

July 16, 1937

MEMORANDUM To The Commission

From: Samuel O. Clark, Jr., Chief Attorney,
Protective Committee Study.

At the suggestion of Commissioner Douglas, I am transmitting to the Commission a copy of a letter dated July 13, 1937 received from J. Reuben Clark, Jr., President of the Foreign Bondholders Protective Council, Inc., together with a copy of amendments to the Council's by-laws made at its annual meeting held July 13, 1937. These amendments were adopted as a result of this Commission's foreign bond report.

It is felt desirable to consider at a Commission meeting what action should be taken on the requests of Mr. Clark that this Commission participate in the creation of a "Board of Visitors" and join with the State Department in a public announcement to the general effect that the Council had carried out the recommendations contained in the Commission's report.

Attachs.

Samuel O. Clark, Jr.

Clark, Jr.

Francis White
Executive Vice-President
and Secretary

A. Moreno
Assistant Treasurer

FOREIGN BONDHOLDERS PROTECTIVE COUNCIL, INC.

90 Broad Street,
New York, N.Y.

July 13, 1937

Dear Mr. Douglas:

By direction of the Board of Directors of the Foreign Bondholders Protective Council, Inc., I have the honor to transmit herewith the following:

1) Copy of amendments to the By-Laws made at the Annual Meeting held today, July 13, 1937, of the members of the Foreign Bondholders Protective Council, Inc.

You will see that these amendments include all of those which were forwarded to you in my letter to you of July 3rd, and also the additions thereto which were discussed between yourself, Mr. S. O. Clark, and myself at our conference on July 8th. As to these additions, we have, so far as possible, used the actual formula discussed between us at that time.

After careful consideration, the Executive Committee and the Board of Directors felt that there should be some provision in the By-Laws to cover the point that the original full membership of the Corporation, as established in the Articles of Incorporation of the Corporation, should not be disturbed by any presumption that the members fell within the disqualifications set forth as governing the eligibility of full members and directors hereafter elected, or reelected, to the Council. It was my understanding at our conference on July 8th that it was the urgent desire of the Commission that these original members should not be disturbed, since to do so at this juncture would tend to wreck the Council and so largely destroy the work the Council has done up to this time.

I think that the way in which the matter has now been covered comes more nearly to representing the actual situation than the language which was at first employed.

You will also observe from the amendments enclosed herewith, that obedient to your suggestion we have provided that a majority of the Board of Directors is necessary for a quorum.

The Honorable William O. Douglas
Commissioner
Securities and Exchange Commission
Washington, D. C.

We have left for the present the number of the Board of Directors at fourteen, but we have in mind their reduction from time to time until they shall reach a more wieldy number and we have in mind the suggestion which you made that perhaps a Board of nine members would be large enough.

2) Copy of a Resolution adopted by the Annual Meeting of the members of the Foreign Bondholders Protective Council, Inc. at their meeting held today, in which the Secretary of State, the Chairman of the Securities and Exchange Commission, and the head of any other department or departments of the government that the two foregoing may select, shall act as a Board of Visitors with the duties and powers specified. I shall much appreciate it if you will be so good as to bring this request to the attention of the Chairman of the Commission.

3) Copy of a Resolution passed by the Board of Directors instructing the Board of Directors to consider and report to the members upon a plan for creating the electoral body of which I wrote in my letter of July 3rd and of which we talked in our conference on July 8th.

I voice the unanimous expression of hope of all the Directors that the Board of Visitors provided for in this resolution noted as number 2 above, will be set up by the government departments named. We would regard this as one of the most constructive measures taken in all of the history of the Council for making effective its work. Your assurances given to me on Thursday last (July 8th) that the Securities and Exchange Commission would be willing to join in setting up such a Board gave greatest satisfaction to the Executive Committee and Directors. We have had like satisfaction over a similar assurance received from the Department of State.

