(F.R.) CONFIDENTIAL

TRANSFER

(F.R.) CONFIDENTIAL

332.3-6 - Repurchase Paper (- 1923 -)

FEDERAL RESERVE BANK
OF ATLANTA

OFFICE OF
DEPUTY GOVERNOR

3323-6

November 14th

1923

Mr. Walter L. Eddy, Secretary,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Eddy:

Referring to your wire dated November 12th with further reference to Statement of Purchases and Sales of U. S. Securities handled by this bank each week ending Wednesday since January 1st, 1923, I am handing you herein corrected copy covering these transactions and regret that the first statement submitted was in error.

Trusting that our failure to furnish you a correct report in the first instance has not seriously inconvenienced you and that the enclosed is what you desire, I am

Very truly yours,

L. C. Adelson,
Deputy Governor.

Enclosure.

Form 148

TELEGRAM

FEDERAL RESERVE BOARD

LEASED WIRE SERVICE

WASHINGTON

November 12, 1923.

Adelson - Atlanta.

Referring to statement showing U. S. securities purchased and sold enclosed with your November 9 letter, we find that in a number of cases figures do not agree with balance sheets Form 34, i.e., if purchases are added to and sales deducted from balance shown on Form 34 at beginning of week the result does not agree with the balance shown on Form 34 at end of week. Kindly advise reason for above differences, and if necessary mail revised statement.

EDDY.

FEDERAL RESERVE BANK
OF ATLANTA

Mr. Sweet

3323.3-6

OFFICE OF
DEPUTY GOVERNOR

November 9th

1923

Mr. Walter L. Eddy, Secretary,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Eddy:

In accordance with your telegram of November 7th, there is enclosed herein statement of Purchases and Sales of U. S. Securities handled by this bank each week ending Wednesday since January 1, 1923. This statement does not include any redemptions or transactions handled by our Fiscal Agency Department, but embraces only those passing through our Investment Account.

Trusting this statement contains the desired information, I am

Very truly yours,

L. C. Adelson,
Creed Taylor.

enclosure

" CORRECTED COPY "

STATEMENT SHOWING U. S. SECURITIES PURCHASED AND SOLD BY THE FEDERAL RESERVE BANK OF ATLANTA EACH WEEK ENDING WEDNESDAY SINCE JANUARY 1st, 1923

Week Ending	- 1 - Other Fed. Res. Banks: Purchase	Sales	- 2 - Alien Property Custodian: Purchase	Sales	- 3 - Federal Land Banks	- 4 - - A - Sales to U S Treas including Redemptions before Maturity	- B - Redemptions at Maturity Exclusive of Temp 1-Day Ctfs	- 5 - All Other Transactions: Purchase	Sales
1-3-23	$	$	$	$	$	$	$	$ 391 952	$ 419 050
1-10-								548 850	451 050
1-17								125 700	401 150
1-24								457 650	194 850
1-31	~~1 000 000~~	0						~~272 400~~ 1,272,400	160 550
2-7	1 500 000							~~946 752~~ 948,752	182 900
2-14								885 450	1 578 300
2-21	5 000 000							108 450	209 200
2-28								11 950	35 200
3-7	~~5 000 000~~ 1,000,000							~~135 702~~ 4,135,700	33 650
3-14								32 850	63 900
3-21							5 000 000	412 100	432 900
3-28							7 500 000	51 400	80 100
4-4								53 302	23 200
4-11								33 150	66 100
4-18								40 900	24 700
4-25								349 900	2 347 100
5-2								210 102	179 700
5-9								52 900	63 650
5-16								~~80 400~~ 480,450	69 550
5-23								125 550	~~120 800~~ 520,800
5-30								210 300	~~220 700~~ 213,000
6-6								41 202	~~105 450~~ 113,150
6-13								156 400	402 100
6-20								14 900	74 100
6-27								~~54 600~~ 154,600	15 900
7-4								148 752	~~150 650~~ 250,650
7-11								271 050	259 500
7-18								289 100	244 000
7-25								363 000	445 950
8-1								66 652	54 200
8-8								27 350	17 100
8-15								80 450	45 750
8-22								111 000	165 350
8-29								52 650	41 450
9-5								217 602	167 800
9-12								105 100	133 600
9-19								179 250	168 250
9-26								110 600	35 800
10-3								109 202	149 150
10-10								182 950	181 400
10-17								393 750	430 400
10-24								70 300	57 300
10-31								114 400	124 500
11-7								229 102	227 150
Total Jan 3 to Oct 31								9,308,018	10,408,950

Changes marked in red made to agree with investment schedules and balance sheets. JJW 11/20/23

STATEMENT SHOWING U. S. SECURITIES PURCHASED AND SOLD BY THE FEDERAL RESERVE BANK OF ATLANTA EACH WEEK ENDING WEDNESDAY SINCE JANUARY 1st, 1923.

	- 1 -		- 2 -		- 3 -	- 4 -		- 5 -		
	Other Fed. Res. Banks		Alien Property Custodian		Federal Land	- A -	- B -	All other Transactions		
Week Ending	Purchase	Sales	Purchase	Sales	Banks	Sales to U S Treas including Redemptions before Maturity	Redemptions at Maturity Exclusive of Temp 1-Day Ctfs	Purchase	Sales	
1-3-23	$	$	$	$	$	$	$	$ 308 950 ✓	$ 335 550 ✓	Jan 3
1-10								548,850 439 850 ✓	451 050 ✓	10
1-17								125 700 ✓ 401,150	262 150 ✓	17
-1-24								455 650 ✓	192 850 ✓	24
1-31	1 000 000 ✓							272 300	160 550	31
2-7-	1 500 000 ✓							948 750 ✓	182 900 ✓	Feb 7
2-14								885 450	1 578 400 ✓	14
2-21	5 000 000 ✓							108 450 ✓	209 200 ✓	21
2-28								11 950 ✓ 35,200	320 500 ✓	28
-3-7	5 000 000 ✓							135 700	33 200	Mar 7
3-14-								32 850 ✓	63 900 ✓	14
3-21							5 000 000 ✓	412 100 ✓	432 900 ✓	21
3-28							7 500 000 ✓	51 400	78 800 ✓	28
4-4-								53 302	24 500	Apr 4
4-11								33 150 ✓ 66,100	65 600 ✓	11
4-18								40 900 ✓	24 700 ✓	18
4-25								349 900 ✓	2 347 100 ✓	25
5-2								210 102 ✓ 179,700	154 700 ✓	May 2
5-9								52 900 ✓ 63 650	88 650 ✓	9
5-16								4 80 400 ✓	69 550 ✓	16
5-23								125 550 ✓	5 120 800 ✓	23
5-30								211 300 214,000	215 750 ✓	30
6-6-								41 200	110 400	June 6
6-13								157 300	402 100	13
6-20								15 000	74 100	20
6-27								154 600	15 900	27
7-4-								151 900	7 153 650	July 4
7-11								252 900 241,350	256 500	11
7-18								258 100 213,000	229 000	18
7-25								363 000	385 950	25
8-1								66 650	54 200	Aug 1
8-8								27 350	17 100	8
8-15								80 450	45 750	15
8-22								111 000	165 350	22
8-29								52 650	41 450	29
9-5-								217 600	167 800	Sept 5
9-12								105 100	133 600	12
9-19								179 250	168 250	19
9-26								110 600	35 800	26
10-3-								109 202	149 150	Oct 3
10-10								182 950	181 400	10
10-17								179 195 250	215 900	17
10-24								70 300	57 300	24
10-31								114 400	124 500	31
11-7-								229 102	227 150	Nov 7

See Corrected Copy

FEDERAL RESERVE BANK
OF BOSTON

November 8, 1923.

Federal Reserve Board,
Washington,
D. C.

