

Foreign Bondholders Protective Council, Inc.
Ninety Broad Street, New York

December 27, 1938

Dear Mr. Chairman:

With reference to our telephone conversation on December 8th, I have the honor to inform you that Senator Logan and Mr. Hasler called on Mr. Clark and me on December 14th. In that conversation Senator Logan suggested that there be cooperation between the Council and his committee. It was our understanding that he suggested that the Council carry on the negotiations with the Colombian authorities and that his committee and the Council agree in advance what fee will be charged to the bondholders and how the fees should be divided as between the Council and the committee; should we agree on this there would then be further details to be worked out.

As the Council understood the proposal, the bondholders would be asked to contribute a sum considerably superior to one-eighth of one percent of the face value of their bonds, the maximum which the Council have up to now requested from bondholders. Senator Logan mentioned one or one and a half million dollars to be requested from the Colombian bondholders. This sum, as we understand it, would be collected from bondholders when they assent to the plan, those not assenting not to receive the service offered. The part of the fee which would go to the benefit of the committee would be used, we understand, to pay the expenses of the committee and also as compensation to the members of the committee. In this connection the Senator frankly and, as we understood him, seriously stated that he was going along with that committee for the purpose of augmenting his income, because he found himself under the necessity of making some money to supplement his salary as a member of the United States Senate, and that failing to obtain additional money he would find it necessary to retire from the Senate.

Mr. Clark explained at some length how the Council operate and some of the principles which have guided our operations; namely, that we do not take deposit of bonds, feeling that the bondholders should retain complete control and custody of their bonds and full liberty of action with respect thereto, and that bondholders should not be put to the expense inevitably involved by such deposit of bonds; and that it is the Council's object to perform their service at the minimum expense possible for the bondholder, and that with this end in view the Federal Administration in Washington requested that the Council be set up as a non-profit

The Honorable

William O. Douglas,

Chairman, Securities and Exchange Commission,
Washington, D.C.

organization. The maximum contribution which the Council have thus far requested from bondholders has been a voluntary contribution of one-eighth of one percent.

In this connection I may say that the Board of Directors of the Council at their meeting on February 28, 1935 directed the Executive Committee to formulate a policy with regard to the solicitation and acceptance by the Council of contributions from bondholders and foreign governments. The Executive Committee went into this matter very carefully and on July 9, 1935 and again on November 27, 1935 decided that the compensation to be asked, in connection with the specific cases before it, would be at the rate of one-eighth of one percent of the face value of the bonds. This action of the Executive Committee was duly reported to and approved by the meeting of the Board of Directors on February 27, 1936, and by the Annual Meeting of Members held the same day.

You will recall that the Securities and Exchange Commission in its report to Congress (page 742) after investigating the matter of committees and organizations dealing with foreign governmental defaults, stated:

“The Council was organized at the suggestion and on the initiative of the Government. During its existence it has shown a record of constructive endeavor despite limitations and handicaps. It has functioned economically; it has been free of entrepreneurial influences; and it has brought about a resumption of debt service on a number of defaulted issues. It has maintained a quasi-public character, and those who have served as directors and members of its executive committee have not been actuated by mercenary motives but by a sense of public service.”

Mr. Clark further drew to Senator Logan’s attention that the report of the Securities and Exchange Commission had indicated the committees with which the Council might and might not cooperate, and recognized that the Council could not cooperate with all committees. In doing so he had in mind pages 641 and 642 of the report, stating the following:

“Any agency formed under governmental auspices and enjoying the support of the State Department can not be expected to extend cooperation to all committees upon demand. If an agency such as the Council is to maintain its prestige and act without embarrassment it must necessarily be permitted to establish reasonable standards to which protective committees must conform in order to enjoy the Council’s support. The history of protective committees in the foreign field lends persuasive weight to any policy which would discriminate between committees according to their fitness. The problem is quite comparable to that confronting the State Department in deciding whether a particular protective committee is worthy of the Department’s assistance.