If the governmental agencies named in the Resolution were to see fit, as it is hoped they will, to set up this Board of Visitors, the Council hopes the establishment of the Board might be considered by the agencies establishing it as the appropriate opportunity for the issuance by them to the public of a formal statement which would recite that the Council had met the suggestions and wishes of the Securities and Exchange Commission as set out in its Report in the matter of Council memberships, qualifications of Directors, annual statements, etc., etc., and, therefore, the Council becomes in very deed the central authority which the Commission in its Report expressed the belief the Council should become and that, as such central authority and agency, the Council would continue to receive necessary and appropriate support from the Governmental agencies constituting the Board of Visitors.

I venture to renew the suggestion already made to officers of the Department, as also to members of the Securities and Exchange Commission, that some public announcement of the sort outlined seems indispensable to the correction of the impressions which are being circulated

The Honorable
William O. Douglas

- 3 -

July 13, 1937

regarding the Council and its work, and to the further effective operation of the Council.

Faithfully yours,

(sgd) J. Reuben Clark, Jr.
President

FOREIGN BONDHOLDERS PROTECTIVE COUNCIL, INC.

Proposed Amendments to By-Laws

Re

I. Qualifications of Full Members, Directors and Officers*

Amend Article I, Section 2, to read as follows:

Section 2. Eligibility to Membership. The Full Members of the Corporation must be natural persons and no person shall be eligible for election or reelection as a Full Member or a Director of the Corporation:

- (1) who is Fiscal Agent for any foreign government or for any state, municipality or other governmental subdivision, instrumentality or agency of any foreign government or for any other person, if such agency be in relation to any obligation of such other person for the payment of which any such foreign government, state, municipality, governmental subdivision, instrumentality or agency is contingently or secondarily liable;
- (2) who, as issue house or otherwise, has publicly offered for sale any obligations of any such foreign government, state, municipality, governmental subdivision, instrumentality or agency or any obligations for which any such debtor is contingently or secondarily liable (obligations of the character described in this clause (2) being hereinafter referred to as "foreign public securities");
- (3) who is a creditor of any such foreign government, state, municipality, governmental subdivision, instrumentality or agency other than a creditor whose interest as a creditor is solely that of a holder of securities generally offered for sale to the public;
- (4) who is engaged in business as a broker or dealer in any securities;
- (5) who has any material financial interest adverse to the interests of holders of any foreign public securities;
- (6) who is or, within two years has been, either (a) an employee, officer, director, nominee or agent of any person described in clauses (1), (2), (3), (4) or (5) above or (b) special counsel of any such person in matters relating to the issuance of foreign public securities or (c) general counsel of any person described in clauses (1), (2), (3) or (5) above; or

* The Executive Committee must be chosen from the directors.

(7) who has any substantial financial interest in any person described in clauses (1), (2), (3), (4) or (5) above.

Provided, however, that, none of said restrictions shall be applicable to any of the individuals who were requested by the Secretary of State, the Secretary of the Treasury and the Chairman of the Federal Trade Commission to organize the Corporation and who were named in the Certificate of Incorporation of the Corporation as members of the first Board of Directors.

Any person, firm, corporation, association, trust, estate, fund, foundation or other organization, group or entity of any kind whatsoever, other than those described in clauses (2) or (3) above, or any employee, officer, director, general counsel, nominee or agent thereof or special counsel thereof in matters relating to the issuance of foreign public securities, shall be eligible to become either a Contributing Member or Founder of the Corporation.

Amend Article IV, Section 4, to read as follows:

Section 4. Eligibility. No person who is over seventy (70) years of age at the time of any election of directors of the Corporation or who is ineligible under the provisions of Article I, Section 2, hereof, shall be eligible for election or re-election as a director.

Amend Section 1 of Article V by adding to said Section the following paragraph:

No person shall be eligible for election or re-election as an officer of the Corporation who would be ineligible for election or re-election as a Full Member or a director of the Corporation under the provisions of Article I, Section 2, hereof.