Gentlemen:

As requested in your telegram of November 7 you will find listed below the total U. S. Government Securities held by this bank under Repurchase Agreements, close of business each Wednesday since January 1, 1923:

Month	Amount	Month	Amount
January 3	~~$1,336,220~~ * 1,377,620	June 6	$190,680
" 10	~~1,030,704~~ * 2,267,304	" 13	366,260
" 17	660,500	" 20	537,154
" 24	1,737,590	" 27	589,550
" 31	1,626,150	July 3	260,580
February 7	669,100	" 11	868,550
" 14	801,660	" 18	1,103,500
" 21	1,255,312	" 25	321,000
" 28	749,403	Aug. 1	773,950
March 7	3,960	" 8	1,066,600
" 14	* 0 ~~3,960~~	" 15	705,750
" 21	262,850	" 22	1,126,300
" 28	337,225	" 29	69,950
April 4	69,300	Sept 5	194,550
" 11	105,785	" 12	378,200
" 18	313,920	" 19	000
" 25	54,700	" 26	~~494,720~~ * 484,820
May 2	196,900	Oct. 3	991,870
" 9	515,250	" 10	250,000
" 16	397,450	" 17	170,000
" 23	567,006	" 24	000
" 29	161,350	" 31	1,084,650

November 7,.... $ 45,000

* See note on reverse side

Yours very truly,

E. G. Hult,
Assistant Cashier.

CBP/M

* Comparison of forms 34 and investment schedules indicate that figures should be changed as marked. JBM 11/10/23

FEDERAL RESERVE BANK

OF NEW YORK

ATTENTION OF:
Mr. W. L. Eddy.

November 8, 1923.

S i r s :

For Governor Strong, I take pleasure in enclosing the statement requested by you in your telegram of yesterday's date, showing the total amount of United States Government securities held by this bank under repurchase agreement at the close of business on each Wednesday, from January 1 to November 1, 1923.

Very truly yours,

J. H. CASE,
Deputy Governor.

Federal Reserve Board,

Washington, D. C.

Enc.

November 8, 1923.

U. S. GOVERNMENT SECURITIES HELD UNDER REPURCHASE AGREEMENT
(Close each Wednesday, January 1 to November 1, 1923.)

DATE		Total Holdings	AMOUNT HELD	Investment a/c
January	3	$ 121,368,450	$ 34,290,000.	$ 87 078 450
"	10	146,478,950	34,435,200.	112 043 750
"	17	110,048,750	5,730,000.	104 318 750
"	24	96,848,750	30,700,000.	66 148 750
"	31	79,068,650	22,919,900.	56 148 750
February	7	52,305,350	17,656,600.	34 648 750
"	14	53,234,250	18,585,500.	34 648 750
"	21	43,590,250	16,441,500.	27 148 750
"	28	48,797,750	21,649,000.	27 148 750
March	7	26,055,750	5,607,000.	20 448 750
"	14	24,426,750	4,228,000.	20 198 750
"	21	17 661,750	6,513,000.	11 148 750
"	28	24,738,350	13,589,600.	11 148 750
April	4	18,825,750	7,677,000.	11 148 750
"	11	17,030,750	5,882,000.	11 148 750
"	18	19,040,750	7,892,000.	11 148 750
"	25	11,148,750	- 0 -	11 148 750
May	2	3,738,750	2,590,000.	1 148 750
"	9	4,572,750	1,224,000.	3 348 750
"	16	7,148,750	6,000,000.	1 148 750
"	23	26,150,050	20,001,300.	6 148 750
"	30	13,226,050	11,077,300.	2 148 750
June	6	21,147,750	14,999,000.	6 148 750
"	13	16,609,750	10,461,000.	6 148 750
"	20	20,509,850	19,361,100.	1 148 750
"	27	31,143,250	29,994,500.	1 148 750
July	4	4,827,250	3,678,500.	1 148 750
"	11	9,972,250	8,823,500.	1,148 750
"	18	10,959,550	9,810,800.	1,148 750
"	25	12,235,150	11,086,400.	1 148 750
August	1	12,174,250	9,572,000.	2 602 250
"	8	6,623,750	5,475,000.	1 148 750
"	15	5,648,750	4,500,000.	1 148 750
"	22	3,845 750	2,697,000.	1,148 750
"	29	12,410,150	11,261,400.	1,148 750
September	5	18,381,150	17,232,400.	1 148 750
"	12	17,249,750	16,101,000.	1 148 750
"	19	10,043,750	8,895,000.	1 148 750
"	26	9 958,750	8,810,000.	1 148 750
October	3	13,573,750	12,425,000.	1 148 750
"	10	6,848,750	5,700,000.	1 148 750
"	17	12,068 750	10,920,000.	1 148 750
"	24	4,548,750	3,400,000.	1 148 750
"	31	10,908,750	9,760,000.	1 148 750
TOTAL		1237,195,700	$529,652,500.	707 543 200 ✓

Prepared By
Checked By

FEDERAL RESERVE BANK OF CHICAGO

230 SOUTH LA SALLE STREET

Mr Strand

3323.3-b

November 8, 1923.

Mr. W. L. Eddy, Assistant Secretary,
Federal Reserve Board,
Washington.

Dear Sir:

As requested in your telegram of November seventh, 6th we held U. S. Treasury Certificates of Indebtedness and Notes under repurchase agreement with dealers at the close of business each Wednesday since January 1, 1923, as follows:

Date	Amount	Date	Amount
January 3,	$2,794,900	June 6,	$1,407,500
January 10,	2,634,000	June 13,	2,826,200
January 17,	1,708,800	June 20,	4,896,800
January 24,	1,147,300	June 27,	6,603,700
January 31,	741,000	July 5,	5,958,600
February 7,	2,769,650	July 11,	5,720,300
February 14,	2,553,200	July 18,	6,210,500
February 21,	2,254,600	July 25,	3,770,100
February 28,	2,313,100	August 1,	4,994,700
March 7,	1,512,700	August 8,	3,808,400
March 14,	2,097,100	August 15,	3,268,700
March 21,	1,352,000	August 22,	2,604,200
March 28,	3,257,600	August 29,	3,359,400
April 4,	1,710,700	September 5,	3,218,400
April 11,	1,818,400	September 12,	4,261,400
April 18,	896,000	September 19,	4,529,400
April 25,	1,765,500	September 26,	2,188,600
May 2,	1,623,750	October 3,	1,420,800
May 9,	2,266,300	October 10,	512,500
May 16,	1,581,100	October 17,	721,200
May 23,	4,378,700	October 24,	2,355,800
May 31,	1,191,800	October 31,	3,411,000
		November 7,	2,630,300

Very truly yours,

C. R. McKay,
Deputy Governor.

D F

FEDERAL RESERVE BANK
OF
ST. LOUIS

33203-6

November 8, 1923.

Federal Reserve Board,
Washington.

Attention Mr. Eddy.

Gentlemen:-

11623

In compliance with your telegram of yesterday, I am enclosing statement giving the amount of United States Government securities sold by this bank during each week ending Wednesday, from January 1 to October 31, 1923.

Yours very truly,

C. M. Stewart

Asst. Federal Reserve Agent.

STATEMENT SHOWING AMOUNT OF U. S. SECURITIES SOLD BY THIS BANK DURING EACH WEEK ENDING WEDNESDAY SINCE JANUARY 1, 1923 TO OCTOBER 31, 1923.

Week ending	Other Federal Reserve Banks	Alien Property Custodian	Federal Land Banks	U. S. Treasury including redemptions before maturity.	Redemptions by U. S. Treasurer at maturity exclusive of temporary one day certificates.
January 3, 1923	None	None	None	None	None
10	"	"	"	"	"
17	"	"	"	"	"
24	500,000	"	"	"	"
31	None	"	"	"	"
February 7, 1923	"	"	"	"	"
14	"	"	"	"	"
21	"	"	"	"	"
28	"	"	"	"	"
March 7, 1923	"	"	"	"	"
14	"	"	"	"	"
21	"	"	"	"	439,000
28	"	"	"	1,343,000	None
April 4, 1923	1,000,000	"	"	None	"
11	None	"	"	"	"
18	"	"	"	"	"
25	"	"	"	2,994,000	"
May 2, 1923	"	"	"	None	"
9	"	"	"	"	"
16	"	"	"	"	"
23	2,500,000	"	"	"	"
30	None	"	"	"	"
June 6	"	"	"	"	"
13	"	"	"	"	"
20	"	"	"	3,051,000	800,000
27	"	"	"	None	None
July 4, 1923	"	"	"	1,152,600	"
11	"	"	"	None	"
18	"	"	"	"	"
25	"	"	"	"	"
August 1, 1923	"	"	"	"	"
8	"	"	"	"	"
15	"	"	"	"	"
22	82,300	"	"	3,500,000	"
29	None	"	"	None	"

Week ending	Other Federal Reserve Banks	Alien Property Custodian	Federal Land Banks	U. S. Treasury including redemptions before maturity.	Redemptions by U. S. Treasurer at maturity exclusive of temporary one day certificates.
September 5, 1923	None	None	None	None	None
12	"	"	"	"	"
19	"	"	"	"	"
26	"	"	"	"	"
October 3, 1923	"	"	"	"	"
10	"	"	"	"	"
17	2,650,000	"	"	1,018,300	"
24	None	"	"	None	"
31	"	"	"	"	"
TOTAL	$6,732,300	None	None	$13,058,900	$1,239,900

TELEGRAM

FEDERAL RESERVE SYSTEM

(LEASED WIRE SERVICE)

RECEIVED AT WASHINGTON, D. C.

