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ONTARIO

ONTARIO SECURITIES COMMISSION

PARLIAMENT BUILDINGS
TORONTO, ONTARIO

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There has been considerable comment in the Press concerning what is called south of the Border, the Canadian problem, with reference to trading in securities.

Sometime ago the Ontario Securities Commission realized that it was becoming increasingly apparent that the restrictions placed on the local securities industry while the practical merits of the Regulation promulgated by the Securities and Exchange Commission, designed to facilitate trading across the Border were being tested, can no longer be fairly enforced. This statement is being made in order to demonstrate beyond any reasonable doubt that the plan adopted as the solution to the so-called problem has proved a dismal failure from any point of view, including the interests of residents of the United States interested in speculative Canadian mining issues. The statement is based on facts without undue elaboration, facts which can be substantiated and which can be readily understood so that the public on both sides of the Border for possibly the first time can understand the efforts which have been made to improve international relations in the securities field and can determine for themselves why these efforts have proved abortive.

The Broker-Dealers' Association made the first approach to Washington requesting that the short form of Regulation should be extended to Canadian issues. I

attended on September 18th, 1949 with a Watching Brief, when the answer was an unequivocal 'no' to the effect that the request would not be considered until the Extradition Treaty was amended covering fraudulent transactions relating to the sale of securities. Later the amendment was negotiated on a Federal level. Anticipating the amendment, negotiations were commenced and representatives of the S.E.C., attended in Toronto on September 28th, 1951 when a draft Regulation was submitted for discussion. The chief submission offered on behalf of Ontario was to the effect that qualification in the appropriate Canadian Province should be a condition precedent to an offering being made in the United States under the provisions of the proposed Regulation described as Regulation D, Subsequently a letter dated October 5th, 1951 was addressed to the S.E.C., confirming this discussion and stressing the importance of this requirement. The necessity of such a stipulation should be apparent to anyone who has taken the trouble to consider the problems involved.

Seemingly matters were progressing favourably. The same representatives from the S.E.C., attended in Toronto on November 30th, 1951 when they addressed a conference of Provincial Securities Administrators, when representatives of the Toronto Stock Exchange and the B.D.A., also attended. The same draft Regulation was before the meeting and the same matter was raised. We were assured at the time that although the condition in question could not be written into the Regulation for certain domestic reasons, it would nevertheless be enforced as a matter of policy.

Further discussions were held in Toronto on March 11th, 1952 when the same representatives from the S.E.C., attended, together with representatives from the B.D.A., in company with their United States Attorney, for the purpose of finalizing previous discussions. Subsequently a draft Regulation dated August 18th, 1952 was circulated for comment on the footing that it would be

promulgated in its present form, subject only to any amendments rendered necessary as a result of the comments received. This draft besides extending the Regulation to Canadian issues also extended it to "domestic issues having their principal place of business in Canada." Without consulting Ontario, in the finalized Regulation dated March 6th, 1953 this wording was altered to read - "domestic issues having their principal business operations in Canada." It is hardly necessary to comment upon the significance of the altered phrasing.

The Regulation had been in force for about a year before United States promoters realized the possibilities of this last minute invitation to exploit their public. Companies were incorporated south of the Border evidently for the sole purpose of acquiring mining rights in Canada enabling them to use the new Regulation, when their sole operations, not their principal business operations might consist of holding mining claims in Canada devoid of any favourable history and a geiger counter and its operator. We are not directly concerned about this type of operation; the responsibility is not ours, but we are concerned with the fact that in the minds of the public they are identified as Canadian ventures. We are further concerned as these offerings are made on terms entirely out of line with our established policies, as after the demands of the inside interests are satisfied, the shareholders interest has almost reached the vanishing point.

About the same time as foreign promoters took advantage of a loophole in a Regulation which does not reflect the spirit and intent of the negotiations leading up to its adoption, local interests decided to test the possibilities of qualifying an Ontario issue under the provisions of Regulation D without prior qualification in Ontario, with the intention of making an offering through United States dealers beyond our jurisdiction. It was then discovered that the S.E.C., as it is presently constituted,

were either unaware of the assurances previously given by their representatives, or placed a different interpretation on these assurances, or intend to disregard them. In any event the test has met with success with the result offerings have again been made on terms entirely out of line with established policies designed to give shareholders a fair share in the ventures they are financing.

In view of the two definite types of competition, coupled with the fact that Canadian issues generally are being discredited through operations based in Montreal, as people in the United States think in terms of 'Canada' without making any territorial distinctions, 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 S.E.C. Our attempts to arrange a meeting in Toronto did not materialize until August 31st, 1954. The results were not encouraging. By this time it was evident that local dealers with one or two possible exceptions had virtually abandoned Regulation D and eventually the field would be occupied exclusively by United States interests, with Canada and Ontario taking the blame for operations which do not meet our requirements either from the standpoint of equitable corporate financing or acceptable Engineers' reports.

