

Enforcement

MEMORANDUM

October 3, 1957

To: All Regional Administrators

From: A. K. Scheidenhelm *AKS*
Executive Director

Subject: Cooperation with Federal, State, and
Canadian Enforcement Agencies

By memorandum dated August 29, 1957, all Regional Administrators were informed that the policy memorandum on this subject dated August 28, 1957 had been considered and would be formally adopted by the Commission following the Regional Administrators' Conference. The Regional Administrators were informed also that in the interim, they could proceed to act in accordance therewith.

On September 30, 1957, the Commission formally adopted the August 28, 1957 memorandum without change. Several copies thereof, dated to reflect final Commission action and authenticated by Orval L. DuBois, Secretary of the Commission, are enclosed for your information and guidance.

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

September 30, 1957

TO: All Regional Administrators

FROM: The Commission

SUBJECT: Cooperation with Federal, State, and Canadian
Enforcement Agencies

The purpose of this memorandum is to state Commission policy with respect to the making available by Regional Administrators to State, Federal, and Canadian law enforcement agencies of information developed in the course of investigations in the more normal situations, and to delegate to Regional Administrators the authority to make such information available under specified circumstances. This memorandum supersedes the Chairman's memorandum dated September 28, 1953 to all Regional Administrators on this subject and the section of the Enforcement Manual (Section 13, P. 15) Re: Cooperation with other agencies.

This memorandum is intended to facilitate cooperation with other enforcement agencies to relieve Regional Offices of the necessity of obtaining prior clearance where the supplying of information is obviously in the public interest and should be interpreted to achieve this objective.

The attention of Regional Administrators is particularly directed to Rule 230.122 under the Securities Act of 1933 and 240.0-4 under the Securities Exchange Act of 1934 prohibiting disclosure by officers and employees of information or documents obtained in the course of investigations unless the Commission authorizes the disclosure of such information or documents as not being contrary to the public interest. These rules must be strictly observed by all Regional Office personnel. This memorandum constitutes such authorization by the Commission in those cases which fall within its terms. Cases where subpoenas are served upon Regional Office personnel shall continue to be handled in accordance with the above rules, rather than this memorandum.

A. Referral of information to State agencies for enforcement action under State Law.

Regional Administrators are authorized in their discretion to make available to appropriate State authorities all material developed in pending investigations, except formal investigations specifically ordered by the Commission, with a view to enforcement action by such State authorities under State law where the Regional Administrator determines:

1. The investigation appears to disclose a violation of State law; and
2. The Regional Administrator is of the opinion that the case can better be dealt with by State authorities than by the Commission, primarily where there would be substantial difficulty in proving a case under Federal law or where the case is primarily of local interest; and
3. The Regional Administrator has reason to believe that the State authorities will proceed promptly with investigation and will enforce any State law found to have been violated.

The primary purpose of this procedure is to conserve the time and manpower of the Regional Offices. It is not contemplated that this procedure will normally be employed where the Regional Office will have to continue the investigation because the State authorities are not equipped to perform this function.

In the case of formal investigations which have been ordered by the Commission which the Regional Administrator believes should be referred to State authorities for enforcement action under the foregoing standards, the Regional Administrator may recommend to the Commission, through the Division of Trading and Exchanges, that information be turned over to State authorities.

B. Cooperation with Post Office Authorities.

Where a Regional Office is conducting an investigation in cooperation with inspectors of the United States Post Office Department, in a situation which may involve violations both of the laws administered by the Commission and the Mail Fraud Statute, the Regional Administrator is authorized in his discretion to make information developed in the course of his investigation available to Post Office inspectors.

C. Furnishing of information to other State and Federal law enforcement agencies.

In cases not falling within the foregoing Sections A and B, that is, situations other than referral of a matter for State enforcement action, or cooperation with the Post Office Department, Regional Administrators are authorized in their discretion to make available to Federal and State law enforcement agencies information developed in the course of an investigation where the Regional Administrator is satisfied that such action is clearly not inconsistent with the Commission's enforcement functions in a particular case or in other cases.

Regional Administrators should advise the agency that the information is being supplied on a confidential basis and is not to be disclosed to others or used in any public manner without Commission authorization.

D. Cooperation with Canadian Securities Administrators

1. Regional Administrators are authorized, in their discretion, to make available to Canadian Securities Administrators, information developed in the course of an investigation where the Regional Administrator believes that such action is not inconsistent with the Commission's enforcement functions. Such information should normally be supplied with the understanding that it is furnished on a confidential basis and should not be disclosed to others or used in any public manner without Commission authorization. The importance of harmonious relationships with Canadian Securities Administrators should be recognized in the exercise of the authority herein granted.

In case it is necessary to undertake any investigative work in order to supply information requested by a Canadian Securities Administrator, Regional Administrators are authorized to perform such work in their discretion. The Division of Trading and Exchanges should be promptly advised of any such work undertaken and of the information developed and supplied.

2. In order for the Commission to maintain proper control over its relations with Canadian Securities Administrators and to permit proper liaison with the Department of State, Regional Administrators should obtain prior authorization from the Division of Trading and Exchanges before:

- (a) Undertaking a cooperative investigation of a case with a Canadian Securities Administrator, or
- (b) Requesting a Canadian Securities Administrator to supply information, other than routine requests for public information which may be supplied without difficulty or burden upon the Canadian Administrator or his staff, or
- (c) Sending Commission personnel to Canada.

PROCEDURE


1. In the case of cooperative investigations with the Post Office Department, the Division of Trading and Exchanges should be advised of the fact that such cooperative investigation has been undertaken and that information is being

furnished to Post Office inspectors. In all cases where information is supplied to Canadian, State, or Federal agencies pursuant to this memorandum, appropriate records should be maintained to indicate the nature of the information or other material which was made available to the agency, and a copy of such record should be forwarded promptly to the Division of Trading and Exchanges, except that where such information or material is furnished to the Department of Justice or the Federal Bureau of Investigation, such records should be forwarded to the General Counsel with a copy to the Division of Trading and Exchanges. Where documents or statements are released to other agencies, the Regional Office should obtain an appropriate receipt in reasonable detail.

Originals of documents which constitute part of the official records of the Commission may be furnished only to Federal agencies. Whenever such originals are furnished to other Federal agencies, the Commission's Records and Service Officer should be informed in writing. Only copies, and not originals, of official records should be furnished to State and Canadian agencies.

2. In those instances where the Regional Administrator is uncertain as to the desirability of supplying information in compliance with a request or otherwise, he may communicate the request to the Division of Trading and Exchanges, together with a statement of the reasons for or against making the information available and request instructions. In the case of a request from the Department of Justice or the Federal Bureau of Investigation such communication should be sent to the General Counsel with a copy to the Division of Trading and Exchanges.

By the Commission:


Orval L. DuBois
Secretary