65frb

Minneapolis Nov 8th 23 1005A

Eddy

Washington

11/6/23

Referring your wire yesterday securities held by our bank under repurchase agreement each Wednesday since January 1,1923.

Jan 3	4,250,000 4,150	May 9,	4,250,000	Sept 19	5,752,000
Jan 10	~~4,250~~,000	May 16	4,250,000	Sept 26	6,502,000
Jan 17	~~2,500~~,000 3,250	May 23	4,500,000	Oct 3	6,252,000
Jan 24	----	May 30	4,500,000	Oc 10	6,502,000
Jan 31	----	Jun 6	4,750,000 5	Oct 17	6,502,000
Feb 7	750,000	Jun 13	~~1~~,000 ,000	Oct 24	6,502,000
Feb 14	1,000,000	June 20	5,000,000	Oct 31	----
Feb 21	1,500,000	Jun 27	5,250,000		
Feb 28	2,250,000	Jul 4	6,000,000		
Mar 7	2,500,000	Jul 11	6,000,000		
Mar 14	3,250,000	Jul 18	~~1~~33,550,000		
Mar 21	3,750,000	Jul 25	3,550,000		
Mar 28	4,250,000	Aug 1	3,950,000		
Apr 4	4,250,000 500	Aug 8	4,450,000		
Apr 11	4,~~250~~,000	Aug 15	4,450,000		
Apr 18	4,750,000	Aug 22	4,700,000		
Apr 25	5,000,000	Aug 29	4,950,000		
May 2	4,250,000	Sept 5	5,450,000		
		Sep 12	5,450,000		

Young

1140A

over

GOVERNMENT PRINTING OFFICE 2—11901

Note:

Investment schedules indicate that the figures should be changed as indicated in ink.

11/10/23

TELEGRAM

FEDERAL RESERVE SYSTEM

(LEASED WIRE SERVICE)

RECEIVED AT WASHINGTON, D. C.,

NOV 8 1923

RECEIVED

332.3-b

78frb

KanSasCity Nov 8 23 1010a

Eddy

Washington

11/6/23

Replying your wire Xth. Amount US Government securities held by this bank under repurchase agreement at close of business each wednesday since January 1st is as follows. March 21st $500,000 March 28th $500,000 April 4 $1,000,000 April 11 $1,000,000 April 18 $1,000,000 April 25 $1,000,000 May 2 $500,000 May 9 $625,000 May 16 $625,000 May 23 $625,000 May 30 $720,000 June 6 $720,000 June 13 $720,000 June 20 $720,000 June 27 $500,000 July 4 $2,000,000 July 11 $2,000,000 July 18 $1,165,000 July 25 $1,135,000 August 1 $1,000,000 August 8 $1,000,000 August 22 $1,000,000 August 29 $1,000,000 Sept 19 $500,000 September 26 $500,000 October 3 $1,200,000 October 10 $1,200,000 October 17 1,500,000 Oct 24 1,500,000 There were no securities held under repurchase agreements on the Wednesdays not indicated above.

Bailey

1207p

over

Coded and transcribed

GOVERNMENT PRINTING OFFICE 2—11901

Apparently $593,100 was carried under repurchase agreement up to 1/16/23 for Fed. Land Bank, Omaha - See investment schedule #99 of 1/16/23 covering retirement.

JGB

TELEGRAM

FEDERAL RESERVE SYSTEM

(LEASED WIRE SERVICE)

RECEIVED AT WASHINGTON, D. C.,

124fcq

Dallas 11am nov 8

Eddy

Washn

Your wire 8th United States Government securities held by this bank under repurchase agreement at close business each wednesday since January 1- Week ending January 17th through March 14 $1,100,000 March 21 $1,500,000 March 28through april 4- $1,600,000 April 11 through April 18 $2,100,000 april 25 through June 6 $1,600,000 none on all other dates.

Emerson

1257p

Noted and transcribed

Form 148

TELEGRAM

FEDERAL RESERVE BOARD

LEASED WIRE SERVICE
WASHINGTON

November 6, 1923.

Harding - Boston
Strong - New York
McDougal - Chicago

Please mail ~~today~~ tomorrow if practicable statement showing total amount of U. S. Government securities held by your bank under repurchase agreement at close of business on each Wednesday since January 1.

EDDY.

Form 48

TELEGRAM

FEDERAL RESERVE BOARD

LEASED WIRE SERVICE

WASHINGTON

November 6, 1923.

Young - Minneapolis
Bailey - Kansas City
McKinney - Dallas

Please wire total amount of U. S. Government securities held by your bank under repurchase agreement at close of business on each Wednesday since January 1.

EDDY.

Form 148

TELEGRAM

FEDERAL RESERVE BOARD

LEASED WIRE SERVICE
WASHINGTON

333

3323

November 6, 1923.

3323-6

Wellborn - Atlanta.

Please mail tomorrow if practicable statement showing total amount of U. S. Government securities purchased and total amount sold by your bank during each week ending Wednesday since January 1 giving separately transactions with (1) other Federal reserve banks, (2) Alien Property Custodian, (3) Federal Land banks, (4) U. S. Treasurer exclusive of one-day certificates, (5) all other transactions. If bank has purchased any U. S. securities under repurchase agreements amounts should be excluded from items 1, 2, 3, 4, and 5, and reported separately. In transactions with U. S. Treasurer please show separately (a) sales to U. S. Treasurer including redemptions before maturity, (b) redemptions at maturity exclusive of temporary one-day certificates.

EDDY.

Form 148

TELEGRAM

FEDERAL RESERVE BOARD

LEASED WIRE SERVICE

WASHINGTON

November 6, 1923.

Martin - St. Louis.

Referring your October 31 telegram, please mail tomorrow if practicable statement showing amount of U. S. securities sold by your bank during each week ending Wednesday since January 1 to (1) other Federal reserve banks, (2) Alien Property Custodian, (3) Federal Land banks, (4) U. S. Treasurer including redemptions before maturity, (5) Redemptions by U. S. Treasurer at maturity exclusive of temporary one-day certificates. If any of amounts reported against above items were included in your wire of October 31 please state aggregate included in each week's figures.

EDDY.

Form No. 131.

Office Correspondence

FEDERAL RESERVE BOARD

3323-6

Date Nov. 7, 1923

To Mr. Hamlin

Subject:

From Mr. Wyatt

2—8495

See letter 10/26/22

I return with thanks the very able opinion of Mr. Weed, Counsel for the Federal Reserve Bank of Boston, with reference to re-purchase agreements. Mr. Weed very kindly sent me a copy of this opinion, and I have already read it. He makes some very strong arguments in favor of the validity of the re-purchase agreements, and I expect to study his opinion very carefully before reporting definitely on the results of my reconsideration of this subject. To paraphrase Mr. Weed, "I think his opinion is well considered and logical" but at present I differ with his conclusion.

Respectfully,

Walter Wyatt

Walter Wyatt,
General Counsel.

Form No. 131.

Office Correspondence

FEDERAL RESERVE BOARD

332.3-6

Date Nov. 6, 1923.

To Mr. Wyatt

From Mr. Hamlin

Subject: Letter from Counsel of Federal Reserve Bank of Boston

2—8495

Dear Mr. Wyatt:

See 10/26/23

I enclose herewith letter from Mr. Weed, Counsel of the Federal Reserve Bank of Boston to Governor Harding on the subject of Re-purchase Agreements. Kindly return it to me after you have read it.

Sincerely yours,

C.S. Hamlin

Misc-37

Form No. 131.

Office Correspondence

FEDERAL RESERVE BOARD

#12

Date November 6, 1923.

Mr Hamlin, Chairman

To Law Committee

Subject:

From Mr. Eddy.

FEDERAL RESERVE BOARD FILE

332.3-6

332.3

10/30/23

By direction of the Governor, the attached communication and enclosures from the Chairman of the Board of Directors of the Federal Reserve Bank of San Francisco, dealing with the subject of the purchase of Government securities and bankers acceptances by Federal Reserve Banks from brokers and others, under repurchase agreements, is referred to the Law Committee for consideration and suggestion as to the form of reply which should be made thereto.

to Mr Wyatt

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NOV 6 1923

OFFICE OF COUNSEL

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Form No. 131.

