

May 16, 1944

The Committee on international securities transactions and foreign investment designated by the Commission held a meeting on Wednesday May 10, 1944. On the agenda of the meeting were the following topics:

1. The extent of the Commission's interest in foreign financing with particular respect to the administration of the Securities Act of 1933.

2. The responsibilities of the Commission under the Securities & Exchange Act of 1934 to insure against the sale or transfer through the securities markets under its jurisdiction of securities expropriated by the enemy, assuming a termination of the Foreign Funds Control, and particularly general ruling 5 thereof, upon the cessation of hostilities.

Although the second of these topics was described and explained there was opportunity for little discussion of it in view of the number of problems which the exploration of the first topic appeared to develop. Several suggested approaches to the problems presented by topic 2 were, however, mentioned:

(a) A rule to limit sales of securities of U.S. as well as foreign issue, initiated from abroad except (i) securities held in the U.S. and to be delivered against such sales and (ii) securities situated outside the U.S. to which are attached affidavits evidencing clear title to the securities, and that they have not been in the possession of the enemy.

(b) Cancellation of all outstanding U.S. securities held abroad, and the reissuance of them upon a showing of clear title and that the beneficiary of the sale was a non-enemy.

The definition of terms and determination of title would need to depend in large part upon the policies adopted by the Inter-Allied Commission on restitution and reparation. The regulation of securities transfers should be a part of such policies, it was recognized.

The committee, however, did not discuss either the Commission's present powers with respect to such matters or what recommendations to make to the Commission in the administration of these powers, or any additional legislation that may be necessary for the effectuation of the program.

The meeting was primarily devoted to a discussion of the first topic above mentioned. The committee was apprised of the present status of the proposed International Stabilization Fund, and U.N. Bank for Reconstruction and Development, the provisions of these proposals and their relevance to the Commission's field of jurisdiction. As to the Fund it was recognized that there was a general interest in the stabilization of foreign exchange rates as a reduction in the risk of foreign investments but that the Commission would not appear to have a direct interest in the particulars of whatever arrangement to this end is achieved. As to the proposed Bank, however, there are a number of aspects which might be affected by Commission policy as to the registration of foreign securities issues; and conversely decisions as to certain functions and methods of the Bank would require consideration of the Commission's activities. The committee was advised that these mutual considerations had been brought before the U.S.

Technical committee and several foreign delegations in discussions of the proposed Bank, and that there was complete understanding of the general provisions of U.S. law applicable to the offering of securities in the U.S. capital markets, and as to the responsibilities of the proposed Bank in guaranteeing or participating in securities offered by private underwriters. Further, that the matter of registration by the U.N. Bank itself had been broached with the present understanding that this was a matter which would be entirely up to this Commission to determine.

As the Bank proposal provides among other things that loans shall only be made to raise the productivity of the borrowing country and only after a competent committee has studied the merits of the project or program it may well be that considerable reliance could be placed upon any investigation which the Commission might have conducted in conjunction with registration. This becomes even more probable in view of a further condition on the Bank's activities, to wit, that no loans would be made by it if funds are available from other sources on reasonable terms. The implications of this condition might well be that prior to making or even guaranteeing loans a registration application would have been filed by an issuer or a private underwriter. It would thus seem that in the event that the loan is finally made by the Bank the registration data will be available. Whether the Bank would rely upon or could rely upon such data without further investigation on its own part would depend largely upon the requirements for registration and the amount of investigation which had been made in connection with it.

The committee made an initial division in its discussion of foreign investments as between (a) loans made to foreign governments for general purposes and, (b) loans to or investments in private foreign enterprises. In the course of discussion it appeared that this division might not be quite precise. Foreign governments, for example, might borrow funds for particular projects and some governments such as the U.S.S.R. would be the only agency for borrowing funds for projects which elsewhere would devolve upon private enterprises. On the other hand loans made or guaranteed by the proposed Bank to foreign private enterprises would require the guarantee of the borrowing government. Therefore, in considering the extent of the information which the Commission might require in connection with registration it was not entirely clear whether the above division would hold. The requirements for foreign governments are included in Schedule B of the Securities Act, whereas, foreign private enterprises are required to file Registration Form A-2. There is considerable difference between these two requirements.

Another division of the subject as affecting the Commission's policy was stated as (a) the registration function in connection with disclosure to public investors and (b) the value and use of registration information in the formation of foreign trade policy and in relation to national security considerations. As to the first there was considerable question on the part of some of the committee whether the mere filing of the information and the certification by some foreign accountant would constitute a sufficient safeguard for public investors particularly in view of the uncertain economic conditions that would probably prevail abroad for some years after the war. It was the feeling of some of the members of the committee that certainly with respect to financing for foreign private concerns considerably

more first-hand inspection and investigation by the Commission's staff would be warranted than has been practiced heretofore or even than is made of domestic financing for the most part. As to borrowings by foreign governments for specific projects this feeling was also entertained by the committee. The borrowing by foreign governments for general purposes, however, was a matter which raised questions which did not appear to the committee could be met by recommending increased investigatory or supervisory activity.

The interests of the State Department would likewise seem to point to an increase in the amount of first hand investigation by the Commission's staff. Certain officials of the Department have from time to time complained that they have not been aided in reaching policy decisions on proposed financing by the registration process of the Commission. Their trouble seems to be that the Commission merely requires a disclosure of the purposes of the projects and other such items but furnishes them with no information upon the soundness of the project or the character of the persons associated with it upon which they might reach a policy decision. A memorandum prepared by a member of the Commission's staff and a representative of the State Department has suggested that a more workable procedure be instituted whereby the Commission would be in a position to act in an advisory capacity to the Department. The committee recognized that to carry out such a program would require considerable revision of the procedures so far adopted. The committee felt that the Commission should be consulted as to the amount of responsibility which it would be prepared to undertake and that a policy in this respect should be formulated prior to any further discussions with the State Department.

The committee also was cognizant of the limitation of the Securities Act in respect of its usefulness to the formation of international policy by reason of the exemption from registration of private placements. It was the general feeling of the committee that if the Commission was inclined actively to cooperate with the State Department by means of the registration instrument it would be important to provide for the registration with the Commission of all foreign loans and investments whether publicly offered or not. This it was felt was a matter which also should be discussed with the Commission prior to discussion with the State Department or to the drafting of legislation.

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