

U.S. Securities and Exchange Commission Division of Enforcement
**STATEMENT OF SECURITIES AND EXCHANGE COMMISSION
REGARDING ILLEGAL SALES OF CANADIAN SECURITIES**

The industrial growth and development of Canada have afforded many opportunities for the useful investment of capital from the United States. According to recent United States Government figures, the value of Canadian securities held by private investors at the end of 1954 amounted to over 3 and a quarter billion dollars, of which over \$300,000,000 was acquired in 1954. /

This great flow of capital, so important to both nations, could hardly have occurred without the cooperation of regulatory authorities in both countries. Since the enactment of the Securities Act of 1933, a total of 221 registration statements have become effective covering offerings of approximately \$1,405,000,000 by Canadian corporations, and an additional \$970,000,000 of Canadian governmental securities have been effectively registered. In 1953 the Commission amended its regulations to permit small offerings from Canada to be made under a conditional exemption from registration, and a total of 83 filings under this Regulation D, amounting to approximately \$21,000,000 were made in fiscal 1954 and 1955. The Commission has also recently permitted Canadian investment companies to register under the Investment Company Act of 1940 and to offer their securities in this country. Approximately \$100,000,000 from the United States was invested in securities of these investment companies during 1954 alone.

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Unfortunately, the interest of United States investors in Canadian securities has been exploited by a small group of unscrupulous persons, many of them U. S. citizens, whose illegal and often fraudulent distributions have for many years been a source of grave concern not only to the Securities and Exchange Commission but also to provincial and state securities administrators, other agencies of both governments, and the securities industry itself. While, as pointed out hereafter, it is difficult to produce exact statistics as to the problem, there is no question but that it exists, has persisted and requires adequate measures for its solution.

The problem is created by the efforts of unscrupulous promoters to take advantage of the international border in order to defraud unsophisticated investors in the United States. Generally speaking, this is done by circulating alluring and misleading literature indicating the possibility of obtaining high profits and following this up with high-pressure selling over the long distance telephone.

The concern of these promoters is not to develop a legitimate Canadian mining venture but merely to extract profits from investors. They operate from Canada in order avoid compliance with state and federal laws designed to protect investors rather than because they have any particular interest in the development of Canada.

The Securities and Exchange Commission and other state and federal authorities in the United States are under grave handicaps in their efforts to deal with this problem. Much of the evidence as well as the violators are beyond their jurisdiction. United States authorities

cannot examine these persons under oath or investigate their books and records, or obtain proof of the falsity of all of their representations because all of the evidence is normally outside the United States. Even where evidence is obtainable, sanctions such as criminal or civil prosecution or administrative proceedings cannot be effective unless personal jurisdiction over the defendants is obtained. Because of this the efforts of authorities in the United States over the years have been generally unsuccessful except to the extent that the cooperation of provincial securities administrators in Canada has been obtained. In many cases the power of provincial administrators to deal with illegal sales into the United States is open to question and these administrators are also under handicaps in dealing with violations occurring outside their province. Although the scope and magnitude of these illegal promotions has varied over the years, depending in large measure upon the situation in various provinces, the problem has accordingly persisted.

By way of background, although the problem has been of concern to the Commission ever since 1934 when the Commission was established, its gravity has greatly increased since the war. At the beginning of that period and generally until the last three years, the difficulties appeared to center in Ontario. Immediately after the war quite a number of illegal promotions from that province developed. In 1949, 1950 and 1951 illegal activity reached its peak. During those three years an aggregate of 1040 orders and prosecutions were commenced by various American states against illegal offerings from Canada and 130 new cases were opened by the Securities and Exchange Commission. In 1950 and 1951

75 fraud orders were issued by the U. S. Post Office Department, these being instances where proof of fraud sufficient to satisfy the postal authorities could be obtained. In 1951 and 1952 the Commission received 7367 complaints and inquiries in its enforcement unit with respect to offerings from Canada which appeared to be unlawful. During this period numerous efforts were made by authorities in the United States and Canada to deal with the problem which had thus become of the first magnitude. At first the Ontario securities authorities appeared to believe that they lacked authority under their statutes to meet the situation but later they took more vigorous action. In 1952 a Supplementary Extradition Convention was entered into between the United States and Canada which was intended by both parties to permit the extradition of persons guilty of perpetrating securities frauds from one country into the other. Vigorous action was also taken by Mr. O. E. Lennox, the Chairman of the Ontario Securities Commission, who adopted in 1953 a policy of taking administrative action against any broker or dealer who violated the U. S. federal statutes. As a result of these efforts the situation was temporarily brought under control. However, in the middle of 1953 the problem cropped up again from Montreal after a temporary lull. During 1954 Mr. Rene Habert, Registrar in Quebec took vigorous action, cancelling the registration of 21 firms and individuals. The situation in Quebec was thereby much improved. Nevertheless, during the first eight months of 1955 the Securities and Exchange Commission has learned of 26 illegal offerings from Canada involving 16 brokers and during 1954 and early 1955 a number of postal fraud orders have been issued. There

is some reason to believe that certain of the persons who were put out of business in Montreal are seeking to resume operations in other provinces; and in at least one instance a dealer while maintaining an office in one province was secretly conducting his telephone campaign from another. As indicated above, it appeared at first that the problem might be solved if the situation in Ontario could be dealt with. Recent experience indicates however, that the solution cannot be found in any one province. It is likely to break out again, perhaps after a lull, in some other location. All the efforts over all the years have not solved the problem.