Office Correspondence

FEDERAL RESERVE BOARD

Date Nov. 3, 1923

3323-6

To Governor Crissinger

From Mr. Wyatt, General Counsel.

Subject: Preliminary Report on Conference with Officers of Federal Reserve Bank of New York regarding Re-purchase Agreements.

Noted DRC

Dear Governor Crissinger:

My time since my return from New York has been so completely taken up with matters demanding immediate attention that I have been unable heretofore to prepare a written report of the results of my conference there with the officers of the Federal Reserve Bank of New York regarding their re-purchase agreements. I have explained to you orally the results of such conference, but feel that I ought to supplement my verbal report by a written memorandum. Inasmuch as this subject is to be discussed at the forthcoming Governors' Conference, however, and there is no especial need for haste in settling the problem, I should like very much to defer until after the conference a final report on the general question whether or not a legal means may be found whereby the practice of the Federal reserve banks in taking bankers' acceptances and Government securities under re-purchase agreements may be permitted to continue. This report, therefore, is not intended to state my final views on the subject but is merely a preliminary report covering only the results of my conference in New York.

I was directed to go to New York "for the purpose of investigating and determining the legal status of the re-purchase agreements which the Federal Reserve Bank of New York enters into with bill brokers when taking acceptances from them." I accordingly proceeded to New York and discussed this subject at length with Messrs. Case, Harrison, and Kenzel, Deputy Governors, and Mr. Mason, General Counsel, of the Federal Reserve Bank of New York and also Mr. Solomon of the firm of Solomon Bros. & Hutzler.

In my memorandum to you under date of August 18, 1923, on the general subject of re-purchase agreements, I had expressed the opinion that a transaction whereby securities or acceptances are sold to a Federal Reserve Bank under an agreement obligating the seller to repurchase the same on or before a certain date is in legal effect merely a loan secured by collateral and not a sale, and that the Federal reserve banks have no legal authority to participate in such a transaction. I also expressed the opinion that, where the agreements merely permit, but do not obligate, the seller to re-purchase the securities or acceptances, no universal rule can be laid down, but I believed that even in those cases the transactions would generally be construed by a court as loans secured by collateral, especially where the agreements bear various ear-marks of loans, such as provi-

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sion for the payment of interest, a purchase price different from the market value of the securities or acceptances, and provision for the deposit of additional collateral giving the Federal reserve bank a margin of security.

Such further consideration as I have given this subject since rendering the opinion of August 18th has confirmed my view that the first class of transactions (those whereby securities or acceptances are sold to a Federal reserve bank under an agreement obligating the seller to repurchase the same on or before a certain date) are in legal effect merely loans secured by collateral and not sales. Furthermore, I have been advised by Counsel for several of the Federal reserve banks that they concur in this view, though some of the other counsel disagree with me.

I find that the re-purchase agreement now in use by the Federal Reserve Bank of New York falls within this class, since it absolutely obligates the so-called seller to re-purchase the securities or acceptances at the same rate at which they were purchased on or before a certain date. The seller has the option to re-purchase such securities prior to that date, but this does not alter the fact that he is absolutely obligated to re-purchase them on or before such date. Furthermore, the agreement provides for the deposit of additional collateral security for the performance of the contract and is accompanied by an agreement covering the deposit of such collateral security which follows very closely the usual form of agreement used by commercial banks in connection with the deposit of collateral securing direct loans to their customers. Even Mr. Harrison agreed that this made the agreement "look too much like a loan."

After a preliminary reconsideration of the subject, I am of the opinion that the transaction covered by the re-purchase agreement now in use by the Federal Reserve Bank of New York is in effect a loan rather than a sale.

I have also been requested by the Board, however, to consider whether or not some legal plan may be adopted whereby Federal reserve banks may extend accommodations to member banks and corporations or firms dealing in acceptances and short-term Treasury certificates by the purchase of such acceptances and securities; and I discussed this subject also with the officers of the Federal Reserve Bank of New York.

I had an idea that the Federal Reserve Bank of New York could extend all of the aid that was necessary to the acceptance market, by simply holding themselves ready to purchase outright all acceptances complying with the necessary standards which are offered by anybody, and to sell, to any one desiring to purchase them, any acceptances which they might happen to have on hand. In other words, I thought that the Federal Reserve Bank could itself be the principal dealer in such securities instead of merely financing other persons who were dealing in such securities. I believed that if this could be done it would conform much more

closely to the intention of Section 14 which authorizes Federal Reserve Banks to buy and sell acceptances in the open market but does not authorize them to make direct loans against the pledge of acceptances or collateral security.

Mr. Kenzel, however, advised me that this would not be at all feasible; because it would require the Federal Reserve Bank to serve as a primary market for bankers' acceptances, and would render it necessary for the Federal Reserve Bank to enter into direct negotiations with the borrowers on each issue of acceptances with regard to fixing the terms of the transactions and especially the rate at which such acceptances would be purchased. I asked him why they could not fix a certain rate and take all acceptances offered at that rate, and he said that this could not be done unless the acceptances bore the endorsement of a bank or carried with them the agreement of an acceptance dealer to re-purchase them within a certain time. He said that in practice the various issues of acceptances are purchased originally by banks or acceptance dealers at varying rates which are fixed after extensive negotiations with the borrower in each case and which depend upon the credit standing of the particular borrower and the accepting bank and the character of the transaction out of which the particular acceptance arose, as well as the general condition of the acceptance market. He said that, as a practical matter, it would be very undesirable to have a Federal reserve bank negotiating with individual borrowers as to the rate at which it would take their acceptances, and it would also be very undesirable to have the Federal reserve bank purchasing acceptances which do not bear the endorsement of a bank or banker or carry with them the agreement of a reputable acceptance dealer to repurchase them. In other words, he thought that the Federal Reserve Bank should have the additional security of a bank endorsement or the agreement of a reputable dealer to re-purchase the securities, in addition to the name of the accepting bank and the name of the drawer.

I am not sure that Mr. Kenzel's objections are absolutely vital and conclusive; though I have great respect for his judgment in the matter. He stated, however, that the Federal Reserve Bank of New York would be absolutely unwilling to undertake to act as a primary market for such acceptances, and this seemed to render any further discussion of that suggestion futile.

We then turned to a discussion of the question whether or not some form of re-purchase agreement could be devised which would comply with the letter of the law as well as the practical necessities of the trade. They were unable to show me any reason why I should alter my opinion that agreements whereby the seller is absolutely obligated to re-purchase acceptances within a specified time are loans rather than sales, and the discussion narrowed down to a consideration of whether or not an optional form of agreement could be devised which would meet the practical requirements as well as comply with the letter of the law.

As stated in my memorandum of August 18, no universal rule can be laid down as to agreements whereby the seller is not required to re-purchase but is merely given an option to re-purchase; and there is

considerable conflict in the authorities as to what construction should be given such agreements. In the last analysis, each agreement must be considered on its own facts. The general statement contained in my opinion of August 18 to the effect that it was believed that in most cases the optional agreements in use by the Federal reserve banks would be construed as loans rather than sales, was based upon the fact that they usually contain certain features, such as a provision for the payment of interest, a fixed sale price different from the market value of the securities, and agreements for the deposit of additional collateral giving the Federal reserve bank a margin of security, all of which give the transaction the ear-marks of a loan rather than a sale. It seems probable, therefore, that if an optional form of agreement can be devised which would be divested of the ear-marks of a loan, it might be construed by the courts to be a sale rather than a loan, especially in view of the fact that the courts are generally inclined to resolve any doubt in favor of the validity of a transaction rather than against it. I suggested, therefore, that the Federal Reserve Bank of New York might attempt to work out a purely optional agreement which would be divested of the ear-marks of a loan and this seemed to meet with favorable consideration.

Mr. Kenzel raised the practical objection that such an agreement would not give the Federal Reserve Bank the additional protection which it desires in the form of a bank endorsement or the obligation of a reputable dealer to re-purchase the securities, - in other words, a name in addition to that of the drawer and the accepting bank. I suggested that this practical requirement might be met by having the dealers enter into an agreement with the Federal Reserve Bank whereby they would guarantee the payment of any and all acceptances which they might sell to the Federal Reserve Bank. Such a guaranty is not unusual in a sale transaction and would give the Federal Reserve Bank sufficient protection against loss through non-payment of the acceptance. Mr. Kenzel was of the opinion that this would not be as good protection as the absolute obligation of the dealer to re-purchase the securities, but rather reluctantly agreed that it would be sufficient protection.

