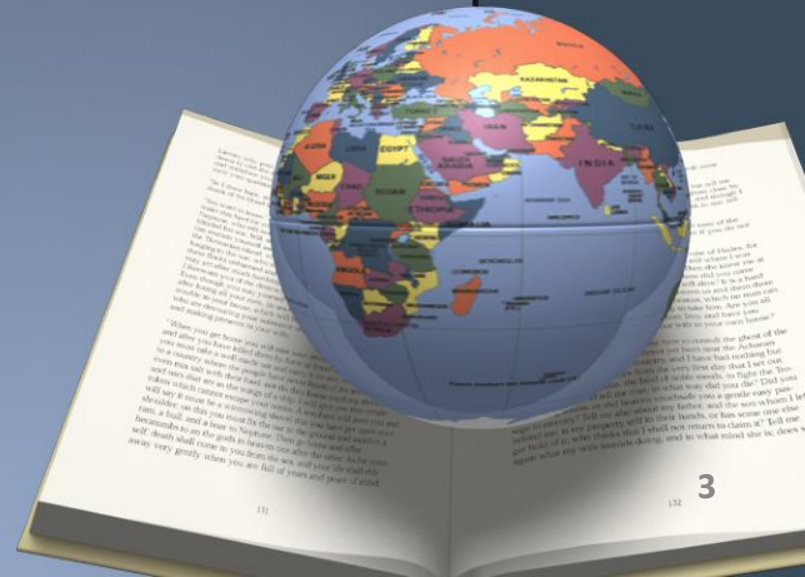


IOSCO MMoU: Overview and Update

- Historical background
- What is the MMoU and how it is used
- Objectives of the MMoU: The MMoU as an integral part of cooperation in cross border securities cooperation and crimes
- Level of implementation worldwide
- Use and future use of the MMoU in securities cases: Current statistics- what do they tell us
- Privacy rights and the MMoU
- Final comments



- Historical background





IOSCO's Mission

IOSCO is the **primary global forum** for securities regulators, with members from over **100** jurisdictions

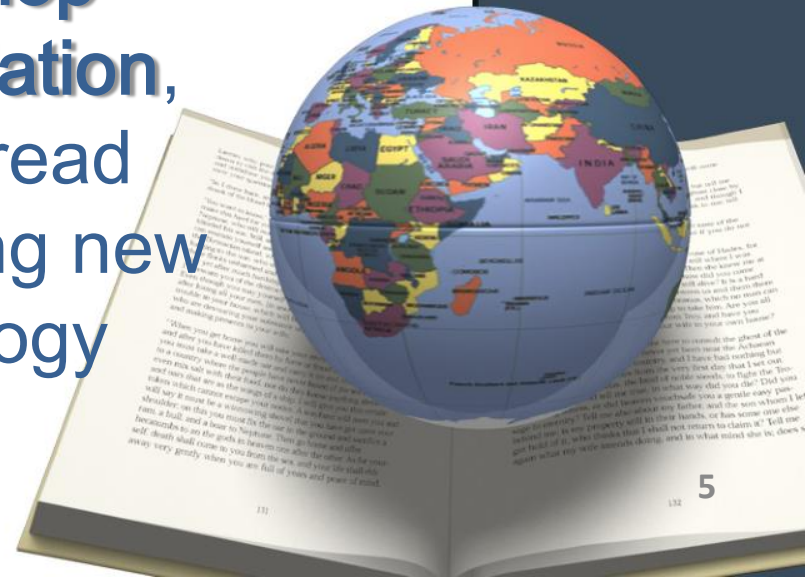
It exists :

- To **cooperate to promote high standards of regulation** to maintain just, efficient and sound markets
- To **exchange information and experience to promote** the development of domestic markets
- To **unite efforts** to establish standards and an effective surveillance of international securities and derivatives transactions
- To **provide mutual assistance** to promote the integrity of markets by a rigorous application of the standards and by effective enforcement against offences



The Financial Systems & Globalization

- A weak domestic financial system is a **systemic threat** to both **domestic and global stability**
- In an environment of increasing cross-border capital flows it is almost **impossible to develop domestic standards in isolation**, as financial institutions spread across markets, introducing new products and new technology



Why is cooperation important?

- Because of **increasing international activity** in the securities and derivatives markets
- To better **ensure compliance** with and enforcement of securities regulations
- To **tackle the current global challenges** of securities regulators
- To **combat securities fraud** and other securities violations



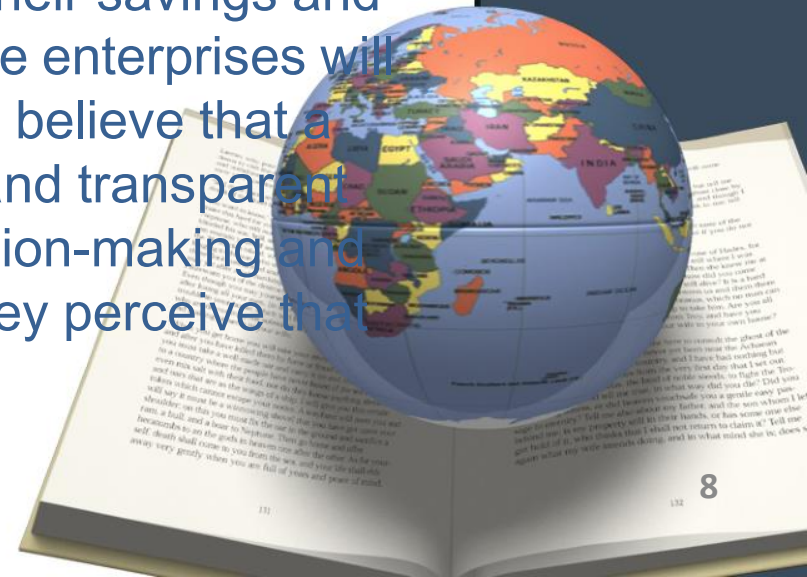
Why was the MMoU established by IOSCO ?

- To **strengthen implementation** of existing resolutions and agreements on information exchange
- To **reinforce a message** to the markets that regulators are co-operating and watching out for **potential securities and derivatives fraud**
- Launched as a “key initiative to tackle global challenges” following 9/11
- Because of increasing international activity in the securities and derivatives markets, and the corresponding need for mutual co-operation among securities regulators

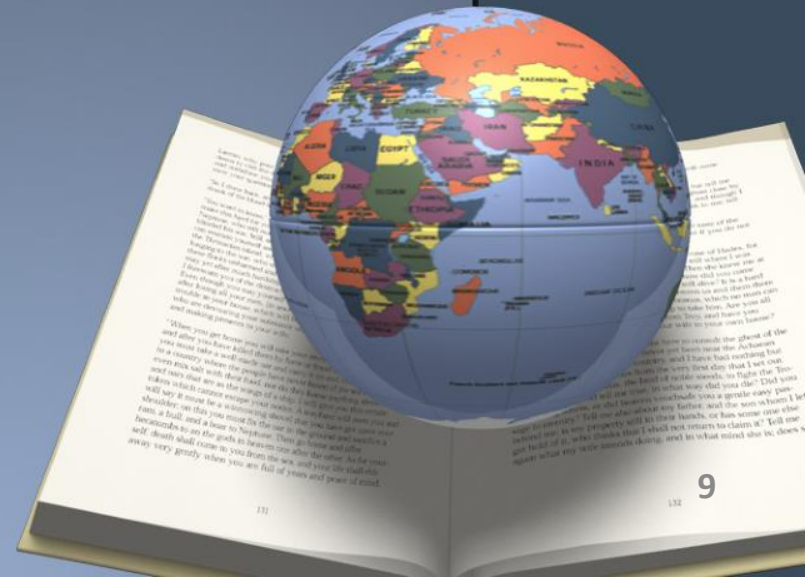


Why is effective enforcement important?

