

MAR 3 1938

My dear Mr. Clark:

This is in reply to your letter of February 3, 1938, relating to the Council's policy regarding dissemination of information as to the 3% dollar funding bond offers of the Konversionskasse fur deutsche Auslandsschulden presently in force. The question which you presented therein has received earnest and extended consideration.

The Konversionskasse's registration statement covering 3% dollar bonds, fractional certificates, and separate coupons to be exchanged for certain interest claims which matured between July 1, 1934 and December 31, 1936, became effective on March 2, 1937. I understand that since that time the Konversionskasse has offered 3% dollar bonds of a new series in exchange for interest claims of the same classes maturing between January 1, 1937 and June 30, 1938. However, the bonds of this new issue have not been registered under the Securities Act, and consequently such bonds may not be offered, sold, or delivered after sale in this country by the issuer, or by an "underwriter" as that term is defined in Section 2(11). The letter of the Kontor der Reichshauptbank fur Wertpapiere, dated December 30, 1937, a copy of which you enclosed, indicates that the appropriate interest coupons may be "exchanged" for unregistered bonds of the Konversionskasse at the Berlin office of the Reichshauptbank, although it does not appear whether the bonds are actually mailed to claimants or are held in the Reichshauptbank or elsewhere for their account. No time limit for acceptance of the exchange offer has been fixed by the Konversionskasse, but interest on the bonds "will only be payable from the first day of the calendar-half-year in which application for an exchange was made". Consequently, delay in making the exchange will cause bondholders to lose the benefit of some of the interest on the new bonds. You therefore inquire whether the Council may with propriety advise bondholders that this offer exists and can be accepted by sending the appropriate coupons to the Reichshauptbank in Berlin. Being aware of the Council's attitude with respect to the terms of the offers which the Konversionskasse has thus far made, I assume that you would confine yourselves to a bare statement of the present offer, and would not express any opinion on its merits.

As you are aware, the first clause of Section 4(1) of the Securities Act exempts "transactions by any person other than an issuer, underwriter, or dealer" from the registration and prospectus requirements of Section 5. Although the matter is not beyond question, I am inclined to believe that the Council, in merely making known the existence of this offer and the mechanics by which it may be accepted, would not be acting as an "underwriter" of the new bonds, even within the technical definition of that term contained in Section 2(12), and since the Council obviously is not a dealer or the issuer of the bonds, it would appear that the exemption mentioned above would be applicable.

I am aware that you are concerned not so much with technical compliance with the Securities Act as with the question whether an organization in the peculiar position of the

Mr. J. Reuben Clark, Jr.

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Council can with propriety call the attention of American bondholders to the existence of an exchange offer the consummation of which would involve a violation of the Securities Act on the part of others. Whether or not the practice apparently being followed by the Konversionskasse and the Reichshauptbank does involve a violation of that Act I do not know, as I do not have a sufficiently detailed knowledge of the facts to be able to determine the existence of any such violation. However, if the exchange offer is in fact being consummated in violation of the Securities Act, I should think that the Council would naturally hesitate to take any steps tending to encourage such violation.

I am sure you will appreciate that in thus stating my view I do not intend in any way to restrict the Council's exercise of its discretion as to the proper course to be taken in this matter. You will recall that in the announcement of the establishment of a Board of Visitors for the Council we expressly stated that the existence of the Board "in no way affects the general policies and responsibilities of the Council in respect of negotiations with foreign governmental debtors. The Council will continue, as heretofore, to function on its own responsibility, and the United States Government will assume no responsibility for its policies and actions". Although I appreciate your dilemma and regret my inability to express a more affirmative opinion, I sincerely feel that the Council is in the best position to reach a detached and impartial decision on this difficult question, and that it would be inappropriate for the Commission even informally to express an opinion thereon.

I note with interest the statement in the letter of the Kontor der Reichshauptbank fur Wertpapiere that "it is intended to replace the bonds by securities negotiable at the New York stock exchange". A similar statement was made by the Konversionskasse itself on July 26, 1937, in connection with the announcement of its offer of the first block of these new-issue dollar bonds. However, up to the present time the Commission has not received any word from the Konversionskasse or the German Government to indicate that such intention is being actively pursued. If you have any information which might throw light upon the present attitude of the German Government with respect to registration of these bonds, we should greatly appreciate being advised thereon.

Yours faithfully,

William O. Douglas
Chairman

Mr. J. Reuben Clark, Jr.
President, Foreign Bondholders
Protective Council, Inc.
90 Broad Street
New York, New York

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