

Date: May 9, 1935

To: Mr. Chase

Subject: Proposed substitute for Sec-

From: Mr. Shean

tion 528 of the Banking Act of 1935.

It is recommended that consideration be given to the exception of interlocking services of directors of Mutual Savings Banks in the provisions of the proposed substitute for Section 528 of the Banking Act of 1935 because:

1. Such service has been and is considered honorary and altruistic. The mutual banks are non-profit institutions operated in the interest of depositors and are, in essence, a public trust.
2. The directorates of mutual savings banks are recruited largely from the directorates of other local banks. Such service has been excepted from the provisions of the Clayton Act and its inclusion at the present time would cause a tremendous upheaval - probably detrimental to the mutual banks.
3. Whether such service would be exempt under the proposed law because of the difference in the classes of business conducted by the banks would depend upon the definition of competition. Most national and state banks and trust companies operate savings departments, make loans on real estate and purchase investment securities. All these activities are inherent in the operation of mutual savings banks.
4. Other classes of local banks have not considered themselves as competitors of the mutual banks in a number of communities, if not all. The mutuals have paid a higher rate of interest on deposits as a rule and the other banks have made no effort to meet the rate.

Mr Clayton

You will be
interested in this. Mr.
Pauler does not suggest
any changes in the
proposed substitute Clayton
Act amendments drawn for
Mr. Thomas.

Em

May 1935

Memorandum to the Board.
From: Division of Examinations.

Re: Proposed Substitute for
Section 328 of the Banking
Act of 1935.

Reference is made to the proposed substitute for Section 328 of the Banking Act of 1935, relative to interlocking relationships of directors, officers and employees with more than one banking institution, which proposed substitute, as submitted to the Division of Examinations, reads as follows:

Sec. 328. Effective January 1, 1936, section 25 of the Federal Reserve Act, as amended, is further amended by striking out the last paragraph of such section; the paragraph of section 25(a) of the Federal Reserve Act, as amended, which commences with the words "A majority of the shares of the capital stock of any such corporation" is amended by striking out all of said paragraph except the first sentence thereof; and the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (58 Stat. 730), approved October 15, 1914, as amended, is further amended (a) by striking out section 8A thereof and (b) by substituting for the first three paragraphs of section 8 thereof the following:

"Section 8. No director, officer, or employee of any member bank of the Federal Reserve System or any branch thereof shall be at the same time a private banker or a director, officer, or employee of any other bank, banking association, savings bank, or trust company organized under the National Bank Act or organized under the laws of any State or of the District of Columbia, or any branch thereof, except any one or more of the following or any branch thereof:

Out.
Out. covered by 7.

- (1) A mutual savings bank.
- (2) A bank, banking association, savings bank, or trust company, more than 90 per cent of the stock of which is owned directly or indirectly by the United States or by any corporation of which the United States directly or indirectly owns more than 90 per cent of the stock.
- (3) A bank, banking association, savings bank or trust company which has been placed formally in liquidation or which is in the hands of a receiver, conservator or other official exercising similar functions.

- (2) *(4) A corporation principally engaged in international or foreign banking or banking in a dependency or insular possession of the United States which has entered into an agreement with the Federal Reserve Board pursuant to section 25 of the Federal Reserve Act.
- (3) *(5) A bank, banking association, savings bank, or trust company, more than 50 per cent of the stock of which is owned directly or indirectly by persons who own directly or indirectly more than 50 per cent of the stock of such member bank.
- (4) *(6) A bank, banking association, savings bank, or trust company not located and having no branch in the same city, town or village as that in which such member bank or any branch thereof is located, or in any city, town or village contiguous thereto.
- (5) *(7) A bank, banking association, savings bank, or trust company not engaged in a class or classes of business in which such member bank is engaged."

In an endeavor to determine in a broad and general way the effect which this proposed substitute may have upon presently existing and authorized interlocking bank relationships, the Division of Examinations has reviewed a large number of outstanding Clayton Act permit files and has compiled certain information which it is hoped may be of some value in this connection. This information has been compiled according to Federal Reserve Districts. Time has not permitted an adequate and proper consolidation of the information obtained nor has it permitted of a study sufficient to formulate and express at this time any definite conclusions.

