February 7, 1939

To Mr. Wyatt Subject: Laws regarding purchase of silver --

From Mr. Hackley present situation and statutory history.

The Present Situation

At the present time, silver is being purchased under both the so-called Thomas Amendment to the Act of May 12, 1933, and the Silver Purchase Act of June 19, 1934.

Silver produced in the United States is being purchased in accordance with regulations of the Secretary of the Treasury dated January 16, 1939, issued pursuant to the Thomas Amendment and the Proclamation of the President of December 21, 1933, as supplemented and extended. Such silver is paid for in silver dollars or silver certificates at rates prescribed in such regulations. As of June 30, 1937, over 150,000,000 fine ounces of silver had been purchased under this authority. However, the provisions of the Thomas Amendment authorizing the unlimited coinage of silver will expire June 30, 1939, and the regulations of the Secretary of the Treasury specifically provide that in order to be eligible for receipt at the mints, silver must be delivered on or before that date.

Under the Silver Purchase Act, silver is likewise being purchased at the present time both at home and abroad and payment therefor may be made in any direct obligations, coin, or currency of the United States, at prices not in excess of the statutory limitations. The authority for purchase under this Act is permanent, although of course such authority depends upon the existence of the conditions specified in the statute. No regulations have been issued with respect to the purchase of silver under this Act. As of June 30, 1937 over 1,000,000,000 fine ounces of silver had been purchased under the Silver Purchase Act.

The Situation before the Thomas Amendment

The silver purchase clause of the Sherman Act of 1890 was repealed by an Act of November 1, 1893; and from 1893 until 1918 there was apparently no authority for the purchase of silver.

The Pittman Act of April 23, 1918 (40 Stat. 535) authorized the Secretary of the Treasury to convert not more than 350,000,000 silver dollars into bullion and to sell such bullion or use it for the recoinage of standard silver dollars. The Act also authorized the purchase of domestic silver sufficient to coin an aggregate number of silver dollars equal to the number of silver dollars theretofore converted into bullion and sold. Pursuant to this authority, over 270,000,000 standard dollars were converted into bullion and between 1920 and 1933 the same quantity of silver was purchased from American mines from which standard silver dollars were recoined.

The Thomas Amendment

The Thomas Amendment to the Act of May 12, 1933, authorized the President in his discretion by proclamation to provide for the unlimited coinage of silver; and the Secretary of the Treasury, with the approval of the President, was authorized to make regulations covering any action taken by the President under this authority.

On December 21, 1933, the President issued a Proclamation pursuant to the Thomas Amendment directing the United States mints to receive for coinage into standard silver dollars any silver mined subsequent to such Proclamation from natural deposits in the United States; and the Director of the Mint was required to deduct 50 per cent as seigniorage and to deliver the balance, in standard silver dollars, to the depositor of the silver. The Secretary of the Treasury was authorized by the Proclamation to prescribe regulations containing provisions substantially similar to those contained in regulations previously issued under the Pittman Act.

By its terms, this Proclamation was to expire December 31, 1937. However, it was extended by a subsequent Proclamation to December 31, 1938 and was still later extended to June 30, 1939.

Under the Thomas Amendment and in accordance with the direction contained in the Presidential Proclamation, the Secretary of the Treasury has from time to time issued "newly-mined domestic silver regulations" prescribing the terms on which silver is to be received by the mints for coinage. These regulations have fixed different charges for seigniorage for silver mined over different periods. The latest of such regulations is dated January 16, 1939.

The Gold Reserve Act

The Gold Reserve Act of January 30, 1934, amended the Thomas Amendment so as to make the power of the President thereunder to provide for unlimited coinage of silver expire on January 30, 1936, except that the President was allowed to extend this time for one additional year. By an Act approved January 23, 1937, the time was further extended to June 30, 1939.

This Act also added to the Thomas Amendment a new provision authorizing the President to cause silver certificates to be issued in lieu of standard silver dollars in payment for silver delivered to the mints for coinage; and the President authorized payment in silver certificates instead of silver dollars, at the option of the tenderer of the silver, by an Executive Order of August 9, 1934. The Act further gave the President power to issue silver certificates against silver in the Treasury, to prescribe different terms and conditions and to make different charges for the coinage of silver produced abroad and silver produced at home, and to reduce the weight of the standard silver dollar in the same percentage as he might reduce the weight of the gold dollar.

The Silver Purchase Act

The Silver Purchase Act of June 19, 1934, directed the Secretary of the Treasury to purchase silver, at home or abroad, whenever and so long as the proportion of silver in the stocks of gold and silver of the United States is less than one-fourth of the monetary value of such stocks and to pay for such silver with any direct obligations, coin, or currency of the United States, or any funds in the Treasury not otherwise appropriated, at a price fixed in the statute itself.

The effect of this Act, therefore, was merely to supplement the provisions of the Thomas Amendment. Whereas the Thomas Amendment merely authorized the President to provide for the unlimited coinage of silver, the Silver Purchase Act directed the Secretary of the Treasury to purchase silver whenever certain circumstances should obtain. The Thomas Amendment did not fix the price at which silver was to be purchased; and the percentage of seigniorage and other charges has been fixed by regulations of the Secretary of the Treasury. On the other hand, the Silver

Purchase Act provides that silver shall be purchased at not more than its monetary value ($1.29+ a fine ounce) and that no silver situated in the United States on May 1, 1934 shall be purchased at a price in excess of 50 cents a fine ounce. Whereas the regulations of the Secretary of the Treasury under the Thomas Amendment appear to apply solely to the purchase of domestic silver, the Silver Purchase Act provides for the purchase of silver produced in foreign countries, as well as in the United States.

It may be noted that the Silver Purchase Act authorized the President by executive order to require the delivery of any or all silver to the United States mints. Acting under this authority, the President issued an Executive Order on August 9, 1934, requiring the delivery to the United States mints of all silver in the continental United States on that date, with certain stated exceptions including silver coins, silver mined after December 21, 1933, silver held for industrial, professional, or artistic use, silver contained in fabricated articles held for customary use and not for their value as bullion, and silver held under a license issued by the Secretary of the Treasury. As a result of this action, over 113,000,000 fine ounces of silver had been transferred to the mints as of June 30, 1937. However, the Executive Order of the President requisitioning silver was revoked by an Order dated April 28, 1938.

Respectfully,

(Signed) HOWARD H. HACKLEY

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