xxxxxxxxx
Philadelphia

March 10, 1943

Green H. Hackworth, Esquire
Department of State
Washington, D. C.

Re: Canadian Extradition Treaty
Your Reference: LE 211.42/212

Dear Mr. Hackworth:

I have already acknowledged your letter of February 10, 1943, which enclosed the two letters of John H. Roberts, dated January 11, 1943 and January 25, 1943, together with photocopies of two editorials printed in The Canadian Mining Reporter. You ask for my comments on the views expressed in the letters and editorials in reference to the proposed Extradition Treaty between the United States and Canada signed on April 29, 1942, and ratified by the United States Senate in June of 1942.

It has come to my attention that other objections have been raised in regard to this treaty by Canadian issuers, securities dealers and stock exchanges. Also briefs in opposition to the treaty have been filed by various parties with the Prime Minister of Canada. Undoubtedly, these objections, in one form or another, will be directed to your Department and, therefore, I wish to make a statement of my views on the treaty which will assist you in answering the objections not only of Mr. Roberts but also of other persons.

The objections which are raised in Mr. Roberts' editorials may be summarized as follows: the treaty will permit the United States to extradite persons in Canada who may have innocently violated the statutes and regulations administered by the Securities and Exchange Commission; the existence of the extradition provisions will stop the flow of American capital into Canada because Canadian issuers, underwriters, brokers and dealers will not risk violation of the securities laws of the United States nor will they be able to pay the prohibitive cost of complying with the securities laws; the provisions of the treaty are retroactive; the treaty introduces a new phase in criminal procedure because it permits persons to be extradited from Canada although their violations may not have been committed in the United States; representatives of this Commission will have the power to inspect the books and records of Canadian securities dealers; the new treaty is unnecessary because the former treaty covers the same ground; and finally, the treaty is too broad because it embraces all the statutes administered by this Commission. Other persons have objected to this treaty for the reason that it would subject to extradition persons in Canada who violated any of the statutes or rules and regulations of any of the forty-eight state jurisdictions as well as the federal securities laws. Moreover, there is no

reciprocal advantage for Canada by including all the securities statutes in the treaty because the provincial legislation in Canada relating to the regulation of securities is less extensive in scope than that prevailing in the United States.

Mr. Roberts seems to feel that the Extradition Treaty is directed mainly against Canadian citizens. This is not true. The treaty applies to all persons who have violated the laws of the United States, and who may be apprehended in Canada. In very many cases, the persons involved may be citizens of the United States who have left the United States to avoid arrest, or may be citizens of the United States who are operating from Canada.

The writer of the editorials is mistaken insofar as he concludes that the treaty will permit the extradition of persons who innocently violate the laws and regulations administered by this Commission. In every instance, the criminal provisions of the securities statutes apply only to wilful violations.

The ratification of this treaty probably would not materially affect the flow of capital into Canada. It should be emphasized that the treaty does not make any new laws or regulations for the sale of securities in this country but merely provides that violations of the existing laws are extraditable. It, therefore, follows that any deterrent effect which will be provided by this improved means of enforcement of the securities laws is simply a deterrence on transactions which have previously been illegal.

In order to prevent any misunderstanding in regard to the retroactive application of the provisions of this treaty, let me state that the treaty itself does not provide by its own terms that it shall be retroactive in operation. Section 12 of the Canadian Extradition Act, which establishes the general machinery for extradition, provides for the surrender of offenders "whether the crime or conviction, in respect of which surrender is sought, was committed before or after the date of the arrangement (i.e., the treaty)." This is a feature which applies to all extradition treaties signed by Canada with this country or any other country, covering all crimes as well as securities violations. It is a matter over which the United States has no control, being purely a matter of Canadian policy in regard to the effect which Canada will give to its extradition treaties. The limitation period on prosecutions for violations of criminal statutes should allay any fear that the retroactive feature of the treaty will enable the United States to prosecute violations which were committed so long ago that it is the policy of the law to bar prosecution for those offenses.

