

**Resolution of the Presidents' Committee
on Principles for Memoranda of Understanding**
September 1991

PRINCIPLES FOR MEMORANDA OF UNDERSTANDING

1. SUBJECT MATTER

MOUs should provide that investigatory assistance will be granted without regard to whether type of conduct under investigation would be a violation of the laws of the Requested Authority unless the Requested Authority is not permitted to provide assistance where the type of conduct under investigation would not be a violation of the laws of the Requested Authority.

2. CONFIDENTIALITY

An MOU should provide that an Authority that receives information pursuant to an MOU request will protect the information with the highest possible level of confidentiality which, at a minimum, should provide that the information will be treated with the same level of confidentiality that is given to similar information that it collects in investigations of possible domestic violations. In addition, an MOU should provide the Requested Authority with the opportunity to identify the level of confidentiality that it expects to be attached to information that it transmits pursuant to an MOU request.

3. IMPLEMENTATION PROCEDURES

In a mutually agreeable form, the signatories to an MOU should describe the procedures that they will follow in making and executing requests for information pursuant to the MOU; those procedures should be consistent with both signatories' legal requirements or impediments.

4. THE RIGHTS OF PERSONS SUBJECT TO AN MOU REQUEST

The fact that an investigation is conducted on behalf of a foreign authority pursuant to an MOU request should not alter the legal rights and privileges granted to persons in the State of the Requested Authority.

5. CONSULTATION

MOUs should contain a provision in which the Authorities agree to consult on relevant issues that arise during the operation of the MOU. Moreover, Authorities should consult

frequently to discuss developments or proposals likely to affect the other Authority's interests or the available means for cooperation.

6. PUBLIC POLICY EXCEPTION

An MOU should provide that the Requested Authority maintains the right to refuse to provide assistance in instances where the provision of assistance would violate the public policy of its State. The concept of public policy would include issues affecting sovereignty, national security, or other essential interests.

7. TYPES OF ASSISTANCE

MOUs should provide that the Authorities will take all reasonable steps to ensure that they can utilize their full domestic powers to execute requests for assistance. The available assistance should include, where the Requested Authority has such powers, obtaining documents and the statements or testimony of witnesses, granting access to the Requested Authority's non-public files, and conducting inspections of regulated entities.

8. PERMITTED USES

MOUs should specify whether and under what circumstances the Requesting Authority may provide information it receives pursuant to an MOU to other domestic Authorities for use in related matters, including investigations or proceedings instituted by other Authorities and regulators, and SROs.

9. PARTICIPATION BY THE REQUESTING AUTHORITY

MOUs should provide that, to the extent permitted by the laws and policies of the Requested Authority, the Requesting Authority may be permitted to participate directly in the execution of a request for assistance.

10. COST-SHARING

MOUs should provide that, under certain circumstances, the Requested Authority can, if it deems it necessary, initiate a process for having the Requesting Authority share the costs of providing assistance that are incurred by the Requested Authority.