- The MMoU sets forth the signatories' intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the respective laws and regulations of the jurisdictions of the signatories
- Without effective enforcement, investor confidence cannot be sustained, with the consequence that investors will be less willing to invest their savings and the cost of capital raising for productive enterprises will rise. If international investors come to believe that a particular domestic market is not fair and transparent, they will factor that risk into their decision-making and likely invest in other markets where they perceive that that risk does not exist

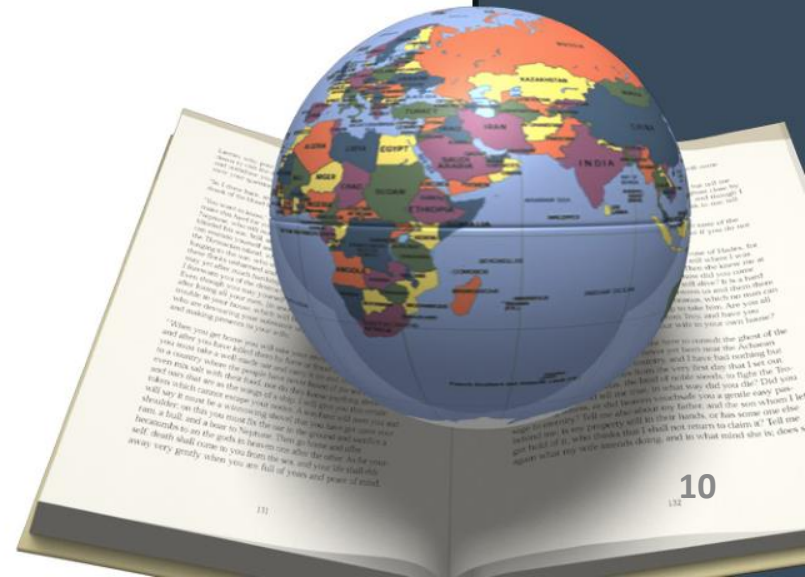


- What is the MMoU and how it is used



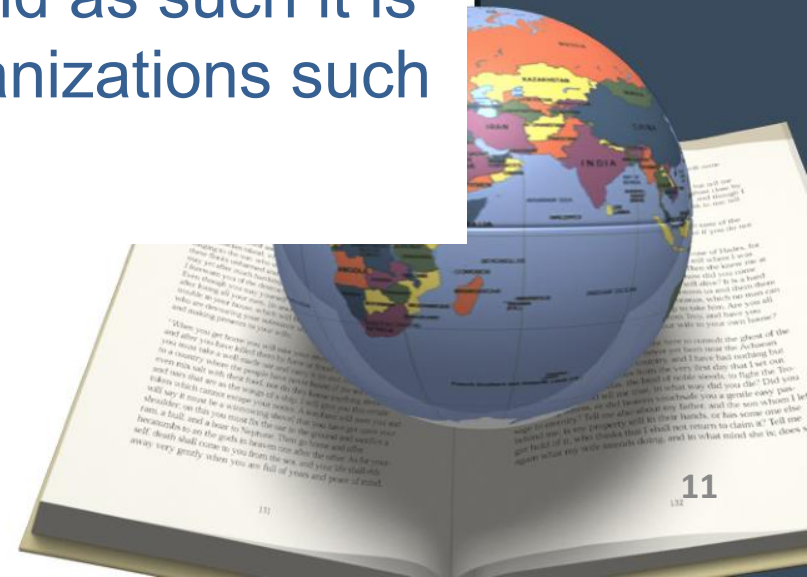
What is the MMoU?

- Not an international treaty
- No legal obligations are imposed
- Not legally binding



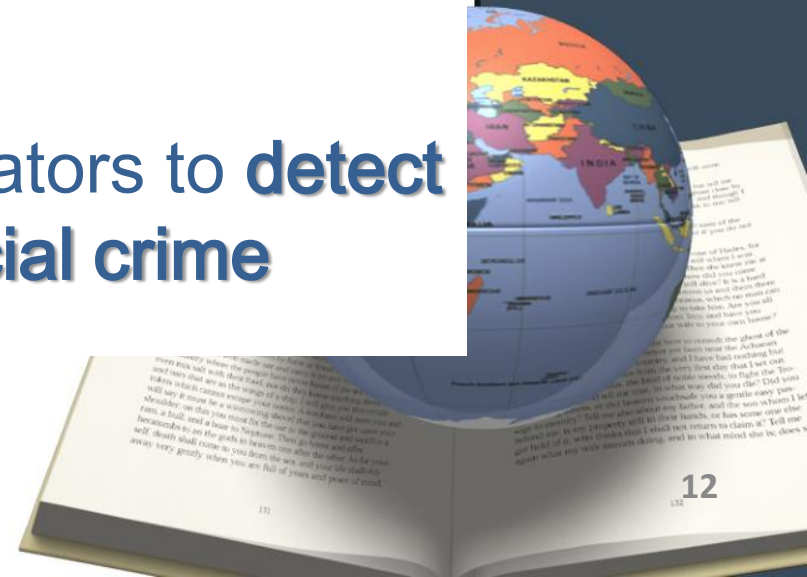
● In summary, the MMoU is...

- An understanding among its signatories about **how they will consult, cooperate, and exchange** information for securities regulatory enforcement purposes
- It is **the international standard** on cooperation and exchange of information, and as such it is recognized by international organizations such as IMF, WB and FSB



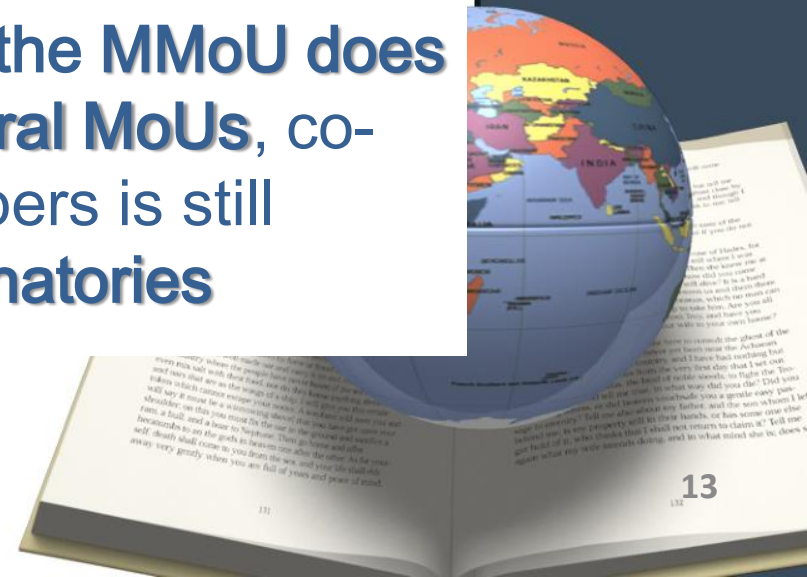
What are the objectives of the MMoU?

- Enhancing jurisdictions' ability and willingness to **co-operate internationally**
- To better **ensure compliance** with and enforcement of securities laws and regulations
- Enhancing the ability of regulators to **detect and deter cross-border financial crime**



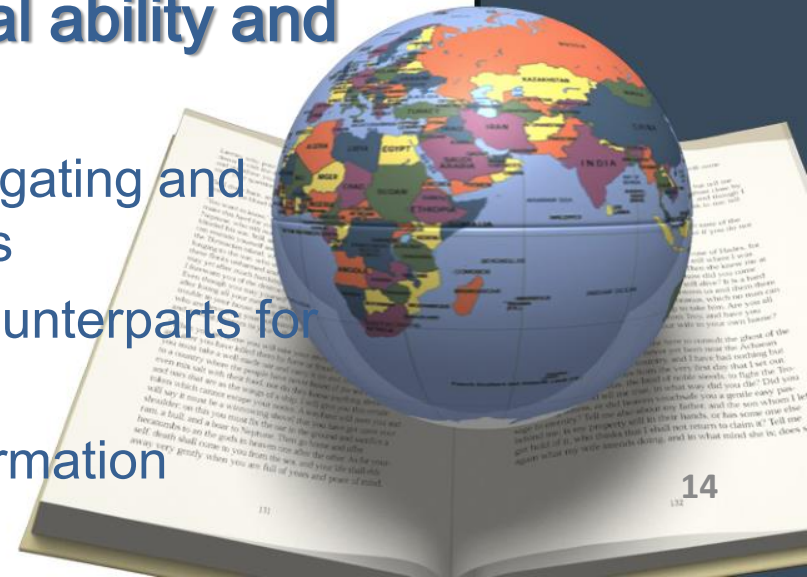
What is the legal impact of the IOSCO MMoU?