(6) A bank, banking association, savings bank,
or trust company of which such person is lawfully a
director, officer or employee on the date of the enact-
ment of the Banking Act of 1935: Provided, however,
That this exception shall not apply to any person who
on such date
is serving [^] under a permit of the Federal Reserve Board
which is specifically limited as to its duration.

In the preparation of the information submitted herewith only current Clayton Act files with respect to which the effectiveness of the outstanding permits has been ascertained recently have been consulted. Generally speaking, the files on permits issued prior to about January 1, 1934, were not consulted; this fact should be borne in mind since it is possible that many of the older relationships may now be prohibited if the proposed substitute is enacted into law. Further, the "Cases Involving Relationships Which May Not Be Disturbed" as indicated in the compilation, include also a number of cases which may involve "contiguous territory" but the available information was not entirely clear on this point.

It should be borne in mind that the present law applies to services to a national bank or a bank organized and operating under the laws of the United States and any other bank making loans on stock or bond collateral, while the proposed provision will include services to a member bank and any other bank.

The task of reviewing the files and compiling the information upon which the summaries with respect to each district are based was distributed among a number of examiners and, since the determination of "competitive status" and "qualifications" is quite often a matter of opinion, minor differences may have resulted and due allowance should be made for a reasonable number of errors, particularly in view of the limited time available for the study. However, the statistics furnished are believed to be substantially correct and to reflect generally the relative effect of the proposed substitute upon those presently existing and authorized interlocking relationships which have formed the basis for this study.

No attempt has been made at this time to appraise the effect of the

proposed legislation upon those cases which have been definitely and finally disapproved by the Board within the past year.

The following figures reflect a summary of the information compiled:

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships Which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Will Be Prohibited</u>
2580	2006	554

1. Federal Reserve District No. 1.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships Which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Will Be Prohibited</u>
183	80	103

Of the 103 individuals in the First Federal Reserve District whose cases have been made a part of this study and whose relationships apparently would be prohibited by the enactment of the proposal, 80 have served two or more of the institutions involved for five years or longer. The qualifications of 80 of these individuals do not appear to be subject to particular question, while the attendance at directors' meetings of nine was criticized, the loans to three were subjected to criticism and the loans to the interests of one were criticized. In 9 of the 103 cases the banks involved are not located in the same business community.

The following analysis has been made of the competitive status of the banks involved in the 103 cases involving relationships which apparently would be prohibited by the enactment of this provision:

(a) Minor competition for commercial business and normal competition for savings business	71 *
(b) Minor competition for commercial and savings business	7
(c) Minor competition for savings business	8
(d) Normal competition for commercial and savings business	1
(e) Normal competition for commercial, savings, and trust business	1
(f) Minor competition for commercial, savings, and trust business	2
(g) Acute competition for commercial, savings, and trust business	1
(h) Minor competition for commercial and savings and normal competition for trust business	1
(i) Normal competition for savings business	8
(j) Minor competition for commercial and normal competition for trust business	1
(k) Minor competition for commercial and trust business	1
(l) No competition	<u>5</u>
	103

* Morris Plan banks involved.

2. Federal Reserve District No. 2.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships Which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Will Be Prohibited</u>
323	265	60

Of the 60 cases forming a part of this study and involving relationships which apparently would be prohibited by the proposed substitute, three involve private bankers, further information concerning which has not been compiled at this time. Forty-four of the remaining 57 interlocking relationships involved have been in existence for five years or more. In 13 of the 57 cases, the banks involved are not situated in the same business community. In 47 of the cases, the qualifications of the individual involved do not appear to be subject to particular question; in eight of the cases information with respect to qualifications was not readily available in the files and the qualifications of two individuals were apparently subject to some question.