I am inclined to the opinion that an agreement might be worked out along these lines which would be held by the courts to be a sale transaction rather than a loan, and thus it might be said to conform to the letter of the law, which authorizes Federal reserve banks to buy and sell acceptances on the open market, but does not authorize them to make direct loans to acceptance dealers secured by pledges of acceptances as collateral.

Looking to the substance of this entire transaction, however, I still doubt that it is consistent with the spirit or theory of the law; because, in the last analysis, the effect of such a transaction is to make an advance or loan to an acceptance dealer to enable him to carry on his business, and the Federal Reserve Act clearly did not contemplate that Federal reserve banks would make advances or loans to anyone other than member banks. On the other hand, it was argued with great force by Mr. Harrison that the broad general purpose of Section 14 is to enable Federal reserve banks to stabilize and support the market by absorbing or carrying excessive offerings of acceptances and by putting money into the market to

support the market when the rate shows a tendency to go too high, and that the re-purchase agreements constitute a method of accomplishing that very result which is fraught with less danger of loss to the Federal reserve bank than the outright purchase of acceptances. He also called attention to the fact that Federal reserve banks are not expressly prohibited from making loans direct to acceptance dealers and the only legal objection to their doing so is that they are not authorized to do it. In other words, he argued that it is not a question of the Federal reserve banks violating or evading a direct prohibition of the Act, but merely a question of whether or not they are exceeding the powers granted them. He also argued that the practice has grown up with the consent of the Federal Reserve Board and that fact would be an argument in favor of its validity. Mr. Harrison's arguments are entitled to careful consideration, and I should like to have an opportunity to study the matter very carefully and in the light of the additional information which probably will be adduced at the forthcoming Governors' Conference before finally reaching a conclusion on the question whether these transactions could be said to conform to the purpose of the law if they can be put in a form which will comply with the letter of the law.

Another practical objection to the optional agreements is that they would enable the dealers to speculate at the expense of the Federal Reserve Banks, by exercising their option to re-purchase the acceptances if the price goes up and refraining from re-purchasing them if it goes down. Mr. Kenzel mentioned this objection, which had already occurred to me, and the only answer to it that I know of is one stated to me by Mr. Warburg, who said that the acceptance dealers would not dare to play fast and loose with the Federal reserve banks, because if they did they would lose the support of the Federal reserve banks which enables them to do business on favorable terms.

As stated above, this is not intended as a final expression of my views on the subject of the validity of these re-purchase agreements, but merely as a preliminary report containing the results of my conference in New York.

I shall cover in a separate report the result of my conference with reference to the acceptances of the National Park Bank.

Respectfully,

Walter Wyatt,
General Counsel.

FEDERAL RESERVE BANK

OF SAN FRANCISCO

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JOHN PERRIN
CHAIRMAN OF THE BOARD
AND FEDERAL RESERVE AGENT

October 30, 1923.

Loan Committee

My dear Governor:

The opinion of the Board's Counsel, X-3817, dated August 18, 1923, has raised very interesting questions regarding the purchase of Government securities and bankers acceptances by Federal reserve banks under so-called repurchase agreements. This opinion refers to the present type of transactions, but it has occurred to me that, in full compliance with the provisions of the Federal Reserve Act, somewhat similar transactions could be had, though differing slightly in legal character. I have, therefore, addressed three queries to our Counsel and his answers to these point a way in which such transactions outlined could be legally conducted.

It occurs to me that you may be interested in the views expressed by our Counsel and I, therefore, take the liberty of handing you his communication to me together with an additional copy which it may be convenient for you to have.

Yours very truly,

John Perrin

Chairman of the Board.

The Honorable D. R. Crissinger, Governor,
Federal Reserve Board,
Washington, D. C.

CONFIDENTIAL

Date, October 29, 1923

To Mr. Perrin, Chairman of the Board and Federal Reserve Agent

From Mr. Agnew, Counsel

Subject: Purchase of Government Securities and Bankers' Acceptances by Federal Reserve Banks under Repurchase Agreements.

This is in response to your recent inquiry regarding the legality of certain transactions involving the purchase of bankers' acceptances by Federal reserve banks, accompanied by an arrangement for repurchase. You ask three questions which I answer in their order.

1. "Would it be lawful and, if so, under what conditions, for a Federal reserve bank to purchase bankers' acceptances from a concern not a member bank, giving to the vendor an option to repurchase the acceptances provided they were not resold by the reserve bank to others prior to the time the option was sought to be exercised?"

In my opinion there is no question that such transactions are lawful and clearly within the powers of the Federal reserve banks, provided the purchase is actual; i.e., the reserve bank pays a present, adequate consideration, takes physical possession of the paper, holds it subject to risk of loss by theft or otherwise, and treats it, in matters of accounting and otherwise, as part of its own assets. An option granted by the reserve bank to the seller to repurchase the paper thus acquired within a given period, at a stated and adequate price, unaccompanied by any penalty or forfeiture upon the seller for failure to repurchase and conditioned upon the free right of the reserve bank to dispose of the paper otherwise than to the seller, either before or after the option period expired, upon terms of the reserve bank's own making, would not only not interfere with the legality of the transaction, but would mark it indelibly as a bona fide sale.

2. "If the vendor should not indorse the bills thus sold to the Federal reserve bank under option to repurchase, and if, in lieu of such indorsement, the vendor should, by separate written instrument, guarantee that acceptors would pay at maturity, would the giving of such guaranty render unlawful a purchase

by a reserve bank such as mentioned in the first question?"

No, if the purchase were made under the conditions stated in my answer to your first question.

3. "If it is lawful for a Federal reserve bank to purchase bills in the manner mentioned in my first question, would the legality of such purchases be affected by the fact that the acceptances were bought at one rate and a more favorable rate granted if they were resold to the original vendor?"

No. If the purchase is bona fide and outright in the first instance and the bills have become the property of the reserve bank, they may thereafter be disposed of to such persons and upon such terms as the reserve bank may consider proper.

I understand that the subject of repurchase agreements has recently received some consideration at the hands of the Federal Reserve Board and in order that it may not be thought my conclusions above stated have been hastily reached, I take the liberty hereinafter of entering into a fuller discussion of this subject in the light of your inquiries.

THE FEDERAL RESERVE ACT.

It would seem that Section Fourteen of the Federal Reserve Act, referring to open-market operations, furnishes an answer to your inquiries. That section provides, in part, as follows:

"Any Federal reserve bank may, under rules and regulations prescribed by the Federal Reserve Board, purchase and sell in the open market, at home or abroad, either from or to domestic or foreign banks, firms, corporations, or individuals, cable transfers and bankers' acceptances and bills of exchange of the kinds and maturities by this act made eligible for rediscount, with or without the indorsement of a member bank."

Subject to such rules and regulations as the Federal Reserve Board may prescribe, it is clear from the above that the reserve banks have power to purchase and sell bankers' acceptances in the open market, from or to banks, firms, corporations, or individuals, provided such acceptances are of the kinds and maturities made eligible for rediscount from member

banks. This section of the act was undoubtedly intended to give the reserve banks the very power outlined in your first question. The only element incorporated in your first question not included in the statute is the grant of an option to repurchase, if before the option is sought to be exercised, the acceptances have not been negotiated or otherwise disposed of by the reserve bank. The power given to "purchase and sell" of course carries with it the power to purchase and to agree to sell and the character of the transaction is not changed if the agreement to sell is simultaneous with the purchase. The option to repurchase, being subject to the right of prior sale by the reserve bank, clearly indicates the free exercise by the reserve bank of dominion over and ownership of the property from the date of purchase and removes all question that the right to repurchase, while in the form of an option, is in fact and intended as an obligation on the part of the vendor to repurchase.

Your second question adds only one element to those contained in the first, to-wit; a guaranty by the vendor that the acceptors will pay at maturity. It cannot be questioned that in open market purchases, conducted under the authority of section 14 of the Federal Reserve Act, the purchase may be made with or without the indorsement of the vendor and, as the act prescribes, "with or without the indorsement of a member bank." The guaranty suggested in your question is merely an enlarged contract of indorsement.

