

Parliamentary Joint Committee on Corporations and Financial Services
Friday, 13 September 2019
Response to ASIC Question on Notice

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Topic: IOSCO MMOU

Mr GEORGANAS: We have seen a growing number of financial institutions—banks—offshoring. In other words, setting up call centres, databases, processing hubs et cetera. With the growth that has taken place in the last 10 years, what difficulties does it create in effectively adhering to the regulations on investigating if there are issues—not so much the privacy, because the privacy is a separate matter, but is it on your radar?

Mr Price: Certainly from an enforcement point of view it can be a challenge. That's why engagement through international bodies—one I'll mention to the committee is a body called IOSCO, the International Organization of Securities Commissions—is very important. We are a member of IOSCO and we have also signed what's called the Multilateral Memorandum of Understanding. That's a standardised agreement that the various jurisdictions entered into. It is a memorandum of understanding that allows us, for supervisory and enforcement purposes, to contact people overseas so as to streamline the getting of information for those supervisory and enforcement purposes. But you're right to identify it. It has been a challenge for some years. It's also important to highlight that, although certain functions may be outsourced, the licensee—if we're talking about licence conduct—retains responsibility. You can't outsource your responsibility. You can outsource the function; you remain responsible as licensee to make sure that that function is—

Mr GEORGANAS: Would you—without naming anyone—be able to tell us of any particular incidents where you have had to get involved and perhaps take it further?

Mr Price: In terms of the MMOU we will take that on notice. I'll give you my general experience. It's a process that runs very smoothly, and it's in everyone's interest that it run very smoothly, because Australia may need information from Germany one day; Germany may need information from Australia the next.

Mr Shipton: We can get you those statistics. They actually passed my desk a couple of days ago on another matter. I don't have them to hand. But, on the information exchange under that MMOU, there is quite frequent exchange particularly with jurisdictions like the United Kingdom, the United States, Hong Kong, Singapore and New Zealand whereby we're exchanging information to assist in investigations. But there are a couple of things that you rightly highlight in your question, such as the complexity with international financial institutions that have offshore operations. That's why John Price was absolutely right to highlight the importance of international regulatory cooperation, because there are matters that do cross borders, particularly in sophisticated wholesale markets where there are subsidiaries and trading businesses of Australian institutions operating offshore, and offshore institutions that have businesses trading and operating in Australia with other functionality offshore.

The original point of your question, which is also a really good one, is the growth of outsourcing. We've seen this in this country; we've seen it in other countries. I will also make the point—and I won't speak with great knowledge of our peer regulator responsible for systemic and prudential issues, APRA—that globally the focus amongst conduct and prudential regulators has been on the increasing outsourced and offshoring business models and how they work and operate. But Mr Price is right to highlight that we look to the comfort of the responsibility of the in-country licensed entity to hold them to account to live up to their responsibilities under our law.

Answer

ASIC's international cooperation

- ASIC works closely with foreign regulators, law enforcement agencies and a range of international organisations. ASIC makes and receives international requests in relation to enforcement investigations, compliance and surveillance, policy research, delegations and licensing/due diligence and general referrals. ASIC also sends and receives referrals of information with foreign regulators to enable information to be shared without the need for request where appropriate.
- ASIC's engagement with international counterparts is undertaken in line with relevant Australian laws.
- In **2018-19**, ASIC made **331** requests for assistance to foreign regulators and agencies and received **514** (a total of **845**). These figures include requests made and received pursuant to the IOSCO MMOU.