- The provisions of the MMoU are **not** intended to create legally **binding** obligations or supersede domestic laws. Signatories can execute their responsibilities **under the MMoU within their legal framework**
- It is necessary to note that since the MMoU does **not supersede any existing bilateral MoUs**, co-operation amongst IOSCO members is still expected, **even between non-signatories**

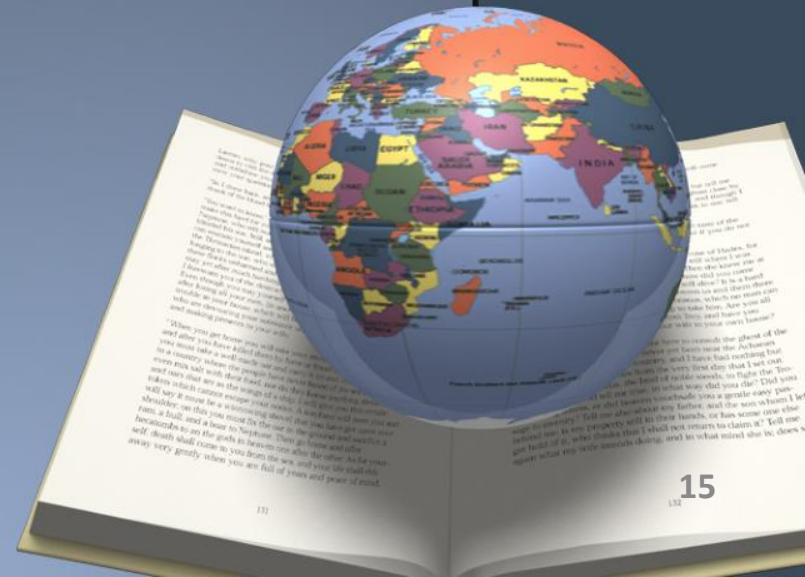


What does it mean to be a signatory to the MMoU?

- Being a signatory to the MMoU is a statement of your **commitment** with regard to **mutual assistance and the exchange of information** for the purpose of enforcing and securing compliance with the laws and regulations of the relevant jurisdictions
- Signatories must have **the legal ability and willingness to:**
 - Gather information key to investigating and prosecuting enforcement matters
 - Provide information to foreign counterparts for the uses described in the MMoU
 - Protect the confidentiality of information

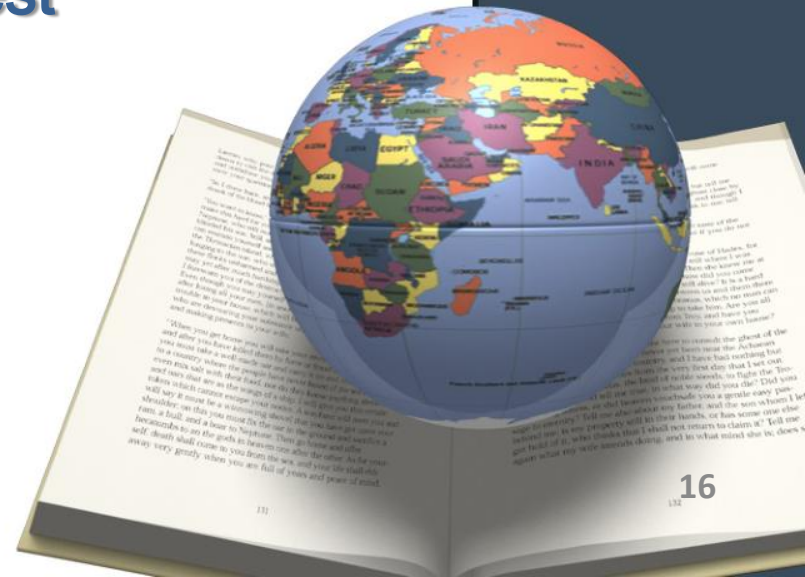


- Objectives of the MMoU: The MMoU as an integral part of cooperation in cross border securities cooperation and crimes



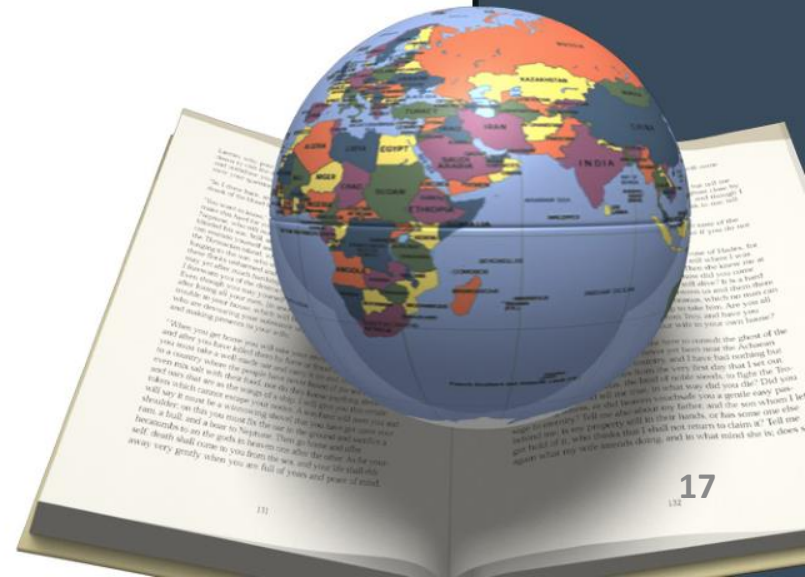
Key MMoU provisions

- **General principles of mutual assistance to enforce and secure compliance with laws of the member's jurisdiction: not intended to create legally binding obligations**
- **Broad scope stated as “the fullest assistance permissible”**



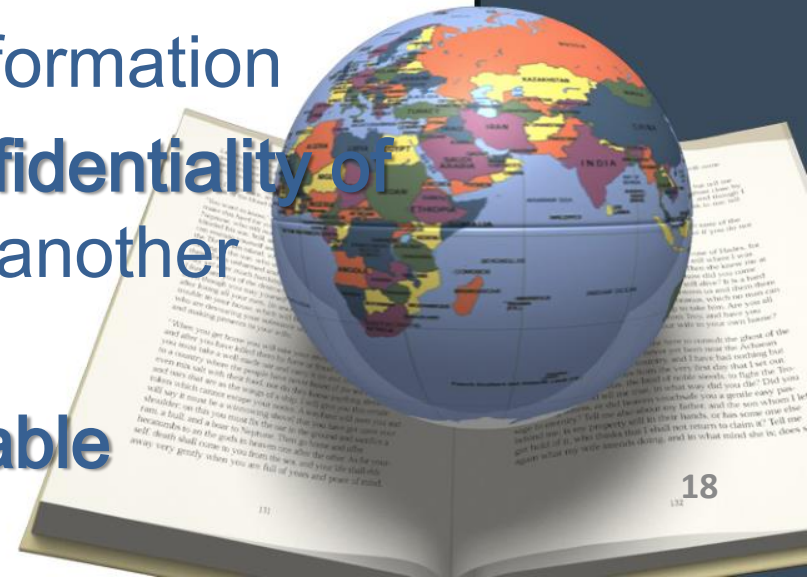
● The meaning of the MMoU

- A signatory to the MMoU makes commitments in **6 important areas**



Commitments of A signatory to the MMoU in 6 important areas

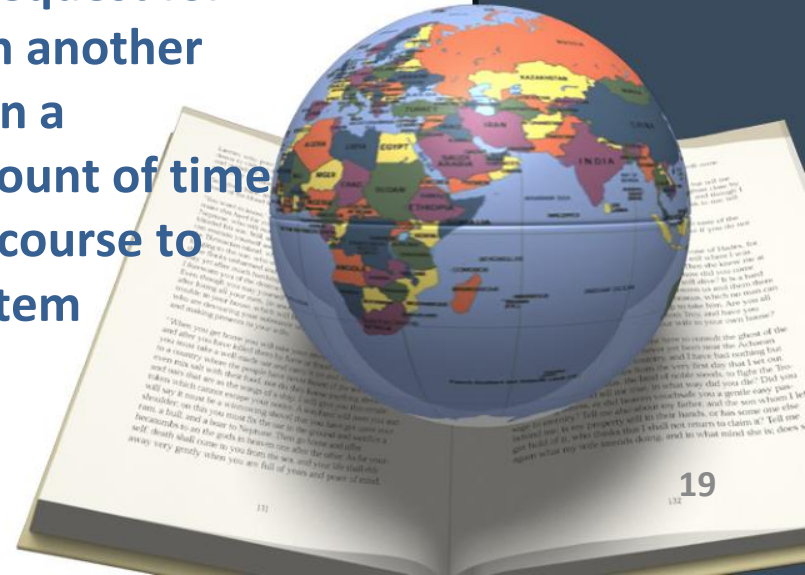
- Ability to **lawfully obtain** information on behalf of another signatory
- **Nature of the information**
- Ability to **lawfully transmit the information** to another signatory
- **Permissible uses** of the information
- Ability to **preserve the confidentiality of information** received from another signatory
- **Extent of assistance available**