The competitive status of the banks involved in the 57 cases (does not include those involving private bankers) involving relationships which apparently would be prohibited has been analyzed as follows:

(a) Minor competition for savings business	6 *
(b) Acute competition for both commercial and savings business	1
(c) Minor competition for both commercial and savings business and normal competition for trust business	1
(d) Normal competition for commercial business and minor competition for trust business	2
(e) Minor competition for commercial business and normal competition for savings business	1

(f)	Normal competition for commercial and savings business	9
(g)	Normal competition for commercial, savings and trust business	6
(h)	Normal competition for commercial and trust business	1
(i)	Minor competition for commercial and savings business	10
(j)	Normal competition for savings business	7 *
(k)	Minor competition for commercial and trust business and normal competition for savings business	1
(l)	Minor competition for commercial, savings and trust business	2
(m)	Normal competition for commercial and trust business and minor competition for savings business	1
(n)	Acute competition for commercial, savings and trust business	1
(o)	Acute competition for commercial business	1
(p)	Acute competition for commercial business and minor competition for savings business	1
(q)	Competitive status not determined	$\frac{6}{57}$

* In twelve of these cases Morris Plan banks were involved.

5. Federal Reserve District No. 3.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships Which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Will Be Prohibited</u>
133	115	55

Of the 55 individuals in the Third Federal Reserve District whose cases have been made a part of this study and whose relationships apparently would be prohibited by the enactment of the proposed substitute, 44 have served two or more of the institutions involved for five years or more. The qualifications of 26 of these individuals do not appear to be subject to particular question, while information relative to 23 of the individuals was not readily available. In 3 of the cases the banks involved are not located in the same business community.

The following analysis has been made of the competitive status of the banks involved in the 55 cases involving relationships which apparently would be prohibited by the enactment of the proposed substitute:

(a) Minor competition for savings business	1
(b) Normal competition for both commercial and savings business	23
(c) Normal competition for commercial, savings and trust business	12
(d) Minor competition for commercial and savings business	5
(e) Normal competition for commercial and savings business and minor competition for trust business	4
(f) Minor competition for commercial, savings and trust business	3
(g) Minor competition for commercial and normal competition for trust business	1
(h) Minor competition for commercial and savings and normal competition for trust business	1
(i) No competition involved	2
(j) Cases involving a Morris Plan bank	1
	<u>55</u>

4. Federal Reserve District No. 4.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships Which Apparently May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Would Be Prohibited</u>
184	137	47

Of the 47 cases forming a part of this study and involving relationships which would apparently be prohibited under the proposed substitute, 26 involve interlocking relationships which have been in existence for 5 years or more. In 17 of the 47 cases the banks involved are not situated in the same business community. The qualifications of 40 of the individuals involved do not appear to be subject to particular question; two appear to be involved and information was not available concerning five.

The competitive status of the banks involved in the 47 cases involving relationships which apparently would be prohibited has been analyzed as follows:

- (a) Normal competition for both commercial and savings business 13
- (b) Minor competition for commercial and normal competition for savings business 2
- (c) Minor competition for both commercial and savings business 12
- (d) Acute competition for both commercial and savings business 6
- (e) Acute competition for commercial, savings and trust business 4
- (f) Minor competition for commercial, savings and trust business 2
- (g) Normal competition for commercial and savings business and minor competition for trust business 3
- (h) Minor competition for savings only 2
- (i) Normal competition for commercial, savings and trust business

3
47

5. Federal Reserve District No. 5.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships Which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Will Be Prohibited</u>
174	98	76

Of the 76 individuals in the Fifth Federal Reserve District whose cases have been made a part of this study and whose relationships apparently would be prohibited by the enactment of the proposal, 61 have served two or more of the institutions involved for five years or more. The qualifications of 75 of these individuals do not appear to be subject to particular question, while two appear to be involved financially and one apparently was regarded as more or less responsible for the condition of one or more of the banks involved. In 9 of the 76 cases, the banks involved are not located in the same business community.

So-called "Industrial banks" were involved in 23 cases and Morris Plan banks were involved in 5 cases.

