

MAR 25 1938

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

My dear Mr. Clark:

This is in reply to your letter of March 10, relating to the "New Issue" 3% dollar funding bonds of the Konversionskasse fur deutsche Auslandsschulden.

As you indicate, the Council's difficulty in this matter arises from the possibility that the procedure being followed by the Konversionskasse and the Reichshauptbank fur Wertpapiere is not in accordance with the provisions of the Securities Act. You point out that in our jurisprudence crime is jurisdictional rather than personal, and on the assumption that the entire transaction of exchange is consummated in Germany you suggest that it is not within the purview of the Securities Act, and you point out that the Council would not in terms inform American bondholders "how to get those securities into this country after they had received them in Germany." I agree that the statute has no force with respect to activities carried out in their entirety beyond the territorial jurisdiction of the United States. However, I presume that in the ordinary course some agency of the issuer or of the guarantor sends to the American claimant, upon receipt of his coupons, either the "New Issue" bonds themselves or a receipt therefor, and as you know Section 5(a) of the Securities Act prohibits the use of the United States mails or instrumentalities of interstate commerce to carry unregistered securities "for the purpose of sale or for delivery after sale." In delivering "New Issue" bonds, or receipts therefor, to bondholders residing in this country, it seems inevitable that the sender will utilize either the United States mails or some instrumentality of "interstate commerce", which latter term is defined by Section 2(7) to include, inter alia, "transportation or communication. . . between any foreign country and any State, Territory, or the District of Columbia. . .".

However, even assuming that the procedure of the German Government and its agencies in this connection is not in accordance with the provisions of the Securities Act, it does not follow that the course of action which you are contemplating necessarily involves a violation of that Act. I wish to state again that in my opinion the Commission would have no legal ground for objecting to the procedure which the Council is considering. Nevertheless, we feel that it would exceed our authority to purport to give "clearance" in a matter of this nature, and that the question of the propriety of the proposed steps must be left to the judgment of the Council.

If you decide to publish a notice along the lines of the draft you enclosed, I would like to suggest one or two modifications in your references to the incidence of the Securities Act upon this situation. I believe that the inclusion in the contemplated release of the last two paragraphs which you quote from your statement of March 8, 1937 might be confusing to some readers, unless supplemented by a statement clearly indicating that the "New Issue" bonds had not been

registered under the Securities Act up to the date of publication. I also suggest that the fourth full paragraph on page 2 be modified in order to obviate the possibility of an erroneous inference that investors and members of the public generally may not sell or buy “New Issue” bonds until such bonds are registered under the Securities Act. As you are aware, the first clause of Section 4(1) of that statute exempts from the registration and prospectus requirements of Section 5 “transactions by any person other than an issuer, underwriter, or dealer.” Presumably this would apply to transactions in “New Issue” bonds by persons not falling within any of the three specified categories.