Commitment 1

Commitment 1
Ability to
lawfully
obtain
Information

The signatory represents it has the legal power to compel persons located in its home jurisdiction to provide information for the use of the signatory and in response to a request for assistance from another signatory within a reasonable amount of time and without recourse to the judicial system



Commitment 2

Commitment 2 Nature of information

- Transactional data
- Banking records including information about beneficial owners
- Brokerage account records
- Communications data e.g. Bloomberg chats
- Oral evidence
- Telecoms data to the extent permitted by law
- Information from its own in-house investigation files
- Other information relevant to market misconduct



Commitment 3

Commitment 3

Ability to
lawfully
transmit
information

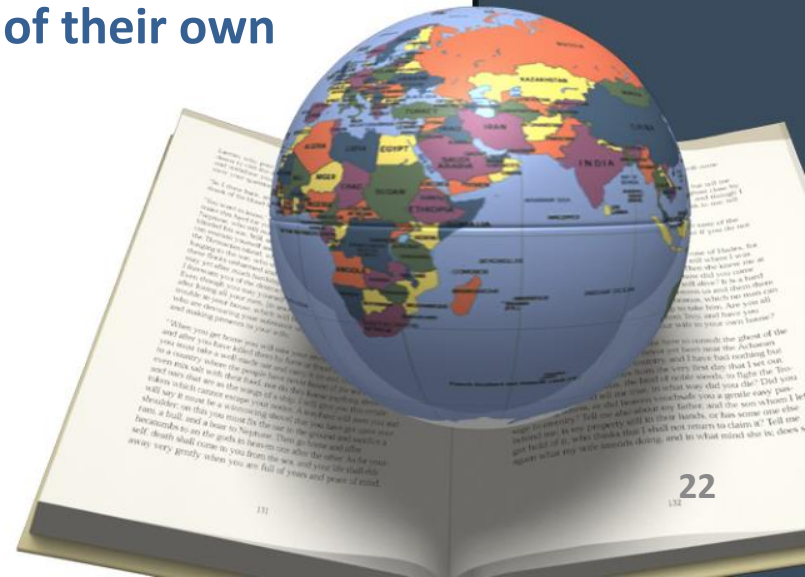
The signatory represents that it is permitted to lawfully transmit information abroad for the purpose of assisting another signatory with its investigation in relation to potential violations of financial services laws and regulations e.g. insider dealing, market manipulation, material misrepresentation and other fraudulent or manipulative market abuse practices.



Commitment 4

Commitment 4
permissible
uses of
information

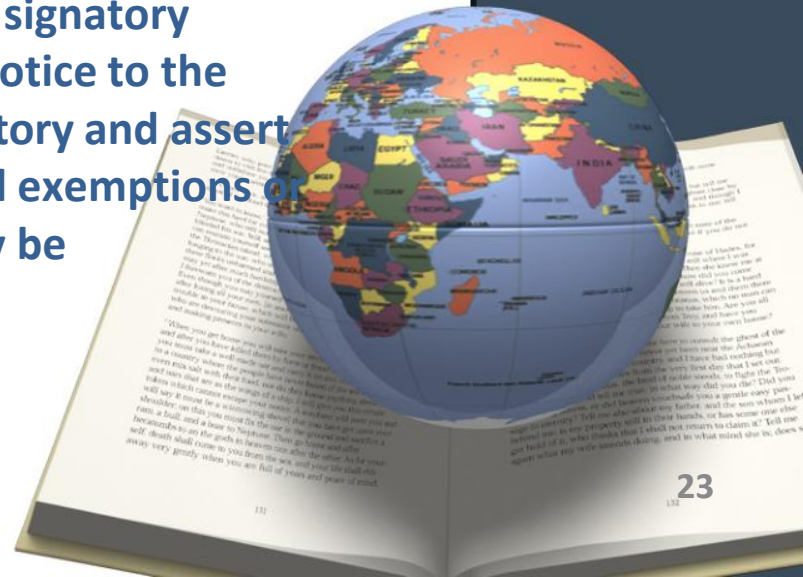
The signatory represents that recipient signatories may use the information to enforce compliance with the securities laws of their own jurisdictions



Commitment 5

Commitment 5
Confidentiality
of information
received from
other signatories

The signatory represents it will comply with the confidentiality restrictions set out in the MMOU including preserving the confidentiality of the information it receives from another signatory. In the context of a legally enforceable demand for the confidential information, the signatory should provide notice to the requesting signatory and assert all available legal exemptions or privileges as may be appropriate

