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 Authority MM D 24548
 By JP NARA Date 12/14/72

Feb 21, 1955

MEMORANDUM

To: Chairman Demmler
 From: The Staff
 Re: New Proposed Quebec Securities Act

*Have sent to
 anyone familiar
 informally*

STATUS OF BILL

Recently Premier Duplessis of Quebec announced that a stronger Securities Act would be passed this session. He and the Quebec securities officials had been under strong attack from stock exchanges, Better Business Bureaus, the press and others for laxity in allowing high pressure securities operators to get a foothold in Quebec, principally in the City of Montreal.

We do not know the exact status of the pending bill. We are told it is to have three readings (with opportunity provided for the introduction of amendments in connection therewith) and that at least the first reading has taken place. A copy of the bill (No. 25) as originally introduced is attached.

GENERAL OBSERVATIONS

The general tenor of the bill is drastically different in approach from the United States securities legislation. The bill provides for three commissioners having discretionary powers far beyond anything we know - practically tantamount to "life and death." The Commission will be able to

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grant, refuse, cancel or reinstate licenses at its discretion, and there will be no appeal from its actions. It may seize property without court action and it may permit or deny trading in issues. (Sections 13, 24, 26, 39 and 50). We are of the general impression that in the hands of a strong Commission, fraudulent or unethical conduct could be quickly stamped out. Conversely, in the hands of a weak Commission the act would provide few controls.

The problem of whether the ultimate benefits to be derived by us from the act would be greater or less if there were more specific criteria, standards, requirements and provisions is not an easy one. The bill might not pass if what appear to be "tough," standards are inserted or if passed with specific standards might become a haven for inaction by a commission choosing to take the position that certain conduct - objectionable to us - is not specifically prohibited. With a cooperative commission and lots of elbow room for interpretation, as now seems to exist in the proposed bill, it is probably that much better enforcement would result from a "non-specific" law.

We are of the general opinion that the United States investors will have a better opportunity for protection if the "elastic" and discretionary powers remain in this proposed act.

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GENERAL SUGGESTIONS FOR AMENDMENT

In its present form there do appear to be a few improvements which we might work for, directly or indirectly. Principally, we might seek provisions which would prohibit illegal sales into the United States. This might be accomplished in two ways, through: (1) a direct or indirect (Commission discretion, etc.) prohibition in the new act against sales or offerings into another province or country unless all applicable laws and registration requirements of such province or country had been met, and (2) a specific requirement in the new act that Quebec standards and requirements be met in each offer or sale whether the sale or offer is made inside or outside of Quebec. The latter, while less effective from our viewpoint, undoubtedly would be less likely to offend and easier to sell. If, however, some quid-pro-quo could be offered, the chances for acceptance of the former might be improved.

MANNER OF PRESENTING SUGGESTIONS

Each of the above routes has its drawbacks from a protocol standpoint. One must pause to consider whether any direct suggestion from governmental officials here might not be used by opponents to stir up resentment against the bill on the basis of "foreign interference." Moreover, we understand that a direct approach would require clearance with our State Department and its taking the matter up with

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the Canadian Dominion Government. The Dominion government would then take the matter up with the Province of Quebec. Past experience indicates the Dominion government is reluctant to become embroiled in Provincial affairs and does not and will not advocate the type of laws the Provinces shall have. (Our Federal government follows the same practice with respect to the states.) Accordingly any suggestion via protocol may cause resentment and fail. Nevertheless, the matter should be discussed with our State Department and its views and suggestions obtained before abandoning the direct approach.

An easier approach, which may be more or less effective, is open to us. The Quebec authorities have asked for the views of certain leading Canadian lawyers and securities officials as to the form the legislation should take. We in turn have been asked by a Montreal lawyer what our suggestions might be with indications that he would suggest them. Also one exchange official may be willing to do the same thing. Further, we might make suggestions directly to the present Co-Registrars with the explanation that we understand they are seeking suggestions, or perhaps we might be able, through indirect means, to have the Quebec authorities specifically request our comments.

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SPECIFIC SUGGESTIONS

The following suggestions, if made and acted upon would be of benefit to us.

1. Amendments in any of the following ways would retard or possibly prevent illegal offerings.

OR

(a) Amend proposed section 14 defining trading in securities by adding to the opening sentence now reading "The following shall constitute trading in securities" the words "whether carried on entirely within the province or from a point outside the province to a point within the province or from a point within the province to a point outside the province, including any foreign country."

(b) Amend proposed Section 35 by adding to the things defined as "fraudulent acts" the following new section (1):

OR

(1) "Any trading of securities in another province or country unless all applicable securities laws and registration requirements of such province or country have been met or exemptions therefrom obtained" or

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(1) "The provisions of this section shall be applicable to any written or oral solicitation, telephonic or telegraphic communication including those from a place outside the province to a place within the province or from a place within the province to a place outside the province, including any foreign country."

(c) Amend section 62(c) to read beginning at the penultimate line "including those from a place outside the province to a place within the province or from a place within the province to a place outside the province, including any foreign country."

2. While Sections 31, 32, 34 require security in the amount of \$5,000 or more, and provide for its forfeiture or use to reimburse a prejudiced person etc., the act does not generally provide for civil liability (Cf. Sections 60 and 61). Consideration should be given to the inclusion in the act of provisions comparable to Sections 11 and 12 of the 1933 Act. Also provisions comparable to Section 15 of the 1933 Act for controlling persons.

3. Consideration should be given to the inclusion of a "touting" prohibition comparable to that provided by Section 17(b) of the 1933 Act.

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4. Consideration should be given to strengthening the "first timer" offense penalties (Section 84) and to investing the court with discretion to impose imprisonment - as presently drafted, only in the event of default in payment of fine and costs can the court impose any prison term at all, irrespective of the conduct constituting the offense.

5. Consideration should be given to a possible limitation on the blanket exemption now provided for mergers etc. (Section 20(f)) in instances where commissions or other considerations are paid for soliciting consents or approvals.

6. Consideration should be given to the broadening of the definition of fraudulent acts (Section 35) to include misleading statements and also false statements made without reasonable inquiry.

7. Consideration should be given to broadening the confirmation requirement (Section 48) to cover principal transactions.

8. Consideration should be given to extending the prohibition in Section 56 to cover customers' fully paid securities.

The proposed bill leaves discretion with the proposed new commission to adopt such requirements, forms and regulations as it deems necessary to carry out its functions. We do not know what form these will take. It is possible

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that these steps will adequately cover many deficiencies or "holes" which appear to exist in the proposed bill. Some of these uncovered areas appear to be:

1. No provision for a waiting period or to permit dissemination of information during such waiting period (Section 50).
2. No requirement that a statutory prospectus accompany or precede other soliciting literature or selling efforts (Section 53).
3. No provision for the filing of annual or current reports with the Quebec Commission.
4. No specific provision is included in the definition of trading covering unsolicited buy orders.