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Authority NND 24548

By SP NARA Date 12/14/7

May 10, 1955

**MEMORANDUM RE UNITED STATES-
CANADIAN COOPERATION ON SECURITIES
FRAUDS IN THE STATE OF NEW YORK**

A number of problems face United States prosecutors when they attempt to enforce our laws against Canadian residents who sell securities into the United States in violation of our laws.

The extradition treaty passed a few years ago, even if properly implemented by the Canadian courts, solves only one of these problems. They include (1) the difficulty of gathering evidence in a foreign land; and (2) that even when found, the introduction of such evidence in our courts is rarely possible under existing rules without the attendance in the United States of identifying witnesses.

It invariably is found that in the proof of fraud, evidence of the falsity of representations is in the possession of Canadian residents who are sometimes not sympathetic to our prosecutions, and who, of course, are not amenable to our subpoenas. These impediments hamper the prosecution of fraud more frequently than does the failure of the existing extradition treaties. Such failure also may conceivably be due to insufficient or faulty evidence.

The above difficulties often prevent fraud from being used as a basis for prosecution of Canadian cases. The only remaining bases for such prosecution are violations of technical provisions of our securities laws. Such violations are not extraditable offenses under existing treaties or conventions.

Since overt acts in these frauds are committed in Canada as well as in our country, prosecution might be brought there as well as in the United States. For the reasons stated, such prosecutions would be more successful than those brought here. This, however, requires full cooperation from Canadian officials.

*Chairman's Files
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By JF NARA Date 12/19/77

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Such a declaration of cooperative policy and its implementation in the Province of Ontario in 1953 drove the stocksters out of that province but they soon sought a haven in Quebec. For a while they operated in that province with success. New laws and the declaration of a new policy in the early part of this year seems to have had a desirable effect in Quebec. There has been a marked decrease in this type of activity there during the last three months. It is hoped that it is a permanent development.

It would appear then that securities frauds can be effectively dealt with through the cooperation of the Canadian securities authorities. Evidence of this is found in the marked change that took place when the Ontario Securities Commission announced, in the public interest, that it would revoke the registration of any Canadian dealer, issuer or promoter who is registered under their laws upon a showing that such dealer, issuer or promoter has violated United States securities laws (including technical provisions). This was done simultaneously with the announcement that the Canadian Commission would cooperate with United States authorities in the gathering of evidence. Not a single justified complaint arising out of Ontario transactions has been received in my Securities Bureau since the announcement of this policy.

As you know, because of some misunderstanding between the Ontario Securities Commission and the Securities and Exchange Commission, the former unilaterally abrogated its praiseworthy declaration of policy, and the continuance of the wholesome results that followed are now seriously endangered. It would appear then that permanence in this arrangement becomes important. Perhaps by treaty or by the enactment by both governments of reciprocal legislation, such policy as was announced by the Ontario Securities Commission could be made into a permanent policy. Cooperation would then become compulsory rather than

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optional or temporary. It appears to me that this is a field that the Senate Foreign Relations Committee might well explore and develop in the interest of the free flow of risk capital between both countries.

JACOB K. JAVITS