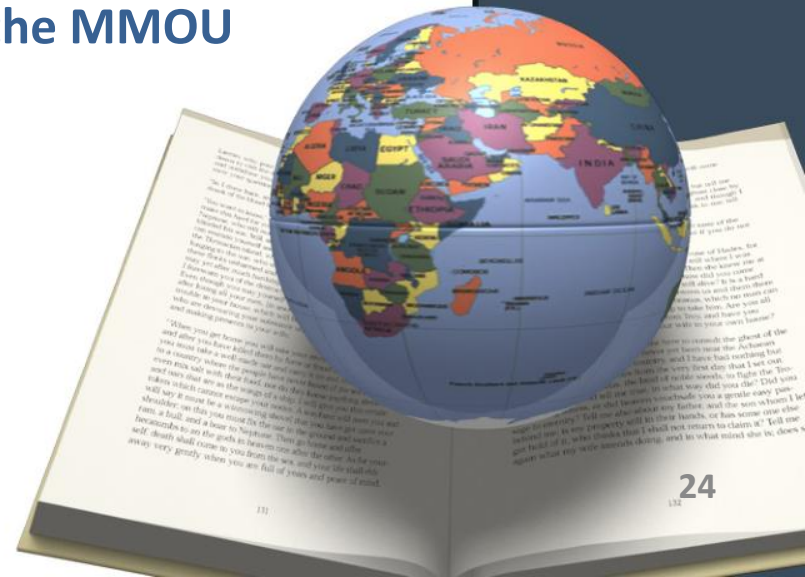


Commitment 6

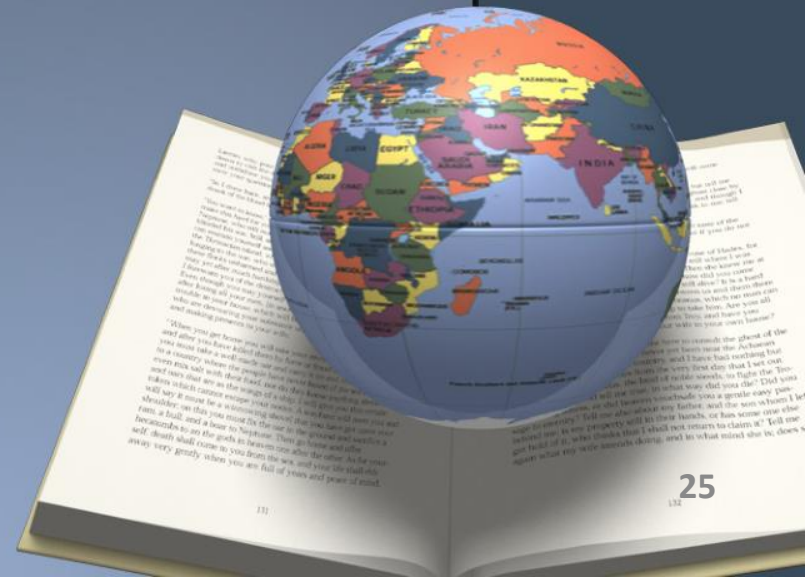
Commitment 6

**Extent of
assistance
provided to
other signatories**

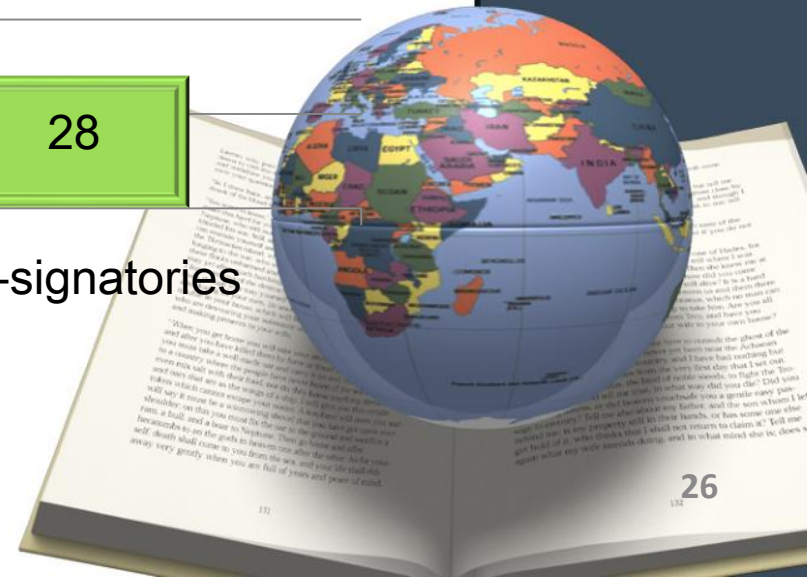
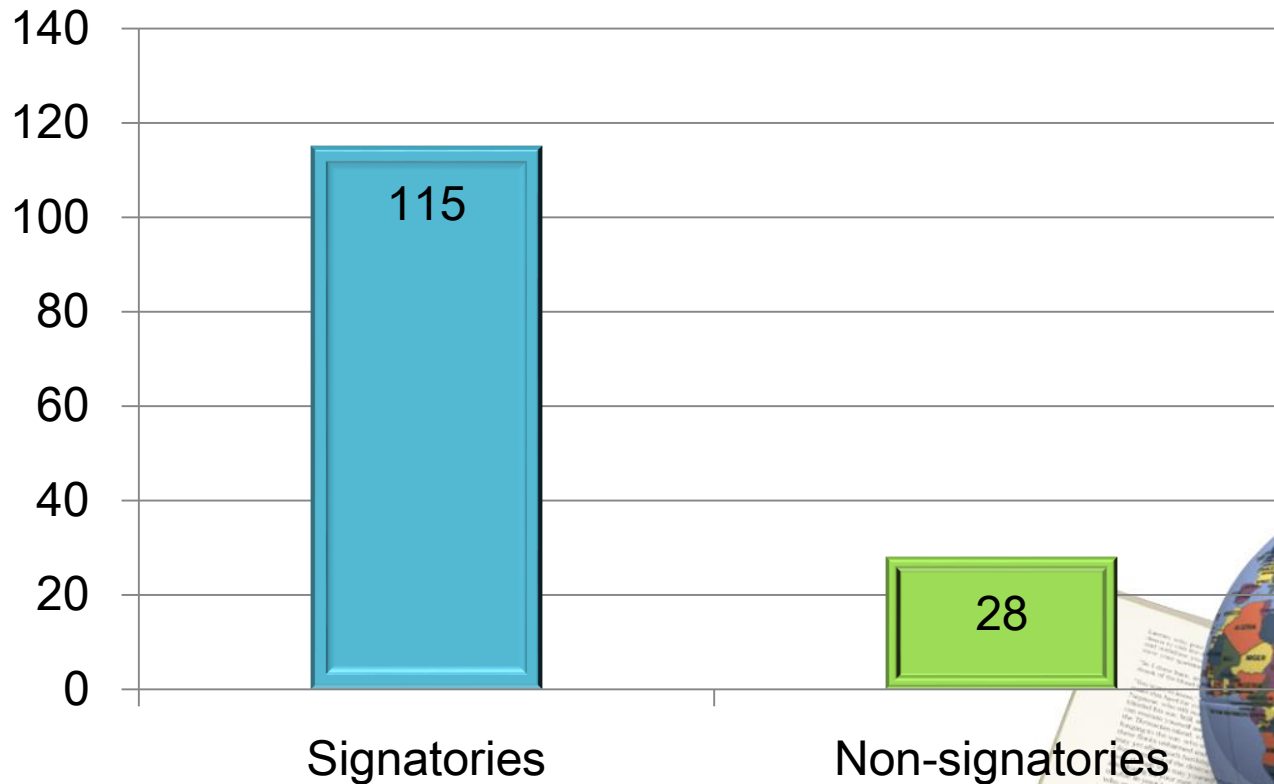
The signatory agrees to provide other signatories with the fullest permissible assistance within the framework of the MMOU



- Level of implementation worldwide

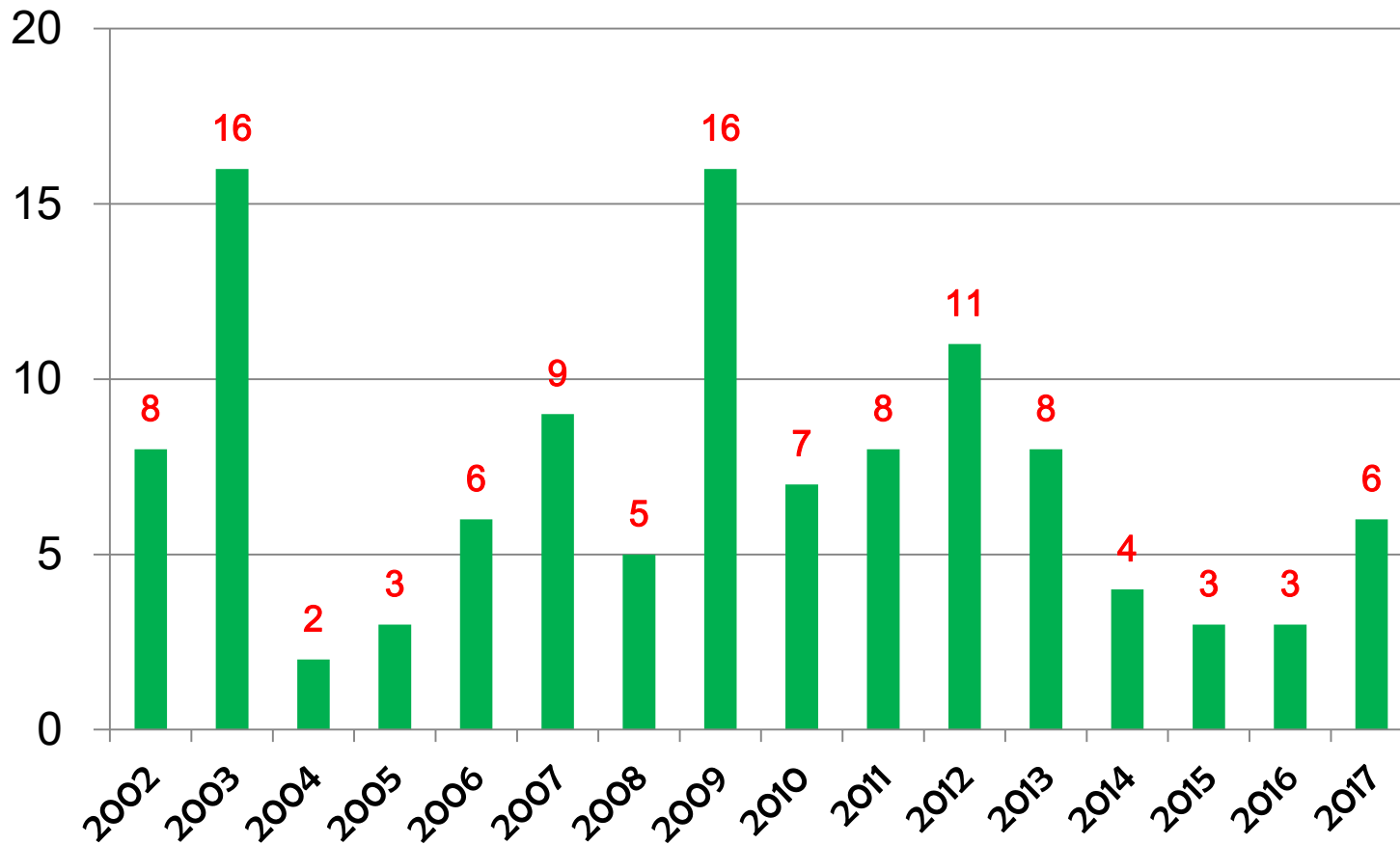


The number of signatories and non-signatory IOSCO Members (As of Nov 2017)