The following analysis has been made of the competitive status of the banks involved in the 76 cases involving relationships which apparently would be prohibited by the enactment of this provision:

(a) Normal competition for commercial business	3
(b) Minor competition for commercial business	2
(c) Normal competition for savings business	10
(d) Acute competition for savings business	4
(e) Minor competition for savings business	25
(f) Normal competition for both commercial and savings business	17

(g) Normal competition for both savings and trust business	4
(h) Normal competition for commercial, savings, and trust business	5
(i) Minor competition for commercial and savings business	1
(j) Competition for loans only	$\frac{5}{76}$ *

* In these cases the banks involved were strictly different types of institutions but did carry some of the same kind of loans.

6. Federal Reserve District No. 6.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships Which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Will Be Prohibited</u>
182	159	32

Of the 32 individuals in the Sixth Federal Reserve District whose cases have been made a part of this study and whose relationships apparently would be prohibited by the enactment of the proposal, 13 have served two or more of the institutions involved for five years or longer. In seven cases the banks involved in the relationship which apparently will be prohibited are not located in the same business community. The qualifications of 29 of these individuals do not appear to be subject to particular question, while the qualifications of two appeared unfavorable because of their undue use of the banks' credit facilities, and the qualifications of another appeared questionable because of his financial condition.

The following analysis has been made of the competitive status of the banks involved in the 32 cases involving relationships which apparently would be prohibited by the enactment of this provision:

(a) Acute competition for commercial, savings, and trust business	2
(b) Acute competition for commercial and savings business	3
(c) Minor competition for commercial, savings, and trust business	4
(d) Minor competition for commercial and savings business	17
(e) Minor competition for commercial and savings and normal competition for trust business	3
(f) Acute competition for commercial and normal competition for trust business	2
(g) Minor competition for commercial and normal competition for savings business	1
	<u>32</u>

7. Federal Reserve District No. 7.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships Which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Will Be Prohibited</u>
281	215	66

Of the 66 individuals in the Seventh Federal Reserve District whose cases have been made a part of this study and whose relationships apparently would be prohibited by the enactment of the proposed substitute, 32 have served two or more of the institutions involved for five years or more. The qualifications of 59 individuals do not appear to be subject to particular question, while 2 appear to be subject to severe criticism and information relative to 5 of the individuals was not readily available. In 24 of the 66 cases, the banks involved were not located in the same business community while in 5 of the cases two out of three institutions involved in each case were so located.

The competitive status of the banks involved in these 66 cases has been analyzed as follows:

(a) Acute competition for commercial, savings and trust business	2
(b) Acute competition for commercial and savings business	2
(c) Acute competition for savings business	1
(d) Normal competition for commercial, savings, and trust business	5
(e) Normal competition for commercial and savings business	21
(f) Normal competition for savings and trust business	1
(g) Normal competition for savings business	6
(h) Normal competition for commercial business and minor competition for savings business	1

(i) Minor competition for commercial, savings, and trust business	6
(j) Minor competition for commercial and savings business	15
(k) Minor competition for commercial business	1
(l) Minor competition for savings business	<u>7</u>
	66

8. Federal Reserve District No. 8.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships Which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Will Be Prohibited</u>
100	91	9

Of the nine individuals in the Eighth Federal Reserve District whose cases have been made a part of this study and whose relationships would be prohibited by the enactment of the proposal, four have served two or more of the institutions involved for five years or more. The qualifications of these nine individuals do not appear to be subject to particular question.

The following analysis has been made of the competitive status of the banks involved in the nine cases involving relationships which apparently would be prohibited by the enactment of this provision:

(a) Normal competition for commercial business	3
(b) Normal competition for both commercial and savings business	4
(c) Normal competition for commercial, savings, and trust business	1
(d) Acute competition for commercial and savings business	$\frac{1}{9}$

9. Federal Reserve District No. 9.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Will Be Prohibited</u>
224	156	28

Of the 28 individuals in the Ninth Federal Reserve District whose cases have been made a part of this study and whose relationships apparently would be prohibited by the enactment of the proposal, 20 have served two or more of the institutions involved for five years or more. The qualifications of 26 of these individuals do not appear to be subject to particular question, while 2 appear to be involved financially. In 7 of the 28 cases, the banks involved are not located in the same business community.