The writer of the editorials is mistaken in his allegations that the treaty will permit the extradition of persons from Canada even though their violations have not been committed in the United States. Of course, it is not necessary for a person to be physically present in the United States in order to use the mails, telephones or other instrumentalities of interstate commerce in violations of the laws of the United States. Nevertheless, these illegal acts are committed in the United States and no person can be

extradited for a violation of the Securities Act unless some act in furtherance of that crime has been committed in the United States.

The Extradition Treaty does not confer on the Commission any power to examine the books and records of persons in Canada.

In view of the history of the negotiations of this treaty, it is difficult for me to understand the argument of the writer that this treaty is unnecessary because it covers the same ground as the former treaty which is now in force. If this were true, there would be no ground for his strenuous objection to the treaty. However, a careful study of the operation of the former treaty, and the cases decided under it, convinced the Commission that fugitive violators of the securities laws of the United States could not be extradited from Canada. The failure of the former treaty to permit extradition for violation of the securities laws results from the insistence by the Canadian courts that the requirement of double criminality be strictly fulfilled and the absence of Canadian statutes which make it unlawful to use the mails and instruments of interstate commerce for securities violations.

An example of this difficulty is illustrated by a statement of the courts In re Lamar, 73 Can. Cr. Cas. 194, 1 Dom. L. Rep. 701, 2 SEC Jud. Dec. 19 (1940).

> "As above stated it is sought to have Lamar extradited from this country in order that he may be put upon his trial in a Court of the United States of America under the above-proven law, of having directly or indirectly obtained the sum of $175.00 from A. W. Nulthauf by means of an untrue statement of a material fact by the use of the mails. It appears to me that this is a specific kind of offense under a particular law and cannot be found to be included in either The Extradition Act or the Extradition Treaty as between the two countries, even by giving the most liberal construction to the subjects included therein."

While it is not believed that the doctrine of double criminality has been applied so rigidly as a general rule, the declaration in the convention will remove all doubt and make it clear that fraud and other violations by use of the mails are extraditable even though Canada has no equivalent fraud statutes that apply specifically to frauds perpetrated by mail or other instruments of interstate commerce. The last sentence of the first paragraph or article IX of the treaty states that "It shall not be essential to establish that the crime or offense would be a crime or offense under the laws of the requested country."

The objection of the writer to the inclusion of all statutes administered by this Commission is an argument largely of policy. We feel that persons in Canada should be subject to the securities laws of the United States when engaging in securities transactions in the United States. Our investigations have disclosed numerous violations by persons in Canada (a great many of whom are citizens of the United States) of the

laws which Congress has enacted to protect the American public. The ratification of this treaty will give the United States additional power to cope with these violations. Insofar as our inability to extradite these violators has permitted them to sell securities in this country against the policies of our own laws and on terms more lenient than those granted to issuers and securities dealers in this country, the situation cannot be justified. People in Canada should not expect to do business in this country without complying with our laws.

This same argument applies to the Extradition Treaty insofar as it permits extradition of persons who have violated the securities laws or regulations of any one of the forty-eight states. The treaty does not make new laws or regulations, but merely permits extradition for violations of those laws with which persons in Canada must comply if they engage in securities transactions which are subject to the jurisdiction of any of the states.

It is hardly a valid objection to this treaty that the laws of Canada on the subject of securities violations are not as extensive in scope as those existing in the United States. The treaty permits reciprocal extradition for the violation of any of the securities statutes in Canada or the United States and no one can foresee at what time Canada may provide for more extensive legislation to protect Canadian investors. Canada is free to do so at any time and the United States will be obligated under this treaty to surrender violators of Canadian laws regardless of the scope of the existing American legislation at the time Canada makes a request for extradition.

I trust that the above will enable you to answer the objections of Mr. Roberts and any similar arguments which may be made to your Department.

Sincerely yours,

Ganson Purcell
Chairman

JMIeersanb