> "The indorser contracts to be liable only upon condition of due presentment of the bill or note on the exact day of maturity, and due notice to him of its dishonor. And he is absolutely discharged by failure in either particular, although he may suffer no actual damage whatever. The guarantor's contract is more rigid, and he is bound to pay the amount upon a presentment made, and notice given to him of dishonor, within a reasonable time. And in the event of a failure to make presentment and give notice within such reasonable time, he is not absolutely discharged from all liability but only to the extent that he may have sustained loss or injury by the delay. The same person may be guarantor, and also indorser of a note; and in such case, while failure to give him due notice of demand and non-payment will discharge him as indorser, he will still be bound as guarantor."
>
> Daniels, Neg. Inst. 6th Ed. Sec. 1754.

I take it to be patent that reserve banks, having been given power to purchase and sell securities of the character

described, such purchases may be made upon such collateral conditions as the reserve bank may see fit to impose, so long as such conditions do not bring into question the bona fides of the purchase or render doubtful its character as such. The condition for guaranty embodied in your second question is not such an one.

Your third question may be paraphrased as follows: Having purchased bills in the open market in the manner permitted by the terms of the Federal Reserve Act, may a reserve bank sell such bills at a preferential rate?

Unless prohibited by some ruling or regulation of the Federal Reserve Board, it is my opinion that reserve banks have power to sell bills purchased by them on such terms and at such rate as may be considered proper. Section 4 of the Federal Reserve Act gives to each reserve bank power "to make contracts" and "to exercise by its board of directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this act and such incidental powers as shall be necessary to carry on the business of banking within the limitations prescribed by this act."

The sale of bills purchased or the agreement to do so is but the making of a contract and one clearly within the power of the reserve banks. So, also, the fixing of the price at which its assets are sold or are to be sold is certainly a power incidental to the conduct of "the business of banking."

It is to be noted, however, that Congress has given the Federal Reserve Board plenary power to supervise and regulate open market transactions such as those referred to in your questions and that open market purchases and sales are "subject to such restrictions, limitations, and regulations as may be imposed" by that Board (Secs. 13 and 14 Federal Reserve Act). Therefore, while clearly legal and within the powers of reserve banks, transactions such as those referred to are within the supervisory power of the Federal Reserve Board.

OPINION OF COUNSEL OF THE FEDERAL RESERVE BOARD.

General Counsel of the Federal Reserve Board, under date of August 18, 1923, rendered to the Governor of the Board an opinion regarding the legality of the purchase by reserve banks of government securities and bankers' acceptances under repurchase agreements. (Letter X-3817) Counsel there dealt with repurchases as conducted by reserve banks at present and not at all with transactions of the character outlined in your questions

addressed to me. He points out that the repurchase agreements now in vogue are of two general kinds:

First, those wherein the vendor is obligated by contract to repurchase the specific securities sold within a specified time and at a fixed price. The vendor is required to deposit additional securities with the reserve bank as a margin of safety. The vendee is given by contract the right to sell the securities on the open market in case the so-called vendor fails to comply with the agreement to repurchase. Interest is charged on the transaction and computed as in the case of an ordinary loan. The reserve banks do not consider or treat the securities as their own and the purchase price is, in effect, an advance against the securities as collateral. Counsel of the Board concludes that these transactions do not constitute purchases on the open market as authorized by section 14 of the Federal Reserve Act but loans to others than member banks and that they are ultra vires the reserve banks. With this conclusion I entirely agree. So-called purchases made under the conditions stated are nothing more than loans made upon pledge. They are transactions for which we find no warrant in the powers, express or implied, given to the reserve banks.

Second, those agreements wherein a mere option to repurchase is granted the vendor, to be exercised, if at all, within a specified time, and there is no obligation resting upon the vendor to repurchase and no penalty attaches for his failure to do so. Counsel for the Board states that in such cases "the transactions would generally be construed by a court as loans secured by collateral." With this conclusion, I do not entirely agree, provided the transaction is not accompanied by other circumstances which would negative or render doubtful the prima facie case of sale shown by the conditions above stated.

If the agreement for optional repurchase does not contemplate the exercise by the original vendee of uncontrolled dominion over the property after the period of the option has expired, if the transaction involves a charge upon the original vendor equivalent to interest during the time the vendee is carrying the securities, or if the original purchase price is greatly less than the market value of the securities, it is perhaps true that the courts, jealous always to guard the right of redemption given in the case of mortgages and pledges, would look behind the name given the transaction by the parties, and, seeking to find the true purpose of the agreement, construe the transaction to be a loan. Such seems to be the trend of the many decisions upon the subject I have examined. But the courts are equally diligent to ascertain the true intent of the parties and if, from a consideration of the entire agreement it fairly

appears that a present transfer of title was intended, with a mere option to the vendor to repossess the property upon given conditions, the purpose of the agreement will not be perverted by judicial construction.

The hypothetical case stated by you in your questions and those cases which Counsel for the Federal Reserve Board criticizes are quite different. Counsel states that even in optional repurchases "most of the agreements entered into by Federal reserve banks provide for the payment or deduction of interest." This would lend some color to the theory of a loan but it is not involved in the case which we are discussing. Counsel, in discussing optional repurchases also says:

> "Further indication of such intention (to effect a loan rather than a sale) is sometimes found in the payment of a price other than the market value for the securities or acceptances and in the provision for the deposit of additional collateral."

The payment of a price other than the market price may lend color to the theory of a loan if the price paid is considerably below the true market value but if the difference be only slight and this is the only suspicious circumstance, the discrepancy would not be fatal to the contention that the transaction was a sale and could be readily accounted for. For instance, it might well be that the seller would be willing to make some concession to reserve bank with which he regularly deals and which furnishes an ample and convenient market for his bills. So also, the fact that the reserve bank was willing to grant the privilege of repurchase at a rate slightly less than the original sale price would fully justify some concession and be not at all indicative of other than a sale. The deposit of collateral, if considered and called such, would, however, be strongly indicative of a pledge or mortgage. But here again the suppositional case which we are discussing is innocent of any such suspicious conditions.

CASES CITED BY COUNSEL FOR FEDERAL RESERVE BOARD

Unless all of the repurchase agreements made by reserve banks under option to repurchase are accompanied by provisions for interest, additional collateral, sale of collateral only in a certain manner after failure to repurchase, or other conditions strongly indicative of loans (and as to that fact I am not advised) I do not believe that the general statement made by Counsel that "most if not all sale agreements made by Federal reserve banks reserving to the seller the privilege of repurchasing are, properly construed, loans and not sales," is justified by law.

With all deference to distinguished Counsel, I respectfully submit that the cases cited by Counsel hardly support his general statement.

The first case cited is Dickinson v. Oliver, 89 N. Y. Supp. 52. The following are the facts in that case:

D, being indebted to defendant and having previously given defendant a chattel mortgage on certain farm property which had not been recorded, executed a bill of sale to defendant of the property covered by the mortgage. D then gave defendant a lease on the property for one year, the rental being $42.00, the exact amount of legal interest on the indebtedness. The property remained in the lessee's possession. The lease provided that if at any time prior to a date specified, D should pay defendant a certain so-called price and interest thereon, defendant would resell the property to D. The value of the property was largely in excess of the so-called purchase price. It was held that the bill of sale and lease constituted a mortgage.

In this case we have the following circumstances, not existing in either the type of case which Counsel was considering or the case which your questions to me present; a pre-existing debt, a lease with the rental based upon interest on the pre-existing debt, the alleged vendor retaining possession of the property, a repurchase price fixed to include interest and at a sum greatly less than the true value of the goods. The court could not have done otherwise than to hold the transaction a mortgage to secure the debt.

The next case upon which Counsel relies to support the contention that all sales made to reserve banks with an option to repurchase are loans, is O'Neil v. Walker (La.) 12 So. 872.

C was a creditor of defendants to the extent of a considerable sum. Defendants sought a further loan from C which he at first refused but afterward made, taking as security a purported bill of sale to certain lumber. The property was admittedly worth largely in excess of the debt. The alleged vendee never took possession of the property, the subject of the purported sale, and never exercised dominion over it. It remained in the possession of the defendants, at their expense and risk. The defendants were authorized to sell the lumber and to appropriate to their own use any surplus which might remain after paying C the amount of his advances and interest.

It was held that this constituted merely a pledge without delivery of the pledged property. I feel certain that a mere

statement of the facts shows its inapplicability to either the concrete or the hypothetical case under discussion.

Sparks v. Robinson, 66 Ark. 460; 51 S.W. 460 (cited by Counsel).