II. Number and Quorum of Directors

Amend Article IV, Section 2, to read as follows:

Section 2. Number. The Board of Directors of the Corporation shall be fourteen (14) in number.

Amend Section 3 of Article IV by adding at the end thereof the following paragraph:

From and after the close of the special meeting of Members of the Corporation held July 13, 1937 (in lieu of the annual meeting of Members for the year 1937), each class of directors shall consist of the following number of directors whose terms shall expire upon the qualification of their successors elected at the annual meetings of Members of the Corporation to be held in the years hereinafter indicated, and whose successors shall be elected for terms of three (3) years from the dates of their election:

<u>Class</u>	<u>Number of Directors</u>	<u>Year in Which Term Expires</u>
A	6	1938
B	5	1939
C	3	1940

Amend the last sentence of Section 7 of Article IV to read as follows:

A majority of the total number of directors shall constitute a quorum for the transaction of business at any meeting, but less than a quorum shall have power of adjournment.

III. Compensation of Directors, Officers and Members of Executive Committee

Amend Article IV, Section 8, to read as follows:

Section 8. Compensation. Members of the Board of Directors shall receive no compensation for their services as such or for services to the Corporation in connection with negotiations with foreign governments or states, municipalities, governmental subdivisions, instrumentalities or agencies of foreign governments. The Board may, however, authorize the payment or reimbursement of expenses incurred by Directors in attending meetings of the Board, or of any committee thereof, or in connection with the business and affairs of the Corporation.

Amend Article V, Section 7, to read as follows:

Section 7. Compensation. The salaries or other compensation of the President, Vice-Presidents and Secretary shall be fixed, from time to time, by the Board of Directors, provided, however, that the total compensation of the President shall in no event exceed \$20,000 per annum, that of any Vice-President \$15,000 per annum and that of the Secretary \$10,000 per annum. The salaries or other compensation of other officers of the Corporation shall be fixed by the President, provided, however, (1) that in no case shall the total compensation of any such officer exceed \$7,000 per annum and (2) that any salary or other compensation which shall amount to more than \$5,000 per annum shall be subject to the approval of the Board of Directors at their next meeting.

Regardless of the number of offices held by any one person his aggregate annual compensation shall not exceed the maximum annual compensation which would be payable to him if, of the several offices held by him, he were the holder only of that office to which the maximum annual compensation hereinabove fixed were payable.

No separate or additional compensation shall be paid to any officer on account of his services in connection with negotiations with foreign governments or with any states, municipalities or other governmental subdivisions, instrumentalities or agencies thereof; provided, however, that nothing herein contained shall prevent the payment or reimbursement of the actual expenses of any officer incurred in connection with the business and affairs of the Corporation.

Amend Article VI, Section 1, by adding the following to the last paragraph of said Section:

and they may be reimbursed for actual expenses incurred by them in connection with the business and affairs of the Corporation; provided, however, that no fee or compensation shall be paid to any member of the Executive Committee for services to the Corporation in connection with negotiations with foreign governments or with any states, municipalities or other governmental subdivisions, instrumentalities or agencies thereof.

IV. Publication of Annual Statements

Amend Article V, Section 3, by adding the following sentence at the end of said Section:

Said Statement shall also be published in the Annual Report of the Corporation.

(Resolution proposing Board of Visitors)

RESOLVED that the Foreign Bondholders Protective Council, Inc. hereby respectfully requests the Secretary of State, The Chairman of the Securities and Exchange Commission and the head of any other Department or Departments of Government that the two foregoing may select, to act as a Board of Visitors for the Council, with power, either directly or by duly authorized representatives, to visit the Council from time to time, with or without notice, to examine into the operations and expenditures of the Council and to scrutinize and review all funds asked for and collected by the Council from any and all sources;

(Resolution regarding Special Council Memberships)

RESOLVED that the Board of Directors be and they hereby are requested to consider and report to the members of the Council with respect to a plan for the establishment of a special membership in the Council with particular duties and powers in connection with the selection and election of the members of the Board of Directors of the Council.