

MEMORANDUM

November 24, 1954

TO: Commissioner Adams
FROM: W. Gomer Krise
RE: Chairman Lennox's Release of November 16, 1954.

You have asked for my comments on the release by Chairman O. E. Lennox dated November 16, 1954 withdrawing his directive of March 26, 1953.

In the second sentence of the second paragraph of the release, Chairman Lennox states "the plan adopted *** has proved a dismal failure from any point of view." In my opinion the failure has been primarily from the point of view of certain Ontario broker-dealers who, being unable to successfully distribute their securities to residents of the United States without lurid literature and telephonic misrepresentations, (to which they were accustomed) have been complaining and bringing pressure to bear on Chairman Lennox. Chairman Lennox, in turn, was looking for something "to hang his hat on"; and it may be that the record provides him with a costumer of sorts.

While I did not participate in the conferences, it is my understanding that his recital of the proceedings leading to the adoption of Regulation D, the agreement concerning prerequisite qualifications in Ontario, the failure to so require, and the change in the wording of the regulation, without consulting with or explaining to him, may have some basis in fact, or at least sufficient basis to have led him to believe that certain provisions would be made.

There is no question that his directive of March 26, 1953 was issued on a trial basis. It so states. I can disagree with his philosophy and apparent reactionary motives but unless careful examination of the available record discloses that it is sufficiently clear as to disentitle Chairman Lennox to his own interpretation, I am unable to find refutable culpable fault with his statement, except those parts devoted to delays in processing Regulation D's and, in his view, the uncooperative attitude of some of the states of the United States. He concentrates exclusively on filings in which there were delays when he well knows that there would have been no delays if full, complete and accurate information had been furnished with the initial filings. His criticism of the actions of various states and the problems posed are beyond our control, of which he is cognizant.

The absence of cooperation by the Ontario Securities Commission confronts us with a grave problem and suggests serious consequences. I submit the following steps for consideration:

1. Immediate designation of a representative of this Commission to confer with Chairman Lennox on a friendly and understanding basis.

2. Immediately thereafter a reconsideration by the Commission of the provisions of Regulation D which are objectionable to him and other problems which he may raise in the aforesaid conference.
3. In cooperation with Chairman Lennox the continuation of conferences and discussions with the various state commissioners in the hope that some compromise can be reached if the state commissions can be impressed with the seriousness of the situation and the consequences of the alternatives.
4. In the event that a compromise can be reach with Chairman Lennox, a resurvey of the processing of Regulation D's. I believe arrangements could be made for filings under this regulation to be processed immediately upon receipt and notifications of deficiencies transmitted by wire. Deficiencies might be confined to those matters which are considered material, excluding matters of minor importance, the only purpose of which would be to build up a barrier. It may be claimed that such treatment discriminates against domestic issuers filing under Regulation A; they do not receive such service. We can, in a large measure, through the courts and administrative proceedings control the actions of our own people but in this instance we are dealing with a foreign element over whom we have little or no control, particularly with respect to violations of registration provisions, except that which is gained through diplomacy.
5. On previous occasions I have suggested that various phases of the "Canadian situation" may be the responsibility of too many persons who are possibly unfamiliar and/or unsympathetic with the problem as a whole, its history, background, philosophy and objectives. It may be that this should be reconsidered.

I realize that it is not unlikely that, coming from an enforcement officer, the foregoing approach may be considered "soft." However, it should be borne in mind that the foreseeable consequences of this "misunderstanding" will be more serious to us than to the Province of Ontario and Chairman Lennox. We have everything to gain and they have little, if anything, to lose.

Unless the record clearly indicates a measure of deliberate perversity on the part of Chairman Lennox, I doubt the wisdom of entering into either public or private contentions with him. The situation, I believe, is sufficiently serious to prompt us to do everything decently and legally possible to dissipate the causes.

W. Gomer Krise

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