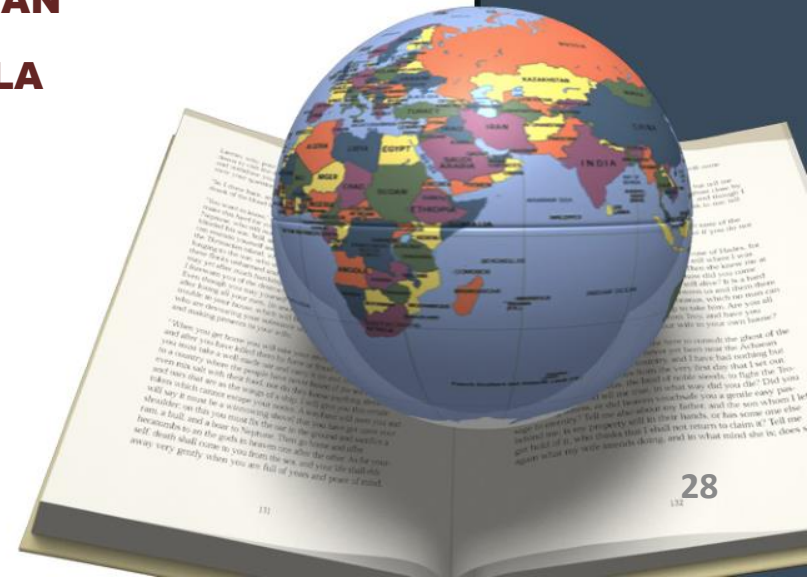
The number of new signatories by year





Members in the 2013 List

- ➔ ALGERIA
- ➔ ARMENIA
- ➔ BARBADOS
- ➔ BOLIVIA
- ➔ BRUNEI
- ➔ CHILE
- ➔ COSTA RICA
- ➔ DOMINICAN REPUBLIC
- ➔ ECUADOR
- ➔ GHANA
- ➔ HONDURAS
- ➔ KAZAKHSTAN
- ➔ KYRGYZ REPUBLIC
- ➔ UKRAINE
- ➔ PANAMA
- ➔ PAPUA NEW GUINEA
- ➔ PHILIPINES
- ➔ UGANDA
- ➔ UZBEKISTAN
- ➔ VENEZUELA
- ➔ ZAMBIA

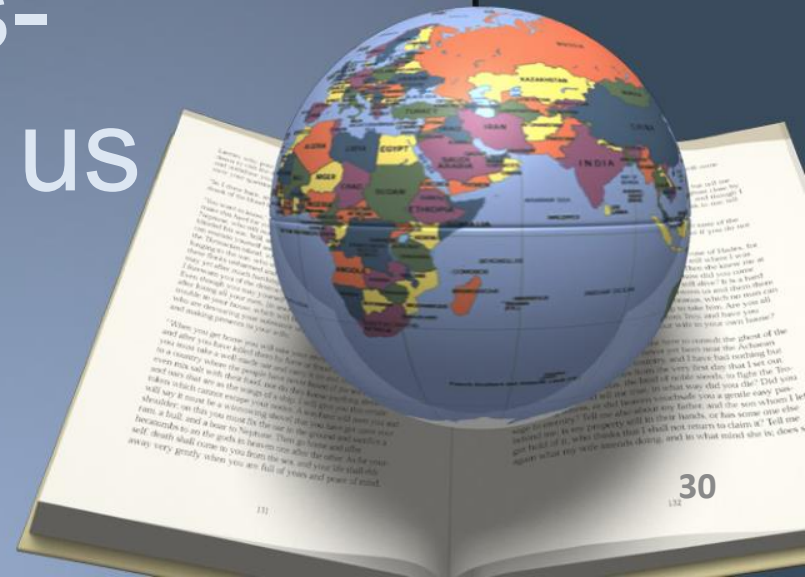




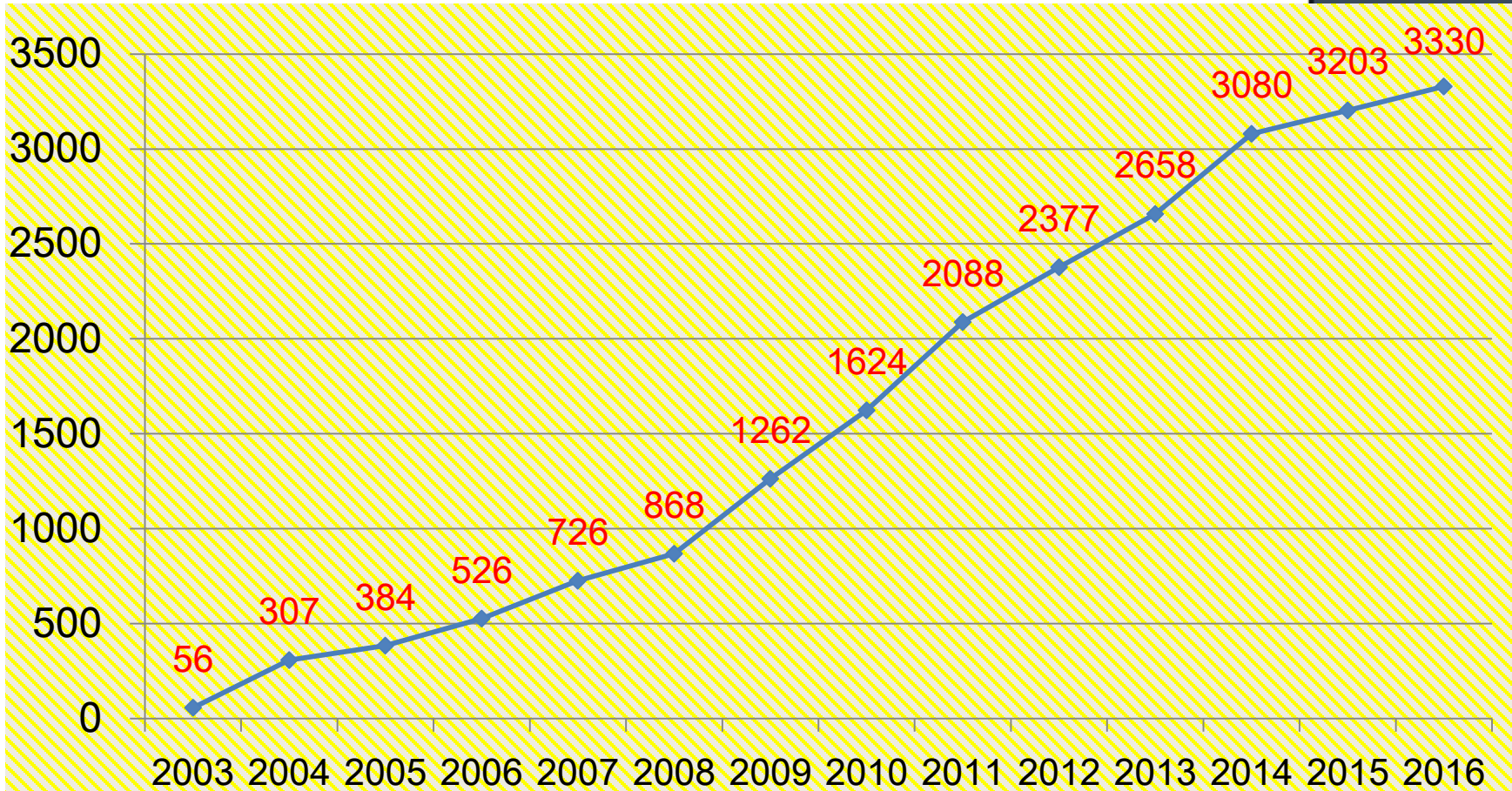
Summary of the Graduated Additional Measures (GAM)

	GRADUATED ADDITIONAL MEASURES	TO WHOM DO THE MEASURES APPLY	DATE FROM WHICH MEASURE TAKES EFFECT	DURATION OF MEASURE
GRADUATED ADDITIONAL MEASURES	<ul style="list-style-type: none"> IOSCO calls on its members to consider taking certain, specified types of precautions when exercising their authorization or supervisory and enforcement responsibilities in respect of entities or individuals linked to non-signatory jurisdictions, given the more limited enforcement co-operation that those jurisdictions can provide. Restriction from nominating candidates for election or appointment to leadership positions 	all remaining non-signatory members	30 September 2013	Measures in effect until non signatories become MMoU Signatories
	<ul style="list-style-type: none"> Stepping down from leadership positions 		31 March 2014	
	<ul style="list-style-type: none"> Suspension of participation in IOSCO Policy Committees 		30 June 2014	Measures in effect until non signatories become MMoU Signatories
	<ul style="list-style-type: none"> Suspension of voting rights 		30 September 2014	
	<ul style="list-style-type: none"> Suspension of participation in IOSCO Board Committees and Task Forces 		1 October 2014	

- Use and future use of the MMoU in securities cases: Current statistics- what do they tell us