ASIC as a member of IOSCO and signatory to the IOSCO MMOU and EMMOU

- ASIC, like many of our foreign counterparts, is a member of the International Organisation of Securities Commissions (IOSCO), and a signatory to a broad information sharing agreement, the IOSCO Multilateral Memorandum of Understanding (IOSCO MMOU). There are currently **124** securities regulators that are signatories to this agreement. ASIC and a smaller number of signatories are also parties to the IOSCO Enhanced Multilateral Memorandum of Understanding (EMMOU) which is a slightly broader agreement.
- The IOSCO MMOU and EMMOU set out an agreement and commitment among its signatories of how they should consult, cooperate, and share information for the purpose of regulatory enforcement regarding securities markets. The MMOU and EMMOU contain requirements and protocols around how and what type of information can be requested, shared and used by regulators. As a signatory to these agreements, ASIC can have certainty around when information can be obtained if requested to assist with its regulatory or enforcement purposes.
- In **2018** ASIC made **50** requests for enforcement matters and assisted with **21** requests for assistance under the IOSCO MMOU/EMMOU. These figures are included in ASIC's total request figures for the relevant financial year to align with ASIC's Annual report.
- During this same period, ASIC also referred **18** matters containing information relevant to foreign regulators for ensuring compliance with laws in their jurisdictions and without any request being made for their consideration and action and received **35** unsolicited referrals of information for ASIC's consideration and action under the IOSCO MMOU/EMMOU. These figures are included in ASIC's total request figures for the relevant financial year to align with ASIC's Annual report.
- All requests, responses and correspondence are confidential, enabling full and efficient information and intelligence disclosure. Accordingly, ASIC is unable to provide specific detailed examples in relation to requests for assistance. However, by way of assistance 2 examples are set out below of public ASIC action taken where assistance was obtained from overseas jurisdictions:

Example 1 – AGM Markets Pty Ltd (Markets Enforcement investigation)

In November 2018, ASIC cancelled the Australian Financial Services Licence of the retail OTC derivative issuer, AGM Markets Pty Ltd (AGM), and banned former director and Chief Executive Officer of AGM, Yossef Ashkenazi, also known as Yossi Ashkenazi from providing financial services for a period of eight years. These actions came after ASIC found AGM's financial services business involved core elements of unconscionability and unmanaged conflicts of interest and followed a business model that disregarded key conduct requirements. ASIC also launched related civil proceedings.

The relevant conduct of AGM had significant connections to individuals and entities overseas. To enable ASIC's investigation to progress, significant information was obtained from foreign jurisdictions. In 2018-19, ASIC made 9 requests for assistance to various foreign agencies based in different jurisdictions, including requests made pursuant to the IOSCO MMOU. The international assistance received by ASIC in this matter has played a significant role in progressing these matters.

Example 2 – Byte Power Group Limited (Markets Enforcement investigation)

In February 2019, ASX-listed company, Byte Power Group Limited (Byte Power), paid a penalty in response to ASIC issuing an infringement notice for alleged failure to comply with Byte Power's continuous disclosure obligations. This action related to an announcement made to the ASX concerning the status of work undertaken by a partner based overseas, and subsequent failure of Byte Power to inform the ASX of changing circumstances in line with continuous disclosure obligations.

To gain a full understanding of this matter, ASIC sought information from a number of foreign jurisdictions. In 2018-19, information was obtained by ASIC in response to 4 requests for assistance made to regulators in 3 jurisdictions, including requests made pursuant to the IOSCO MMOU. ASIC's determination and action were greatly assisted by the information provided in response to these requests.¹

Other cooperation arrangements

- ASIC is also a signatory to a number of information sharing agreements (MOUs) with foreign counterparts to facilitate information sharing and regulatory cooperation on a bilateral and multilateral basis. ASIC currently has **91** current bilateral MOUs with regulators who are also members of the IOSCO, and these MOUs relate to the supervision and enforcement of relevant laws and regulations; promotion and cooperation with regard to innovation (Fintech and Regtech); and oversight of AIFMD entities (Alternative Investment Fund Managers Directive).
- ASIC also has **4** MOUs with other regulators or international bodies which are not members of IOSCO with regard to oversight of AIFMD entities; compliance and enforcement of corporations (companies registry); and oversight of auditors and accounting standards.

¹ Jurisdictions are not listed in these two examples due to confidentiality requirements of international requests, including those made under the IOSCO MMOU. Should this information be required, ASIC can provide it to the Committee by way of confidential briefing.

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- ASIC is a member of the International Association of Insurance Supervisors (IAIS) and actively seeking to become a signatory to the IAIS Multilateral Memorandum of Understanding and Information Exchange (an agreement with **42** other insurance regulators as signatories), which will assist with the facilitation of information from overseas when needed to assist with regulation of insurance matters, including enforcement of such matters where appropriate.