The following analysis has been made of the competitive status of the banks involved in the 28 cases involving relationships which apparently would be prohibited by the enactment of this provision:

(a) Normal competition for commercial and savings business	7
(b) Minor competition for commercial and savings business	6
(c) Minor competition for commercial business	3
(d) Minor competition for savings business	5
(e) Normal competition for savings business	2
(f) Acute competition for commercial and savings business	1
(g) Acute competition for savings and trust business and minor competition for commercial business	1
(h) No competition	<u>1</u>
	<u>28</u>

10. Federal Reserve District No. 10.

<u>Total Cases</u> <u>Reviewed</u>	<u>Cases Involving Relation-</u> <u>ships Which May Not</u> <u>Be Disturbed</u>	<u>Cases Involving Relation-</u> <u>ships Which Apparently</u> <u>Will Be Prohibited</u>
585	354	49

Of the 49 cases forming a part of this study and involving relationships which apparently would be prohibited under the proposed substitute, 35 involve interlocking relationships which have been in existence for 5 years or more. In 35 of the 49 cases two or more of the banks involved are situated in the same business community. In 43 of the cases the qualifications of the individual involved do not appear to be subject to particular question.

The competitive status of the banks involved in the 49 cases involving relationships which apparently would be prohibited has been analyzed as follows:

(a) Normal competition for both commercial and savings business	9
(b) Minor competition for commercial business	5
(c) Normal competition for commercial business and minor competition for savings business	1
(d) Minor competition for both commercial and savings business	22
(e) Acute competition for both commercial and savings business	6
(f) Acute competition for commercial, savings, and trust business	5
(g) Minor competition for commercial business and normal competition for trust business	1
(h) Competition for loans only *	<u>2</u> 49

* Involve cases where there appears to be no competition for deposits or trust business but where there appears to be some competition for loans.

11. Federal Reserve District No. 11.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Will Be Prohibited</u>
163	153	13

Of the 13 cases in the Eleventh Federal Reserve District forming a part of this study and involving relationships which apparently would be prohibited, 11 involve relationships that have been in existence for five years or more. The qualifications of the individuals involved are apparently not subject to particular question.

The competitive status of the banks involved in these 13 cases have been analyzed as follows:

- (a) Normal competition for both commercial and savings business 9
- (b) Minor competition for both commercial and savings business 2
- (c) Minor competition for savings business $\frac{2}{13}$ *

* Involves Morris Plan banks.

12. Federal Reserve District No. 12.

<u>Total Cases Reviewed</u>	<u>Cases Involving Relationships Which May Not Be Disturbed</u>	<u>Cases Involving Relationships Which Apparently Would be Prohibited</u>
192	174	18

Of the 18 individuals in the Twelfth Federal Reserve District whose cases have been made a part of this study and whose relationships apparently would be prohibited by the enactment of the proposal, 13 have served two or more of the institutions involved for five years or more. The qualifications of 16 of these individuals do not appear to be subject to particular question, while one apparently was regarded as more or less responsible for the condition of one or more of the banks involved, and there was no information available concerning the qualifications of one. In 2 of the 18 cases the banks involved are not located in the same business community.

The following analysis has been made of the competitive status of the banks involved in the 18 cases involving relationships which apparently would be prohibited by the enactment of the provision:

(a) Normal competition for commercial and savings business	1
(b) Acute competition for commercial and savings business	3
(c) Minor competition for commercial and savings business	1
(d) Acute competition for commercial, savings and trust business	1
(e) Minor competition for commercial and acute competition for savings and trust business	5
(f) Minor competition for commercial and savings and normal for trust business	1
(g) Normal competition for trust business	3
(h) Acute competition for trust business	1
(i) Minor competition for savings business	<u>2</u> *
	18

* These cases involve an "Industrial Bank" and a Morris Plan Bank, respectively.