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of

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to the

FIRST HEMISPHERIC STOCK EXCHANGE CONFERENCE

Problems of Admission of Foreign Securities to United States Stock Exchanges

CHAMBER OF COMMERCE OF THE STATE OF NEW YORK
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I wish first to extend greetings on behalf of myself and of the entire Securities and Exchange Commission to our good neighbors from both the north and south. This occasion, while dedicated to the exploration of a limited set of economic problems, evidences the existence of a sound feeling of solidarity and foreshadows broader and higher levels of hemispheric cooperation. As a citizen of the United States I wish to extend my thanks to all those in my own and in other communities whose work makes such cooperation possible.

You have heard other speakers cover much of the ground that needs to be explored in such a conference, and others are to come. Perhaps no single one of us is capable alone of showing the way through the extensive field which must be traversed in preparation for a full program of free financial relationships in this hemisphere. One of the values of this conference, preliminary and tentative as it must be, is that it affords a means of interchanging information, of delineating problems and of laying down lines for future more definite study.

Other speakers have indicated and will indicate the range of some of the problems that must be explored. I conceive it as my best course to give you some idea of the fundamentals regarding the procedure for admitting foreign securities to exchanges in this country and incidentally, a brief outline of the Commission's general powers and duties with reference to our exchanges and the securities there listed.

As I proceed it will become apparent that the United States has adopted what amounts to a fairly extensive code of regulation of securities exchanges, of the members who trade on such exchanges and, to some extent, of the issuers of the securities traded on such exchanges and their managements.

This code of regulation is predicated upon the essential idea that the American investor is entitled to certain minimum protections in his dealings on exchanges, with members of exchanges, and in his relations with the issuers of listed securities and their managements. Within the framework of this legislation lies the permissible field in which the Securities and Exchange Commission can act. It cannot create national or foreign policy outside of the limited scope of its powers, and outside of the limited purposes of the legislation which it administers.

This limitation must be kept squarely in mind throughout your entire consideration of the Commission as a factor in any hemispheric exchange program. The Commission cannot forsake the basic aim of protecting American investors in adjusting either its rules or its technique of administration to any such program.

I bear in mind also the necessarily preliminary nature of this conference. To the extent that a policy within the framework of our legislation can be reached that policy must be based on an informed consideration of the many difficult and complex problems involved. Perhaps it is dangerous in any case to attempt to formulate broad policy in advance of the specific consideration of particular problems necessary to implement that policy. In this case I feel assured that it is the better part of wisdom for the Commission to wait until more detailed information is available and until the background has been laid for a discussion of particular problems.

As most of you are probably aware, a foreign issuer, proposing to register its securities on an exchange in the United States, must

be fully apprised of and completely comply with, not only the requirements of the exchange upon which the securities are to be traded but also the applicable securities laws of this country, namely, the Securities Act of 1933, the Securities Exchange Act of 1934 and the Trust Indenture Act of 1939, all of which are administered by the Commission.

The Securities Act of 1933 must be given primary consideration. Absent compliance with its requirements, securities cannot be publicly offered or sold in this country by any issuer, underwriter or dealer. This Act is, in essence, a disclosure statute which requires that, unless an exemption from its provisions is available, securities must be covered by an effective registration statement before they are offered or sold, and a prospectus must be supplied to offerees and purchasers. The purpose of the registration statement and prospectus is to bring out all essential facts concerning the issuer and the security being sold -- nothing more than the simple truth is demanded.

The registration statement for a foreign corporation is filed on one of the various forms provided for that purpose by the Commission. Ordinarily Form S-1 is suitable. On the other hand, if the issue is a foreign government the requirements of Schedule B of the Act must be met.

The registration statement and prospectus should disclose the history of the company, its capital structure and that of its affiliates, a description of the securities and the terms of the offering, the control and management of its affairs and the remuneration of its officers and directors, as well as other material information necessary to provide the investing public with such data as it

If the securities to be sold are debt rather than equity securities, the provisions of the Trust Indenture Act must also be considered. Absent an exemption, an indenture covering the bonds or notes in question must be qualified under that Act before they are offered for sale.

It might be noted at this point that both the Securities Act and Trust Indenture Act contain broad exceptions from their provisions. For example, if the security being listed was sold by the issuer or bona fide offered to the public prior to July 1933, an exemption from both Acts would be available. And, ordinarily if the security was offered to the public more than one year prior to listing, it may be freely traded by brokers, dealers and their customers.

If the registration statement is complete and accurate and no pre-effective amendments are necessary, it may become effective on the 20th day after filing, or the Commission may, under appropriate circumstances, accelerate the effective date.