Plaintiff received $8.00 of defendant and turned over to him a $45.00 sewing machine. A bill of sale was executed reciting $8.00 as the consideration and reserving to the seller the right to redeem in one month on presenting a certain ticket which provided that the holder might within thirty days have "the option of purchasing any one article" in the buyer's place "that is for sale, at a price not to exceed ten per cent. above its actual cost, including one sewing machine, $8.00, if preferred." Like tickets were issued each month. Plaintiff testified she put up the machine as collateral for the loan, agreeing to pay eighty cents a month for the use of the money. This, defendant denied.

The court held that the transaction was a loan at the usurious rate of 10% a month and that it was void. How the court could have come to a different conclusion under these facts it is difficult to see. The case was clearly one of pledge or pawn. The intent of the parties gathered from the contract leads inevitably to this conclusion. The case bears absolutely no similarity to the class of repurchase agreements which operations under the facts we are discussing would bring into existence. Nor, it is respectfully submitted, does it bear much resemblance to the repurchase agreements now used by some reserve banks wherein the seller is given the option to repurchase bankers' acceptances.

The next case cited by Counsel, that of Mercantile Trust Co. v. Kastor, 273 Ill. 332; 112 N. E. 988, did not involve a repurchase agreement. It was decided by a divided court, two judges dissenting. The facts, I respectfully submit, are not at all analogous with those involved in the purchase and resale of acceptances, either as now conducted by reserve banks or as suggested in your queries.

Plaintiff trust company accepted from the K Company under a purported agreement of purchase and sale, certain accounts receivable against which plaintiff advanced 77% of the face of the accounts. Plaintiff agreed to pay the K Company more if the accounts were finally paid, the additional amount to be paid predicated upon a rate of interest for the time the account ran. The advance of any amount above 77% was discretionary with plaintiff so long as any of the accounts in its hands remained unpaid. The purported vendor was to pay all expenses and attorneys' fees and was to act as plaintiff's agent in the collection of the accounts. The court based its decision upon the following facts deduced from the evidence:

> "At no time did the accounts become the exclusive property of the trust company but its interest in them is limited to the 77 per cent. advanced and the proportion of the 23 per cent. fixed by the scale in the agreement. .. Under the contract in question the Kellastone Company retained an interest in the accounts to the extent of 22 per cent. of their value. .. It is not necessary to go outside of the contract which sufficiently shows that the transaction was intended to be a mere pledge of accounts for a loan of money at a usurious rate of interest."

We have here, then, a purchase price disproportionate to the true value of the property, a contingent additional payment figured in such manner as to return to the purchaser a usurious rate of interest, the purported vendor continuing to exercise control over the property and paying the expenses incurred in collecting the accounts. In my opinion, neither this nor the companion case of Home Bond Company v. McChesney, 239 U. S. 568, also cited by Counsel, can be considered at all analogous to the state of facts which your questions present. In relation to purchases of acceptances with an option to repurchase, such as suggested by you, the language of Chief Justice Farmer in his dissenting opinion in the "Mercantile Trust Company" case would be particularly applicable:

> "The contract is in the language of both parties and by its terms the transaction was a sale. No language in it justifies holding the parties did not mean what they said but meant something else. .. It does not seem to me there is anything more in the contract to indicate the transaction was a loan than there would be in the contract of an indorser or guarantor of a promissory note. .. When the language of the instrument is plain and unequivocal and there is no room for construction it will be given its legal effect as written..."

Home Bond Co. v. McChesney, 239 U. S. 568 is the only other case cited by Counsel in support of the contention that all repurchase agreements made by reserve banks, whether under option or not, "should be considered loans secured by deposit of securities or acceptances as collateral, instead of sales with the right to repurchase reserved to the seller." A statement of the case shows, I believe, the entire dissimilarity between the facts in the case cited and those which would exist under optional repurchases such as you suggest in your questions.

Accounts receivable were transferred to X by a contract purporting to be one of sale. The transferee was to make advances

to the trenaferrer on acceptable accounts but the transferrer was to and did collect, bearing all expense in connection with the collection. The so-called purchase price, viz. the difference between the face of the account and the discount was not presently paid and was not even determined until the payment of the account and then only by figuring the time that had elapsed since the date of the advance. The purchase price was supposed to be deferred and was calculated on the excess of the collection over the advance plus the discount. The contract also provided that if the accounts transferred were not paid at maturity, or if the debtor became insolvent, the transferrer should repurchase such unpaid account and reimburse the transferee for the amount advanced plus the discount.

These, the court said, were the considerations which led it to hold the transaction to be a loan. And, in fact, no other conclusion was possible. We have here: no present purchase price paid or determined, the subject of the alleged sale not transferred to the so-called vendee, the accounts handled and collected by the transferrer, the price fixed on the basis of the time for which the money advanced was employed, the agreement that the purchase price (loan) should be repaid by the transferrer with interest if not collected from the debtor at maturity.

None of these conditions exist in optional repurchase agreements such as those which your questions suggest.

OTHER CASES UPHOLDING THE VALIDITY OF SALES MADE UNDER THE PLAN SUGGESTED.

The cases draw a very clear distinction between chattel mortgages and pledges on the one hand and conditional sales on the other. In order for the transaction to be a mortgage, the relation of debtor and creditor must exist between the parties and must continue during the pendency of the transaction. This condition does not exist in the type of cases we are discussing. Sales with a simple option to repurchase are conditional sales or, more exactly, sales with a condition subsequent. Such transactions, unless accompanied by collateral conditions which destroy their character as sales, have been repeatedly upheld by the courts and are clearly within the power of reserve banks. The mere granting of an option to repurchase is not such a condition.

> "If the transfer is intended merely to secure an existing indebtedness, it is a mortgage; but if the debt be extinguished, or if the money advanced is not by way of a loan and the grantor has the privilege of refunding if he pleases and thereby entitling himself to a reconveyance, the transaction is a conditional sale."

6 "Cyc." 444.

"If the grantor of the property is to receive it back on condition of paying the debt which he is in any event bound to pay, the transaction, however worded, is a mortgage, but if the grantor has an option whether he will or will not pay the money and perform the condition, the transaction is called a conditional sale."

Williston on Sales, p. 520.

"The absence of any obligation on the part of the transferrer to repay the price, he being given the option merely of refunding and demanding a re-transfer, is a material reason for considering the transaction a sale with the right of repurchase, and not a mortgage."

24 Ruling Case Law, Sec. 742.

The decisions construing cases of the exact kind under consideration are relatively few; this, no doubt, for the reason that where the transaction is in form a sale, with a mere option to repurchase, where the price paid is adequate, where there is no existing debt between the parties and where it is evident from the course of dealings and the conduct of the parties that a present transfer of title was intended, the transaction is so patently a sale that to question its character as such would be futile. There are, however, a few cases the facts of which are so close to those under discussion as to serve as a definite basis for my conclusions.

Munnerlin v. Bermingham, 22 N. C. 358; 34 Am. Dec. 402

A delivered to B a slave, receiving $400 from A at that time. B executed a writing agreeing that if by a certain date A tendered him $400 he would redeliver the slave but that the agreement should be void after a certain date. A sued to have the agreement declared a mortgage. The court held it to be a sale, saying:

"There is nothing mentioned of a mortgage or borrowed money, in either the bill of sale or the paper writing. There is no proof that the girl was worth more than the money advanced by defendant. There is no covenant ..for the repayment of the money by the defendant in case of death of the slave, or any repayment, and there is no evidence that a loan was ever talked of or contemplated between the

parties. The slave was immediately delivered. ... The bill must be dismissed."

To the same effect see -

Moss vs. Green, 10 Leigh (Va.) 251; 34 Am. Dec. 731.

Palmer v. Howard, 72 Cal. 295.

Furniture was sold by A to B under an agreement whereby A reserved title to the goods until the purchase price was paid. The vendee was described as the "borrower" of the goods and it was provided that he should keep it insured, not remove it from a specified place and should promptly surrender the property in good order upon failure to keep his part of the agreement. The "borrower" paid one installment only, mortgaged the property to the defendant and left for parts unknown. The court, construing the agreement a sale and not a mortgage said:

> "Where it is clear from the whole transaction that for all practical purposes the ownership of property was intended to be transferred and that the seller only intended to reserve a security for the price, any characterization of the transaction by the parties or any mere denial of its legal effect will not be regarded. The question, it is true, is one of intention; but the intention must be collected from the whole transaction and not from any particular feature of it."