“In the exercise of this function the Council admittedly is faced with a delicate and embarrassing task. A committee whose petition

is rejected will naturally feel that the Council has formed an adverse judgment on its fitness to represent bondholders. But a policy which would require the Council to accept all applicants would give full play to the profit motive in the field of foreign bond readjustment. It will be recalled that committees seeking the Council's support believed that the prestige and power of the Council's sanction would bring in a flood of deposits. Thus Mr. Lavis believed that a Colombian protective committee enjoying the Council's support would obtain deposits of \$75,000,000 within six months. And by exercising the 1 percent lien on deposited bonds the committee could create a sum of \$750,000, which, after paying certain expenses and a fee to the Council, would permit a payment to members of the committee of an aggregate of \$75,000. Mr. Hoover, it will be recalled, was more optimistic. He placed the deposit of Colombian bonds with his committee, which would follow its endorsement by the Council at \$165,500,000, from which would arise a fund of \$1,655,000 for fees of members and committee expenses. Under such circumstances a refusal of the Council to cooperate cannot be readily condemned."

Mr. Clark also stated that among the committees with which the report of the Securities and Exchange Commission seemed to indicate the the Council should use great care and discrimination in cooperating, were committees taking deposit of bonds and seeking to make profits and those formed by houses of issue and short-term creditors (page 739-741 of the Securities and Exchange Commission Report.)

The Council adopted the policy in forming their committees that they would request participation thereon of such persons as were either actual bondholders themselves or were the appointees of actual bondholders. Since, from the information in the hands of the Council, it appeared that the great mass of small bondholders purchased bonds at the time they were issued, it was also the opinion of the Council that the membership of such committees should be confined, so far as possible, to those purchasing bonds at or near the original issue price in order to insure that the interest of the committees would be primarily concerned in protecting the original investment of the small bondholders rather than in the protection of speculative investments made in depreciated bonds. It was also felt essential by the Council not to include on such committees persons engaged in the active buying or selling of bonds, either for personal profit or on behalf of customers, since they might favor adjustments providing a return on the actual investment in their depreciated bonds, even though such a service would constitute a small and unfair return on the original investment. It was felt that the sort of an organization envisaged by the Council would bring to the Council, the counsel and advice of persons whose sole interest is the protection of the rights of the bondholders themselves.

The Council also determined, when they set up their first committee in October 1934, that the committees which they would undertake to set up with reference to any issues of defaulted bonds would be non-profit committees. The Council felt that the committee membership should have no other interest than that of protecting the bonds which they represent, and that if the members of the committees which they created stood personally to gain or to lose, except in their capacity as bondholders, as the result of the operations of the committee, grave

danger would arise that their judgments might be biased by the inevitable persuasiveness of their purely personal interest.

The above policy was publicly set forth by the Council in their first annual report for 1934 and in subsequent reports.

I may also say that the Council, in connection with all offers they have up to now succeeded in inducing a defaulting government to make, have arranged that all the holders of dollar bonds of that debtor may benefit thereby irrespective of whether or not the bondholder made the requested contribution of one-eighth of one percent to the Council.

While the Council hope that it is unnecessary to give Senator Logan assurance that it sympathizes with him and his committee in the problems with which they are confronted and greatly appreciate the friendly spirit with which he approached them in this matter, they feel confident that he will also appreciate the Council's position and that the very purpose for which the Council was set up, at the instance of the Administration, compels them jealously to guard the interests of the bondholders and critically to review every proposal, made with reference to the service or adjustment of foreign external dollar bonds held in the United States, upon the sole criterion as to whether the proposal is to the advantage or disadvantage of the bondholders. It is in this spirit that I have been instructed to communicate to Senator Logan the conclusions of the Executive Committee.

I have been directed to refer to the policies which the Council have determined upon and followed, as set forth above. The Executive Committee also had in mind that the conclusions and recommendations of the Securities and Exchange Commission supported the establishment of "high fiduciary standards" by committees if they are to enjoy the Council's support.

The Council have not been able to perceive how the bondholders might be benefitted by the proposal made to them, as that proposal is understood by them. On the contrary, it would appear that the bondholders would be subjected to vastly greater expense than under the principles and policies being followed by the Council in dealing with this and other default situations.

In view of all the circumstances of the case I was directed by the Executive Committee to advise Senator Logan that the Council, to their great regret, do not see their way clear to cooperate on the basis which he proposed. A copy of my letter to Senator Logan is enclosed herewith for your information.

Faithfully yours,

Francis White,
President.

Enclosure.