Commencing September 10th, 1954 representatives of the B.D.A., held a series of candid discussions with the Commission when the delays involved in processing applications with the S.E.C., and other types of frustration were stressed on behalf of the B.D.A. It was decided that their members should report their experiences. I have the results before me which can only be fully appreciated by those directly involved. This

information was provided in order to assist the Commission in reaching a decision regarding restrictions imposed under a Directive issued by the Commission dated March 26th, 1953 to the effect that while Regulation D was being tested as a practical means of trading, any registrant who made an offering in the United States without complying with United States laws would be placing their registration in jeopardy. This policy was endorsed by the B.D.A., at the time. It was only a policy, not a law and depended upon the support of those primarily interested, which support in turn depends upon whether the Regulation which has been put to a test of over eighteen months, has proved workable.

The unfair competition which has developed is sufficient to defeat the purpose of a provision designed to facilitate Canadian offerings and at the same time protect the public. It has now become a vehicle for others who exploit the interest now being shown in Canada's resources. Apart from these considerations, which should be a matter of grave concern on both sides of the Border, there is the matter of the delays involved. These delays are a matter of record. At the conference in November, 1951, representatives from the S.E.C., stated that issues could be qualified within fifteen days. At first it was only reasonable to expect delays in dealing with a new procedure. Accordingly the following figures cover the record of recent applications following a period of trial of at least a year. I have checked the time involved in the case of five of the more recent issues which are identified by number, namely numbers 37, 43, 44, 50 and 55. The number of days required in each case is - 64, 42, 59, 56 and 67 respectively. A fair average is two months as against the fifteen days represented when Ontario dealers and the Commission were being persuaded to accept the proposal as a happy solution.

The fact that no use of the Regulation is now being made in Ontario should speak for itself, and demonstrates that this statement is founded in fact, not fancy. The statement is made in the interests of the securities industry but should also serve to demonstrate to the Government agencies concerned, and others, that in its present form the Regulation cannot prove effective, nor can it be considered satisfactory until applications are processed in a much more expeditious manner. The B.D.A., which is primarily concerned, have made a request and proceeded to support the request with evidence. This statement revoking the Directive of March 26th, 1953 has been accelerated but not influenced by current statements appearing in the Press. The restrictions imposed are now removed, but each individual registrant must decide on his own future course of conduct bearing in mind that the type of operation which the Commission has consistently combated in the past, including excessive mailings, excessive telephoning and other high-pressure methods prejudicial to the industry at large, will not be tolerated. These views are, I believe, shared by all responsible members of the organized industry.

Besides justifying a reversal of policy, this statement may help in finding a solution to the problem, which in my opinion is capable of solution, provided it is approached fairly and squarely. The S.E.C., have the means of correcting obvious defects, but this is not the only consideration in view of past experiences. It is now painfully apparent that a majority of the States place little if any reliance on the fact that an issue has been processed by the Federal agency. Possibly they are bound by the provisions of their own State legislation. In the result the S.E.C., provides only one hurdle of many and Canadian offerings are for all practical purposes limited to the few so-called 'Free' States as opposed to 'Regulatory' States. Every jurisdiction naturally enacts

legislation to meet its own particular requirements. However the principle of uniformity is rapidly gaining support. It seems only feasible in the case of a public offering of securities from a foreign jurisdiction that if these offerings are acceptable to the Federal authorities they should be acceptable throughout the various States. Ontario has adequate securities legislation without it being unduly oppressive. It is in fact based on the principle of full disclosure, as is the Federal legislation administered by the S.E.C., but it contains safeguards against the granting of excessive considerations to inside interests, including vendors of properties and promoters. These safeguards are not to be found in the United States Federal Act. The difficulty confronting Ontario dealers when seeking to meet State requirements is that most State legislation appears to be geared and tuned to industrial financing without allowing any leeway in the case of mining issues which present vastly different considerations. Both Ontario and these Regulatory States have the same objective in view, namely to provide for equitable public financing, but the Ontario Act contains general and flexible provisions readily adjustable to any form of financing with a view to the over-all results. Some States have specific restrictive provisions such as limiting the selling costs to a point inconsistent with the risk involved in the case of mining issues. At the same time however, it appears that cheap options of treasury stock in favour of inside interests are permissible. This type of option is ruled out in Ontario as a matter of policy. In fact no dealer would sponsor an issue with large blocks of cheap stock overhanging the market.

The problem is still capable of solution if fairly considered on both a State and Federal level. In my view

the best way to combat stockateering is to drive it out by fair competition. Fair competition in relation to existing abuses can only be developed by providing a practical means of trading which is not bogged down by technicalities and unnecessary obstacles. I feel confident the public will eventually share my views on this score.

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Chairman