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Honorable Edward R. Stettinius, Jr.
Secretary of State
Department of State
Washington 25, D. C.

Re: Canadian Extradition Treaty
Your Reference: Le 211.42/231

Dear Mr. Stettinius:

This will acknowledge receipt of your Department's letter of March 3, 1945, relative to the reservations proposed by the Canadian government to the extradition treaty signed by the United States and Canada on April 29, 1942. You ask whether we think it is advisable to insist on the suggested modifications to the Canadian reservations set forth in our letter of May 3, 1944. You make particular reference to the proposal against giving retroactive effect to the treaty and to the proviso in paragraph 4 of the proposed reservations.

It was our thought that the Canadian authorities would be agreeable to the treaty being retroactive at least with respect to those who had wilfully perpetrated frauds on citizens of the United States. However, in view of the marked increase in the unlawful sale of securities from Canada into the United States, and the consequent pressing need for ratification of the treaty, I think we should agree to making the treaty wholly non-retroactive if, in the opinion of your Department, its ratification by the Canadian Parliament would be expedited.

The first part of the proviso to paragraph 4 relates to acts classified as occurring partly in Canada and partly in the United States. It is not unlikely that such a classification would be held to include most of the violations in which we would be interested. The proviso would require a showing that the act was criminal in both countries, and also in the particular "place" where the act occurred in the requested country. In our opinion this would seriously handicap the extradition process. Indeed, it would very likely make it unworkable with respect to securities and mail fraud violations because, under the law of the "place" the transaction might be held not to be a criminal offense; and it should be noted that in general criminal cases in Canada are subject to Dominion jurisdiction, as distinguished from a provincial or local jurisdiction.

It would appear, moreover, contrary to established treaty practice as we understand it, and inconsistent with the spirit of the instant treaty, to require the

requesting country to prove criminality under the law of a particular locale as well as under the national laws of the requested country.

I find it difficult to perceive any justification for the second part of said proviso, which provides that a person committing the violation wholly in the requested country is immune from extradition, if he takes refuge in a particular "place" in which the laws do not make the violation a criminal offense. It seems to us that this can only serve as an escape mechanism.

We appreciate that the proviso may be the result of concern on the part of some Canadians that unwitting and inadvertent violations of our securities laws might be made the basis for extradition. As we have stated previously, the securities laws administered by this Commission do not provide criminal sanctions except in cases where there is wilful intent to violate the law. Moreover, you may assure the Canadian authorities of the fact that criminal proceedings under the securities laws are not brought except in cases of substantial, as distinguished from technical violations, and that would be particularly so when extradition proceedings are involved.

In our view, paragraph 4 of the proposed reservations, modified as suggested in our letter of May 3, 1944, makes it clear beyond doubt that no persons can or will be extradited except for fraud and wilful offenses.

In the absence of specific inquiry with respect to the other suggestions in our letter of May 3, 1944, it is presumed that there has been no objection made thereto. In any event, our opinion as to the appropriateness of such suggested modifications remains the same.

As mentioned previously, this Commission is receiving a mounting volume of complaints from United States citizens who have been imposed upon by individuals selling Canadian securities into the United States. These transactions involve violations of the federal securities laws, to which there is no effective deterrent in the absence of an adequate extradition treaty. I am sure that you will appreciate that this condition makes early ratification of the treaty all the more important.

Sincerely yours,

Ganson Purcell
Chairman

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RSRubin
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