

Philadelphia, 3

MAR 13, 1945

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

My dear Mr. Secretary:

There have come to the attention of this Commission, in the course of administering the Securities Act of 1933 and the Securities Exchange Act of 1934, certain provisions of the Cuban Constitution of 1940 and certain existing or pending laws and decrees apparently designed to place severe restrictions on the practice of public accounting by persons who are not Cuban Nationals. I have reference particularly to Articles 70 and 82 of the 1940 Constitution, to Law No. 4 of November 13, 1944, and to Presidential Decree No. 641 (March 9, 1944). In addition, I believe there were published in the official gazette of January 4, 1945 certain by-laws of the Colegio de Contadores Publicos de Cuba. While I believe these by-laws relate to Decree No. 641, it is my understanding that to have the force of law they must be supplemented by regulations issued by the Government under Law No. 4 of November 13, 1944.

The status of these measures is of considerable interest to us in view of certain provisions of the Securities Acts that are applicable to companies which carry on business in Cuba and which are listed on a National Securities Exchange or which may wish to sell securities in the United States. Our records show that a great many American companies having branches or subsidiaries in Cuba, and also a number of Cuban companies, have in the past sold securities in the United States. Many of these companies also have securities listed on the stock exchanges of this country. It seems reasonable to assume further that these companies and others similarly situated will, in the future, seek to sell securities in this country or to establish a market for their securities by listing them on one or more of the stock exchanges.

The Securities Act of 1933, in most instances, requires companies desiring to sell securities in the United States to file a registration statement on forms promulgated by this Commission and thereafter, if the issue be large, to file annual reports with the Commission. Companies desiring to establish and to maintain a market for their securities on the stock exchanges of this country are required by the Securities Exchange Act of 1934 to file, on forms promulgated by the Commission, an application for registration and periodically thereafter annual and other reports.

The registration and reporting forms promulgated by the Commission are designed to secure for the investing public material information, both non-financial and financial, regarding

the activities of companies subject to the Securities Acts. The financial information called for in the forms is generally required to be certified by independent public or independent certified public accountants. At the present time, the financial statements filed with the Commission by companies doing business in Cuba are certified by firms of public accountants having their principal place of business in the United States. These certifying accountants are readily amenable to the sanctions and penalties provided by the Securities Acts when the financial statements certified are found to be false or misleading. They are also subject to discipline by this Commission, by State Boards of Accountancy and by their professional organizations, such as the American Institute of Accountants.

However, it is our understanding that the proposed Cuban decrees and legislation may effectively preclude accounting firms which are not composed of Cuban nationals from performing or supervising accounting and auditing work in that country to the degree necessary to enable the firm to certify financial statements filed with the Commission. If the proposed legislation were to have the effect indicated, American firms might, of course, arrange to delegate the Cuban work to Cuban accountants and, by accepting full responsibility for such work, continue to certify in their own firm name. Whether American accounting firms would be likely to follow such a course if the company in question did a great part of its business in Cuba, is a matter for speculation. In somewhat analogous situations the Commission has, moreover, declined to accept a certificate of an accounting firm which had not itself carried out the necessary auditing work.

On the other hand, the companies involved might arrange to have their statements certified by Cuban accountants. If this course were followed, the foreign accountants employed would not be readily amenable to discipline nor easily made subject by court action to the sanctions and penalties of the Securities Acts. It may also be pointed out that the Commission has promulgated special requirements as to the form and content of financial statements to be filed with it and has interpreted many of these in numerous opinions. There have also been developed standards of auditing and accounting which are in many respects peculiar to practice in this country. In view of these circumstances there may well be a question as to whether Cuban accountants whose professional status is based on thorough training and experience in Cuban affairs will have had the opportunity or occasion to acquire the necessary familiarity with American accounting practice and the special aspects of the Commission's requirements.

A third possibility, acceptance of uncertified statements from such companies, would involve waiver of certification. It is doubtful, however, that such a course of action would be consistent with the Securities Acts.

The significance of this legislation in the Commission's work should be measured not only by the fifty or more affected companies now listed on American security exchanges and filing reports with the Commission but also by the many companies which may in the future wish to sell securities in this country or to list them on the exchanges. Moreover, there is some reason to believe that the proposed Cuban legislation may set a pattern for comparable action by other countries, particularly in Central or South America. For these several reasons I would very much appreciate your views as to the present status of these measures, and as to whether in your

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opinion the pending legislation would, if passed, have the effect of preventing American accounting firms from practicing, as public accountants, in Cuba under their firm name.

Sincerely yours,

Ganson Purcell  
Chairman

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