When the requirements of the Securities Act and the Trust Indenture Act have been met, or it has been determined that an exemption is available, the rules of the exchange may then be considered. In this connection, let me point out that, in the sale of securities registered under the Securities Act or qualified under the Trust Indenture Act, it is necessary that offerees and actual purchasers be provided with a prospectus or an analysis of the indenture provisions as the case may be.

At this juncture bear in mind that the exchanges in this country do not, in general, provide facilities for the initial distribution of either foreign or domestic issues. This function is commonly performed by an investment banker or banking syndicate. It is only after a sufficiently

wide distribution is attained in the United States, to offer reasonable assurance of an adequote auction market in the shares on the exchange, that the securities would be deemed eligible for listing.

Assuming that the issuer can clear these hurdles and other pertinent exchange requirements, it should then consider the provisions of the Exchange Act. This Act complements the provisions of the Securities Act and was adopted to prevent unfair, manipulative, and fraudulent practices in connection with trading in securities both on exchanges and in the over-the-counter market. It wa s also designed to prevent the excessive use of credit in security trading, and to provide truthful and adequate information concerning securities listed and traded on exchanges.

Under the Act all national securities exchanges are required to register with the Commission and to comply with certain rules and regulations adopted by the Commission.

The Act further provides that no security may be admitted to trading on an exchange in the United States unless a listing application in prescribed form has been filed by the issuer with the exchange in question, unless duplicates of the application have been filed with the Commission, and the exchange has approved the security for listing and registration. This application for registration provides extensive information about the issuer, its business, finances, management and organization.

It should be noted that any issuer, except an investment company, which has filed a registration statement under the Securities Act and which has no securities listed and registered on an exchange, may, if the registration statement has become effective, file an application for listing which consists of a copy of the Securities Act statement, a description of the securities being registered and the facing sheet of the appropriate form with required signatures.

Registration under this Act usually becomes effective automatically 30 days after certification of its approval by the exchange. The Commission has no power to prevent the listing and registration of a security so certified, except where the registration statement or some act of the issuer fails to conform to the Act or rule of the Commission adopted under it. The responsibility for determining whether to admit a security to listing rests with the exchange, but the application must contain such information as the Commission may require as necessary or appropriate in the public interest or for the protection of investors.

To assist foreign issuers in this registration procedure the Commission has adopted a few prescribed forms, namely, 19 through 21, and 19K through 21K, which are to be used in connection with initial listing and registration and the submission of annual reports to keep the information on file up to date.

For the purposes of this Act, nationals of North American countries and Cuba are not considered foreign issuers; consequently, as to these issuers Forms 10 and 10K would be applicable.

Foreign issuers filing applications for registration on Forms 18, 19, 20 and 21, because of their special character and circumstances, are exempted from certain requirements of the Act to which all other registrants are subject. For example: they are not required to file current reports revealing the occurrence of certain events in the corporation between the filing of annual reports; the listed securities are exempted from the requirements of the proxy rules and from the operation of Section 16 of the Act. Section 16 (a) requires that officers, directors and certain beneficial owners of listed securities must file reports of transactions in equity securities of the issuer; Section 16 (b) subjects short-swing

profits in equity securities of the issuer, realized by such persons within any six-month period, to recapture by the issuer, and Section 16 (c) interdicts certain short sales of the issuer's equity securities.

Several things are apparent from this cursory review. First, it has been extremely sketchy. Refinement of concepts and the delineation of details have been impossible in the short time at my disposal. Perhaps I can in some measure make up for this lack by inviting any one of you who wants more detailed information to call upon the facilities of the Commission to furnish it. We shall be glad to consider fully and answer to the best of our ability any inquiries you may have.

Secondly, it is apparent that the Acts administered by the Commission penetrate into many details of financial recording and financial presentation by companies and into important aspects of the conduct of their managements and large security holders. To what extent these provisions can be enforced in respect of various kinds of foreign securities cannot be determined without a wholesale survey of the problem. Only a detailed analysis of particular problems, in the light of the purposes of the law, can help us reach informed judgments.

The free international movement of credit is a worthwhile ideal. It is not, however, an end in itself. To be a genuine basis for international cooperation it must justify itself as a paying proposition. Our government has made many decisions to facilitate such cooperation. However, we should not ask our investors to place their savings in foreign enterprises while relaxing or waiving any of the standards of our Acts which are their fortress of protection. The standards which I have outlined are not, and have not been, barriers to the conduct of honest business — national or international. Quite to the contrary, they are

essential predicates to what every securities market needs in order to survive -- public confidence. On the maintenance of that confidence depends the continued success of our organized exchanges as trading places for all investments, domestic and foreign. Preservation of that confidence must be a guiding priciple not only to the Commission but to those who manage our great market places.