It is impossible for us to demonstrate the magnitude of the problem in purely statistical terms. The Securities and Exchange Commission and other authorities in the United States learn of illegal offerings only by complaints and inquiries from investors which often come too late and are necessarily fragmentary. Probably only the individual promoters know how many fraudulent offerings are made, the magnitude of the offerings or the amount of money taken. Various estimates have been made but we do not believe that any of these figures are very accurate. There are, however, certain records which at least give a rough guide as to the ebb and flow of the activity and shed light upon its extent. Since 1935 the Securities and Exchange Commission has opened an aggregate of 595 cases involving approximately 940 issues. Of these cases 140 were commenced prior to 1945 and 455 thereafter. In the same period States of the Union have taken action in 1988 instances of which 98 were prior to 1945 and 1922 were subsequent to that date. The

use of U. S. postal fraud orders commenced in 1950 and since then 80 such orders have been issued and one is now pending. Since 1950 the Securities and Exchange Commission has received an aggregate of 12,627 complaints and inquiries with respect to presumptively illegal offerings from Canada. These figures by years since 1945 are summarized in the table attached hereto. Obviously the number of citizens who make complaint to the Commission is only a very small minority of those solicited or even of those who are induced to invest. Indeed the Commission is now receiving complaints from persons who invested some years ago and who are only now realizing that what they acquired was worthless.

In summary, we wish to point out, first, that fraud is being perpetrated and has been perpetrated for a number of years. This must necessarily be a matter of concern to both Governments. In the second place, existing methods of dealing with the problem have brought no final solution and offer no assurance that fraudulent operations may not again be resumed on a major scale. A recurrence of the situation on the scale which existed a few years ago would obviously have most unfortunate repercussions in both countries. Not only would innocent investors be defrauded for the benefit of unscrupulous promoters but Canadian investments in general could suffer serious and perhaps irreparable injury, and measures more drastic than those heretofore taken might become necessary for the protection of the investing public.

We have suggested certain steps which might be taken to meet the problem. Some of these were discussed in our memorandum of June 3 to the U. S. Department of State where we recommended the enactment of a

Canadian statute which would at the very least make clearly illegal securities frauds perpetrated from Canada on persons outside Canada and would, if possible, provide for uniform enforcement since the problem cannot be confined to any one province. We have also recommended the taking of adequate steps to revitalize the extradition convention of 1952. In the recent extradition case (U. S. v. Link & Green) a Canadian extradition judge held that Securities Act offenses were not encompassed by Enumeration A of the recently enacted Supplementary Extradition Convention with Canada. While the judge held that such offenses as well as mail fraud offenses fall within Enumeration B of the Convention, he denied extradition upon the ground that evidence of telephone conversations and other fraudulent activities in the promotion would be admissible in the prosecution in the United States - evidence which he felt would not be admissible in a similar Canadian prosecution. The enactment of a Canadian statute similar to Section 17(a) of the Securities Act of 1933 should revitalize Enumeration A of the Convention. Appropriate queries have already been made to the Canadian Government in an effort to obtain an advisory ruling from the Supreme Court of Canada which would overcome the other unfavorable aspects of the extradition judgment.

While we have suggested certain courses of action we, of course, do not mean to imply that these are the only means of attacking the problem. These are merely offered as possible solutions which occurred to us. We welcome any others that may be offered. We believe that with mutual cooperation this chronic securities problem may once and for all be solved.

STATISTICS REGARDING ILLEGAL OFFERINGS
FROM CANADA - 1945-1955

<u>Year</u>	<u>State Actions</u>	<u>SEC Docketed Cases</u>	<u>Letters of Complaint and Inquiry Received</u> ^{1/}	<u>U.S. Postal Fraud Orders</u> ^{2/}
1945	208	109 ^{3/}		
1946	135	52		
1947	83	32		
1948	144	40		
1949	377	42		
1950	327	50		43
1951	346	38	3941	32
1952	98	23	2198	
1953	41	13	1099	
1954	131	27	2565	4
1955 ^{4/}	86	21	1195	1 ^{5/}

1/ Separate records pertaining to Canadian offerings were not maintained prior to 1951.

2/ The use of U.S. Postal Fraud Orders in this field commenced in 1950. Their use was suspended in 1952 and 1953 both because of a decline in activity and because other methods were being tried.

3/ This includes cases of prior years.

4/ January 1 - August 15, 1955.

5/ A request for an additional fraud order is now pending in the Post Office Department.