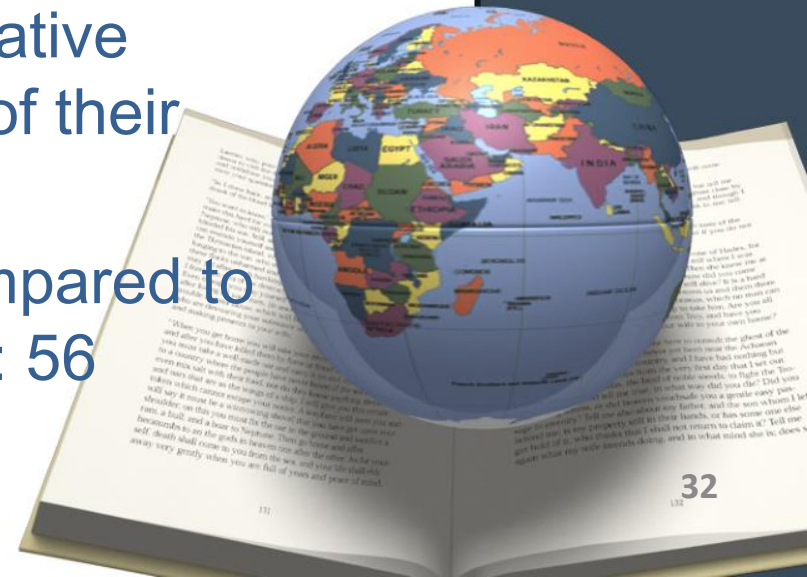


Requests made pursuant to the MMoU



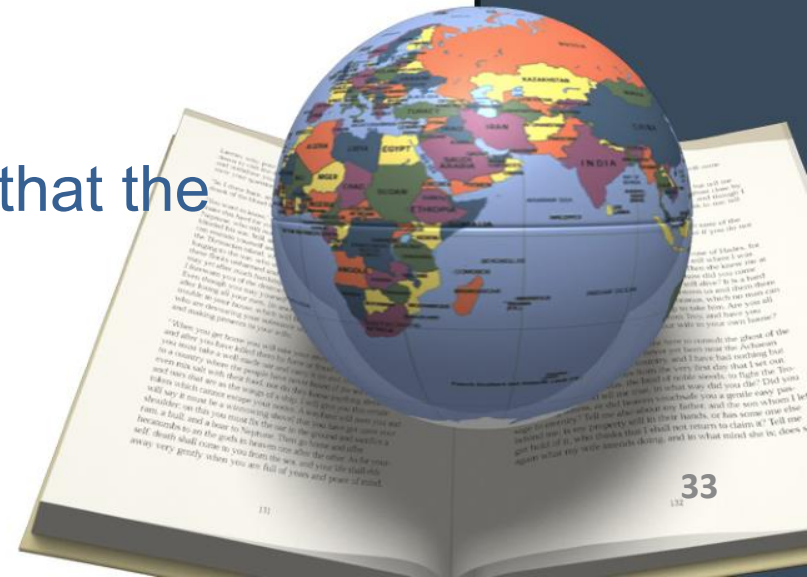
MMoU Usage Statistics - 2016

- During 2016, 3330 requests were made and received. Most of them were made for information needed to reconstruct securities or derivatives transactions and to identify beneficial owners, regarding insider dealing, market manipulation, misrepresentation of material information and other fraudulent or manipulative practices and the identification of their material details
- The 2016 figures should be compared to the number of requests in 2003: 56

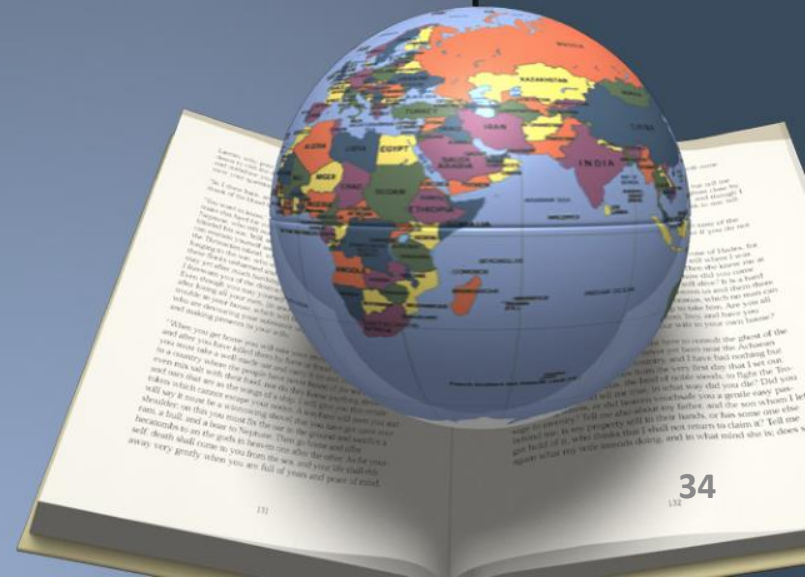


MMoU Usage- Statistics - 2016

- The jurisdiction making the largest number of requests in 2016 was France AMF(374), followed by US SEC(360) and UK FCA(329)
- The jurisdiction receiving the largest number of requests in 2016 was UK FCA (530), followed by US SEC (492)and Swiss FINMA (204)
- Most of the respondents stated that the response time was satisfactory



- Privacy rights and the MMoU





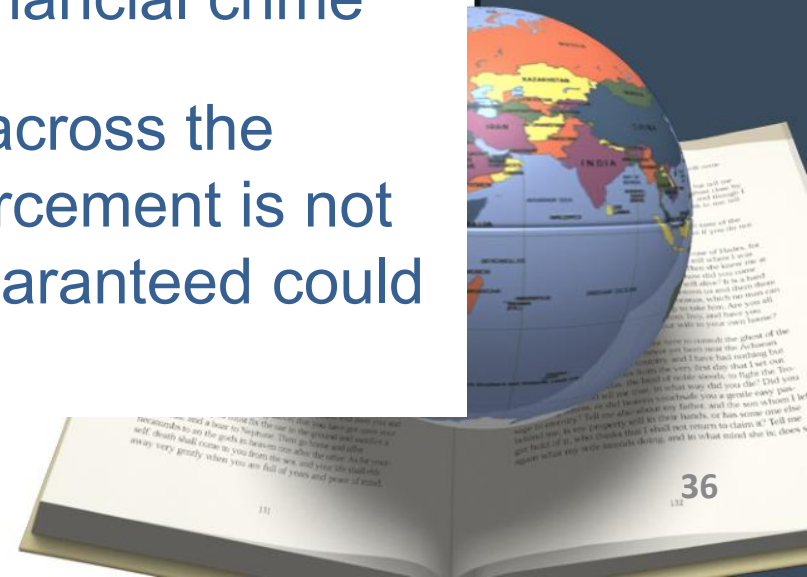
Privacy Rights

- Does **NOT** mean that no one should be aware of the information
- Means that
 - (1) the data subject should have the right to decide who will be able to access/maintain/use his/her information, to prohibit a misuse of the information, and to be able to request a deletion of his/her information, and
 - (2) all information should be appropriately processed
- The use could be restricted for the public interest or other legal purposes
- IOSCO is well aware of this matter and is now drafting an Administrative Arrangement for privacy purposes



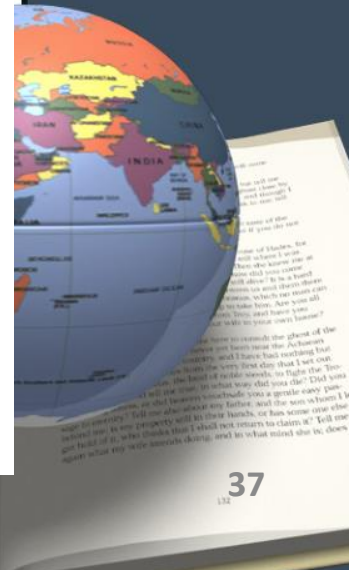
Capital Market Transparency

- Transparency is one of the important elements for capital market development and a fundamental basis for investors' confidence – who will invest in markets where fraud is common place?
- Without international cooperation, we cannot effectively combat international financial crime
- Given the fast transfer of capital across the world, the jurisdiction where enforcement is not working or transparency is not guaranteed could be a target of crime



