

MEMORANDUM OF CONFERENCE

Between: Representatives of the New York Stock Exchange, the Army, State, Treasury and Justice Departments, and the Securities and Exchange Commission.¹

Date: May 6, 1949

Subject: Proposed Resumption of Trading in "Axis" Securities.

This conference was called at the request of the State Department to consider the effect of Military Law 75 upon dealings in German dollar bonds and to discuss the plan of the securities exchanges for screening German bonds so as to prevent the sale of looted bonds in the event trading is resumed. Some of the background of these problems is set forth in memoranda relating to previous conferences.

The representatives of the New York Stock Exchange (who were speaking also on behalf of the Curb Exchange) were interested principally in the question of trading in German and Japanese securities. For practical reasons, they apparently are not much concerned with the problem of trading in securities of other countries, such as Austria, Rumania and Bulgaria.

The discussion related largely to dollar securities of German origin that had been repatriated prior to and during the war apparently for retirement, some of which were looted by the Russians when Berlin was occupied at the end of the war, the certificates not having been destroyed or cancelled in the meantime. No complete lists are available relating to the serial numbers of the bonds in question, and while there are lists identifying perhaps 85% of such bonds, the percentage is much smaller in some specific issues. Col. Love indicated that a proposal was under consideration by the military government to adopt a law invalidating the bonds on these lists and perhaps some additional bonds. Such a step might be significant for the American trustees of such bonds in the event that any funds were ever made available for payment to the bondholders.

In view of the fact that the lists are not complete, the Stock Exchange representatives, who had been considering the same problem, suggested that the problem might be met by a procedure to validate bonds of these issuers upon a showing that they had been held in this country since the beginning of the war or perhaps under some other suitable showing. They suggested that this might be accomplished by a procedure similar to that followed during the war in which Form TFEL-2 was attached to certain securities as evidence of the absence of any

¹ The conference was attended by the following: New York Stock Exchange: Phillip West and James H. Ording; Army, Civil Affairs Division: Lt. Col. Lowell S. Love and John S. Bachman; Department of Justice, Office of Alien Property: Leon R. Brooks and Edward F. Friedlander; Treasury: S. H. Chofkin; State: G. E. Palmer; Securities and Exchange Commission: Walter C. Louchheim, Jr. and Arden L. Andresen.

enemy interest in them. They suggested that validation might be based on affidavits filed by recognized banks or brokers with the Federal Reserve authorities, who had handled the problem during the war. The Stock Exchange representatives suggested this procedure as one preliminary step to remove technical difficulties in the way of the admission of German securities to trading in the near future. In conjunction with the information that is available regarding the securities that disappeared upon the occupation of Berlin, it might be more effective in screening out looted securities than the invalidation proposal which the Army has under consideration, but it of course would be much more cumbersome and expensive. Since the conclusion of the meeting with respect to the main problem was that we should not now permit a resumption of trading in German securities, no encouragement was given to the proposal to set a validation procedure in motion at this time.

The considerations against resumption of trading in German securities in the immediate future were generally the same as those set forth in my memorandum relating to the conference of January 19. In addition, however, the Army representatives were more outspoken in their opposition than they had been in the previous meeting. While the representatives of the Exchange were inclined to think that provision would eventually be made for some recognition of the claims of American holders, Col. Love expressed the view that among other possibilities there was a definite possibility that no provision might be made for any payment. With respect to most corporate obligations, at least, he indicated that the laws that had been adopted by the Military Government involved a seizure of assets, freeing them of any liens relating to these bonds, for example, and wiping out any legal claim of the bondholders. He indicated also that under the law or regulations now applicable in Germany there was a prohibition of some sort on the transfer of such securities or a provision that transfers would not be recognized, and he emphatically denied West's contention that transfers within the United States would have to be recognized.

Mr. West indicated that in terms of face amount most of the securities were those of the German government or municipalities, as distinguished from German corporate securities. The situation with respect to these is perhaps somewhat different in form in that they never did carry a lien on specific property and apparently no action has been taken formally to wipe out such obligations.

With respect to the reports that the Exchange would hope to have the issuers file with the Commission under the 1934 Act, Col. Love felt that there was nothing of significance that could be shown in such statements since the primary question, whether the obligations should be honored at all, was a matter to be settled by this and other governments.

Representatives of the War Department opposed any resumption of trading at this time for the reason, among others, that trading in such bonds would probably result in an accumulation of them by persons interested in bringing pressure on the military authorities and other agencies of the government to honor the bonds and so would render more difficult future negotiations and decisions relating to this problem. He felt also that sound decisions would be facilitated by not having to be made against the background of a speculative market price for such securities, which would of course be simply a speculation on the Government's decision. This view was accepted as the consensus of the meeting.

The view was also expressed during the meeting that, inasmuch as trading has been suspended in these securities since the beginning of the war, any action that the government might take at this time permitting a resumption of trading would inevitably be taken by many people as some indication that the government expected that the securities might have value, no matter how much such a conclusion or indication were denied at the time the suspension was lifted. It was felt that such an impression would be unfortunate and misleading at this time.

Because of these considerations and other considerations mentioned in my memorandum on the January 19 conference, it was unanimously decided again that it was not appropriate to permit a resumption of trading in German securities in the foreseeable future.

Col. Love felt that the problem relating to the Japanese securities was not quite as complex as the German problem, and he undertook to give further study to the Japanese problem with a view to a further discussion.

Arden L. Andresen