IN REPLYING PLEASE QUOTE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
REGIONAL OFFICE
42 BROADWAY
NEW YORK 4, N.Y.

February 16, 1955

Edward T. Tait, Esq.
Executive Assistant to the Chairman
Securities and Exchange Commission
Washington 25, D. C.

Dear Ed:

Having been advised that Tony Lund is conducting a study of the Canadian situation generally, from time to time I have had discussions with John Bowser as to certain ideas I had in connection with this general subject. In my last conversation he requested that when I had finalized my thinking in this regard, I prepare and send a memorandum to him covering the same. Inasmuch as I have arrived at some very definite conclusions in connection with this matter, and in view of John's absence, I felt it appropriate to write you at this time setting forth my ideas. I am sending several copies of this letter with the thought that if Ralph feels the suggestions merit consideration, a copy possibly might be made available to Tony Lund in connection with his study, or to anyone else who may be working on this matter. In addition, I am sending a copy of this letter under separate cover to Jack Goodwin.

Ever since the November 16th pronouncement of O. E. Lennox, Chairman of the Ontario Securities Commission, lifting the requirement that brokers comply with the regulations of the Securities and Exchange Commission when selling Canadian stock south of the border, I have been giving consideration to the problem posed thereby and a possible solution thereof. Lennox's decision apparently was based on two main objections: (1) that Regulation D cannot prove effective or satisfactory until applications are processed in a much more expeditious manner, and (2) the alleged changing of the wording of the agreement by the Commission to read "domestic issues having their principal business operations in Canada", which allowed corporations formed under the laws of the various states of the United States to acquire properties in Canada and qualify stock for sale to the public under Regulation D, without complying with the regulations of the Ontario Securities Commission. That Lennox did not intend this as an end-all to the problem is clearly evident from a reading of the lastsentence of his announcement, which apparently left the door wide open for further consideration of the matter. This sentence read as follows: "It was apparent that the restrictions imposed on local registrants must be removed unless conditions which were rapidly developing could be rectified through the cooperation of the SEC". Further-

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Chairman's Files
Folder: Canadian Situation
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Edward T. Tait, Esq. February 16, 1955

more, in telephone conversations I have had with Lennox concerning other matters pertaining to this office, he invariably has steered the conversation around to this overall problem and his expressions have convinced me that he is more than anxious to arrive at a satisfactory solution to this problem.

I submit the following as possible answers to the objections raised by Lennox, and as a suggested program for obtaining the future cooperation not only of the Ontario Securities Commission, but also of the Quebec Securities Commission and the various Canadian exchanges:

1. As to Objection No. 1 -

As you know, as a result of the reorganization of this office, a separate section was set up to process filings under Regulation A. New processing procedures were adopted which seemingly have passed the tests of time and adequacy. At the present time all such filings are completely processed within the required ten day waiting period, with the exception of such filings as are so deficient as to require substantial amendment. Preliminary closing reports thereon setting forth the salient facts of the respective filings usually cross my desk within a matter of three weeks after the filing is made. In addition, to the aforementioned processing procedures, new follow-up techniques were adopted to insure a proper policing job during the offering period. The success of these new techniques is best attested to by the number of suspensions that have resulted under Rule 223, as well as the broker-dealer revocation proceedings that have been instituted as a result thereof.

A check of the filings under Regulation D indicates that from the time of the adoption of said regulation on March 6, 1953 until January 15, 1955, there were 81 such filings. There is no doubt in my mind that the Regulation A Section of this office could adequately process these filings within the required fifteen day waiting period, particularly in view of the fact that this office is no longer processing the filings under Regulation A that originated in the State of Pennsylvania. Of the 81 issues offered under Regulation D, 73 thereof were offered solely in the

Edward T. Tait, Esq. February 16, 1955

States of New York and New Jersey. It logically follows that inasmuch as most of the securities covered by said filings are offered in the area embraced within the jurisdiction of this office, that the processing of the filings should also be handled by this office, which would greatly help in connection with the follow-up policing job to be done. My feeling that such filings can be completely processed within the required fifteen day waiting period is of necessity based on the assumption that we can get prompt comments from Ben Adelstein and/or Tell White in connection with the filings. From the foregoing I feel that Mr. Lennox's first objection can be adequately met if the function of processing these filings is transferred from the Division of Corporation Finance to the New York Regional Office.

2. As to Objection No. 2 -

In view of the fact that Lennox on a purely voluntary basis has been compelling brokers under his jurisdiction to comply with our Securities Acts, there appears to be some merit to his second objection. However, I would like to make it abundantly clear that in no event would I welcome a solution that would deny corporations formed under the laws of the various states of the United States from qualifying under Regulation D. The books and records of companies so incorporated are readily available to us in the event of a required investigation, which is not the fact in connection with companies incorporated in Canada. However, in order to adequately answer Lennox's objection, there would seem to be no apparent reason why the Commission could not amend Regulation D to require as a condition for availability of the exemption, that the issuer comply with the rules and regulations of the Canadian province where the issuer has its principal business operations, unless some exemption from compliance is available. As a practical matter I do not believe this would result in any undue hardship. I have recently been informed of a proposed filing under Regulation D whereby the issuer intends complying with the rules and regulations of the Ontario Securities Commission. It might be well to follow this filing closely to observe the practical effect thereof.

Edward T. Tait, Esq. February 16, 1955

From the standpoint of our enforcement problems the proposed amendment of Regulation D by the inclusion of such a condition would appear to be a step in the right direction. As you know, the Ontario Securities Commission requires, among other things, that promotional stock be placed in escrow, which such stock is only released piecemeal as the properties are developed. This successfully prevents the sale of this promotional stock to the public. Whether we like it or not, the fact is that in many instances in connection with filings under Regulations A and D, promotional stock does find its way into the hands of the public. In this connection you might care to review the comments that were made in my letter to Byron Woodside on January 18, 1955 in connection with the study of Regulation A.

3. As to our overall objective -

Based on the conduct and outcome of the recent extradition hearing in Canada, it appears that our present objective would be to insure that violators of our Acts could be brought within our jurisdiction for prosecution. From various talks I have had with Jim Weir of the Montreal Stock Exchange and Ed McAteer of the Canadian Stock Exchange, there is no doubt in my mind that most of the exchange members in Quebec are anxious to clean up the situation in that province and will cooperate to that end. Further, I had occasion recently to review the proposed Quebec Securities statute at the request of Irv Pollack and a study thereof clearly indicates an intention on the part of that province to do something about the present situation existing in connection with the sale of securities. Based on these premises and as overall strategy, I would strongly recommend that a conference be arranged in Canada with Messrs. Lennox, Weir, McAteer, Trebilcock of the Toronto Stock Exchange, and Hebert of the Quebec Securities Commission. I would further strongly suggest that such conference be arranged by Ralph and that he attend the same. It appears not only possible, but most probable, that if they were advised of the proposed intentions of the Commission to proceed along

Edward T. Tait, Esq. February 16, 1955

the lines outlined above, we could expect their wholehearted cooperation to do something about putting teeth in the extradition provision of the existing treaty.

I would appreciate having your reactions on the foregoing at your earliest convenience.

Sincerely,

FRANCIS J. PURCELL
Regional Administrator.

RHD

Mr. Lund has been trying to reach you - left the following: "We have learned that the Quebec new proposed securities law has been read twice and will no doubt pass any day now. If we are going to make suggestions,to our Canadian counsel, we better do it quickly. Please advise whether Irv Pollack may write our Canadian counsel with suggestions or should this be considered more fully.

2/25/55