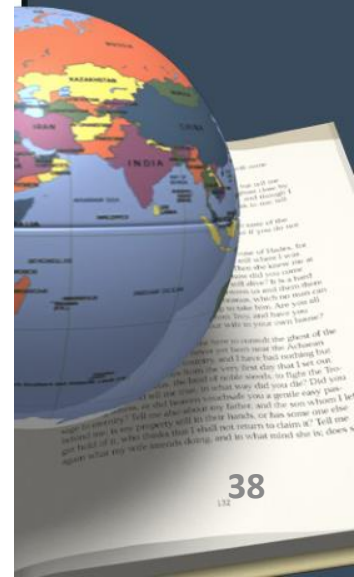
Balanced approach to Privacy and Enforcement

- There might be some conflict between privacy and transparency
 - how can we arrive to a balanced approach between these conflicting forces?
- We need to remember that privacy cannot be used as a tool for crime or an immunity to enforcement
- All jurisdictions provide more or less rights for privacy, including in many of MMoU signatories, however we can see the MMoU signatories are actively cooperating and exchanging information

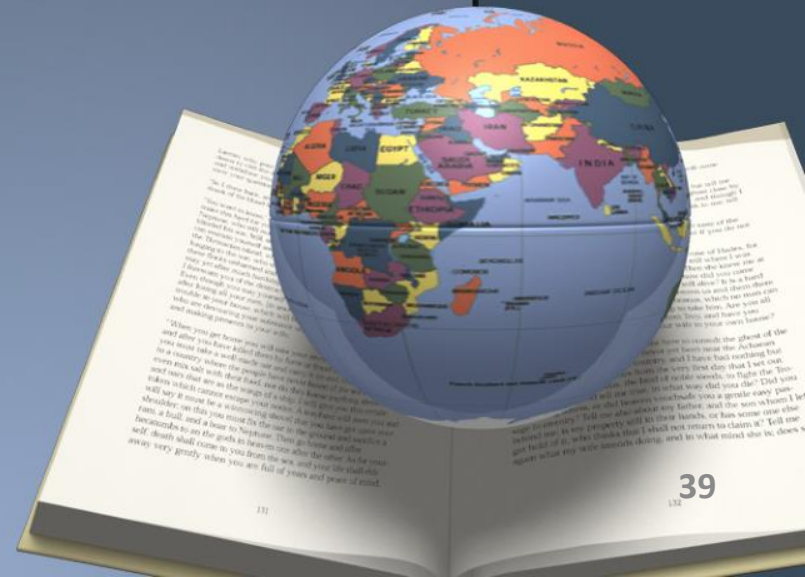


Balanced approach to Privacy and Enforcement

- The MMoU requires strict confidentiality measures which minimize damages to privacy
 - Each authority must have the ability to impose enforcement measures against its staff and executives for breaching the confidentiality requirements
 - A requested authority cannot disclose a request, its existence or its contents to a third party for purposes unrelated to the execution of the request without first consulting with the requesting authority
 - A requesting authority must have a right to argue against the disclosure and must use its best efforts to protect the confidentiality of non-public documents and information received under the MMoU



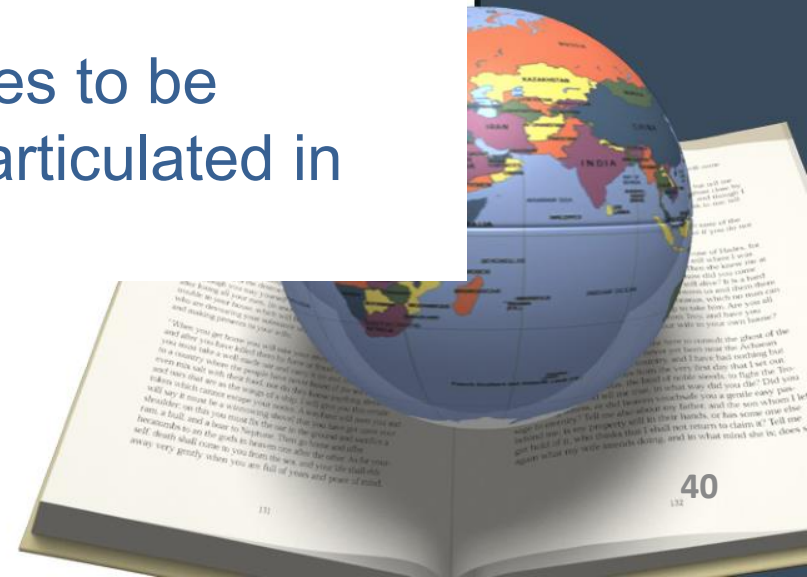
- Final comments





MMoU Impact

- 115 MMoU signatories covering over 90% of the markets which these securities regulators regulate
- The MMoU is a global standard to ensure international cooperation and information exchange
- The MMoU requires the signatories to be compliant with the requirements articulated in the MMoU





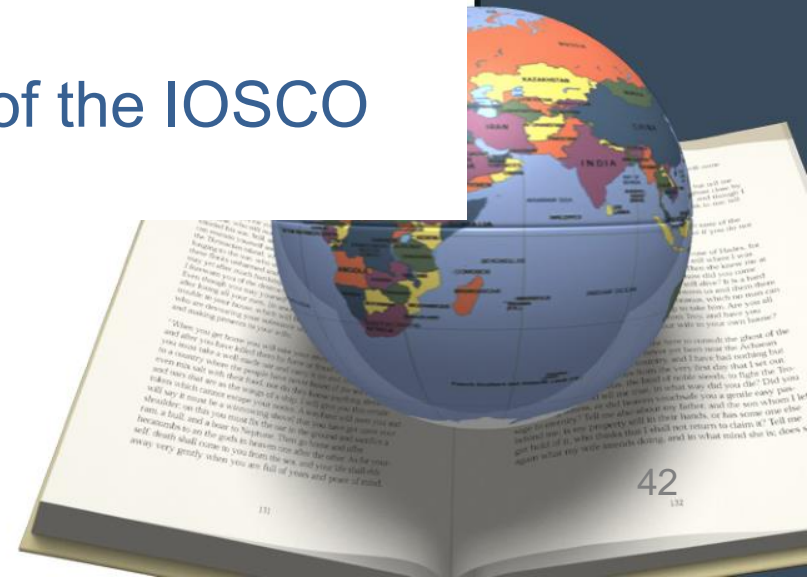
MMoU Impact

- The fact that a jurisdiction is a MMoU signatory means that the jurisdiction has implemented the global standards for enforcement and cooperation, which provide transparency to the capital markets, confidence to investors and a good reputation to the jurisdiction
- This is the reason why all jurisdictions round the world are very eager to join IOSCO and sign the MMoU
- We need empirical research in order to evaluate the impact of the MMoU on capital markets, but we can assume the MMoU should be helpful for capital market development



Additional benefits of the MMoU

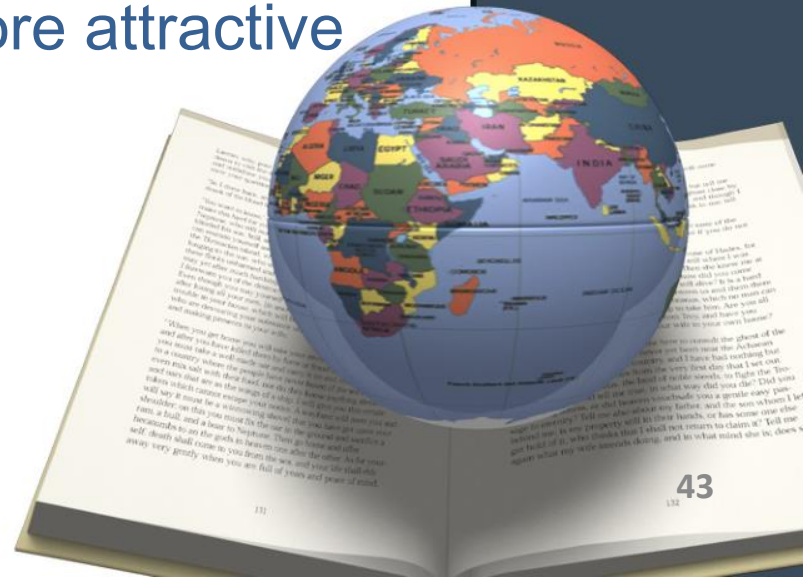
- Increases the credibility of capital markets
- Likelihood that signatories attract increased capital flows & experience a lowering in the cost of capital
- Recognition from international bodies & regulators around the world
- Moving on the implementation of the IOSCO Principles





Conclusion

- The MMoU is a practical and effective international instrument that assists regulators to enforce their securities and derivatives laws
- As the enforcement activities of securities regulators become stronger, national financial markets are made more attractive to investors





**Questions or
comments?**