See also In re Nelson, 191 F. R. 233.

Beardsley v. Beardsley, 138 U.S. 262; 11 S.Ct. 318.

In this case one A executed to his brother an instrument in writing reading, "I hold of the stock of the X railroad company 1350 shares which is sold to B and which, though standing in my name, belongs to him subject to the payment of $8000."

Justice Brewer, in holding this to be a contract of sale with title passing, said:

> "What is the significance and import of this instrument? This ... is not to be determined by any separate clause but by the instrument as a whole ... 'The answer to this question is not to be found in any name which the parties may have given to the instrument and not alone in any particular provisions

it contains disconnected from all others, but in the ruling intention of the parties gathered from all the language they have used. It is the legal effect of the whole which is to be sought for. The form of the instrument is of little account.' ... We have little doubt as to the significance of this contract and hold that its effect was to make the appellee one third owner with the appellant of the stock of the railroad company."

Yost v. First National Bank, 66 Kans. 605; 72 Pac.209

In this case A executed to B his warranty deed covering certain property and on the same day B gave A a bond to reconvey the property upon the payment to him by A of a certain purchase price within a certain time thereafter. A creditor of A obtained a judgment against him and levied execution. Later B agreed to sell the property to C, and A in writing waived his right to repurchase under the agreement with B. The creditor of A claimed the property was subject to his execution and that the transaction between A and B was a mortgage. This contention B resisted. The court, holding the transaction a sale, said:

"An examination of the record shows both plaintiff in error and A testified the transaction was a sale of the property and not a mortgage. It is a settled rule of law that the intent of the parties .. must govern and that the rights of the parties must be mutual. In the case at bar, if it is in the power of A or his judgment creditor to insist upon the transaction as a mortgage, the plaintiff in error must have the corresponding right to compel payment of an existing indebtedness and the foreclosure of the deed as a mortgage to secure such indebtedness. In other words, if no debt exists after such transaction there can be no mortgage. ..."

Hickman v. Cantrell, 9 Yerg. (Tenn.) 172; 30 Am.Dec.396.

In that case A gave B a bill of sale to a slave and B in the same writing agreed that if A should repay the purchase price within a given time, the bill of sale should be void and title revert to A. The court, holding that the transaction constituted a present sale with an agreement to re-sell, said:

"The courts of chancery have .. said that in all cases where a pre-existing debt, or a loan made at the time of purchase was the consideration of the deed of conveyance, they would consider the debt as

thing contracted for. .. But this rule of construction was only applied to cases where the estate was really intended as security for the payment of money and not to those where there was no precedent debt and no loan of money, but an honest design to purchase the property with a condition to repurchase; they were left as at common law. .. From these considerations it is seen that to make a deed of conveyance a mortgage upon its face, it must show that the consideration which suggests it was either a debt due or money lent at the time of its execution, or it must contain an express covenant for the repayment thereof; this bill of sale and its condition shows neither of these things. Therefore, it is not a mortgage upon its face. .. We are of the opinion that it was a sale upon condition of repurchase."

Brennan v. Crouch, 10 N. Y. Supp. 419, affirmed in 125 N.Y. 763; 26 N. E. 620.

Plaintiff who held a paid-up life insurance policy, the surrender value of which was $1600, applied to defendant for a loan of $1500 which was refused. Two days later he entered into an agreement with defendants in which he "sold and assigned the policy" and the defendants agreed to resell the same to him on or before a given date upon payment of $1600. It was also agreed that if plaintiff did not repurchase the property the defendants would pay him an additional $100 in full of all demands.

Upon a suit to have a reassignment decreed after the expiration of the option period, the court held that while the purchase price was less than the surrender value, the intent was clear to effect a sale with a mere option to repurchase, and refused to decree a reassignment.

Slowey v. McMurray, 27 Mo. 113; 72 Am. Dec. 251.

Plaintiff owned a lot of land subject to two mortgages. He borrowed from defendant sufficient to take up the second mortgage, giving his notes therefor which, at the time of the occurrences hereafter related were not fully paid. Plaintiff, being unable to liquidate the first mortgage, the mortgagee foreclosed. It was agreed between plaintiff and defendant that defendant should bid in the property at sale and if plaintiff should repay the amound bid, together with the other indebtedness remaining between them within one year, defendant would reconvey; otherwise the property should remain his. This was done but before the expiration of the year defendant sold the property to a third

party who took with notice of the agreement. Exactly one year from the date of sale, plaintiff tendered the amount due defendant and demanded a deed, which was refused. This action was to annul the deed given by the defendant or to obtain a money judgment against defendant for the value of the premises less the debt. The trial court gave an instructed verdict for defendant. The court said:

> "We do not well see how the transaction between these parties can be regarded as a mortgage or a quasi-mortgage or how the law of mortgages is applicable to it. It may be presumed that contracts of this kind are narrowly watched and courts lean strongly in favor of the right of redemption. Chancellor Kent says that the distinction between a mortgage and a bill of sale is that if the relation of debtor and creditor remains and a debt still subsists, it is a mortgage; but if the debt is extinguished by the agreement of the parties or the money advanced was not by way of loan, and the grantor has the privilege of refunding if he pleases by a given time, and thereby entitling himself to a reconveyance, it is a conditional sale. 4 Kent's. Com. 145. .. The contract or promise made by (the defendant) even if binding in law, constituted the transaction a conditional sale and not a mortgage."

It will serve no purpose to cite other cases at length. There are many which hold that transfers of property, under circumstances more indicative of loans than those which we are discussing, are sales where it appears the title passed, the consideration was adequate, and the alleged buyer assumed dominion over the property transferred. The following cases illustrate the rule.

> Roberts v. Norton, 66 Conn. 1; 33 Atl. 532,
> Phipps v. Munson, 50 Conn. 267,
> Kerting v. Hilton, 152 Ill. 658; 38 N.E. 941,
> Eames v. Hardin, 111 Ill. 634,
> Spalding v. Brown, 36 Ore. 160; 59 Pac. 185,
> Wallace v. Johnstone, 129 U.S. 58; 9 Sup.Ct. 243,
> Conways Extrs. v. Alexander, 7 Cranch (U.S.) 218,
> Page v. Vilhac, 42 Cal. 75,
> Morris v. Angle, 42 Cal. 236,
> Hart Wood Co. v. Bonaly, 66 Cal.Dec. 439, 441;
> (10/8/23).

CONCLUSION

The questions which you have propounded and which are answered herein induce the conclusion that the contemplated transactions will be considered and treated by both parties as

sales with present title passing; that, during the period when the option to repurchase may be exercised, the property will be treated as that of the reserve banks, subject only to the contingent option. Such transactions, in my opinion, are clearly intra vires the reserve banks.

It may be said that while it is true that no relation of debtor and creditor exists between the bill brokers and the reserve banks and while no penalty attaches for failure of the seller to exercise the option to repurchase, the fact remains that all of the transactions, taken together, represent merely a scheme to create for acceptances a ready market which would not otherwise exist and to give to bill brokers an outlet for their paper which they would not otherwise have. Admitting, for the purpose of argument, that this is the effect of open market purchases on a large scale by reserve banks, such fact does not affect the nature of any transaction or series of transactions. The provisions of section 14 of the Federal Reserve Act whereby the reserve banks are given power to purchase and sell securities of the kind mentioned "from or to ... firms, corporations, or individuals" cannot properly be restricted to purchases from or sales to particular firms, corporations, or individuals. It is the nature of the transaction or series of transactions and not their ultimate effect which will give them their legal character and determine the power of the reserve banks to engage in them. In other words, a transaction or series of transactions otherwise within the admitted powers of the reserve banks is not rendered ultra vires because, in the larger aspect they result in the creation or stimulation of a commercial paper market for firms or corporations not members of the reserve system.

Respectfully submitted,

ALBERT C. AGNEW

Counsel.

Mr. John Perrin,
Chairman of the Board
and Federal Reserve Agent,
Federal Reserve Bank of San Francisco,
San Francisco, California.

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84 STATE STREET

BOSTON

TELEPHONE
MAIN 7380

October 26, 1923.

Noted by Governor
DR6
FG

Hon. W. P. G. Harding, Governor
Federal Reserve Bank of Boston
30 Pearl Street
Boston, Massachusetts

My dear Governor Harding:

Repurchase Agreements

Question has been raised by Mr. Wyatt, general counsel of the Federal Reserve Board as to the propriety of the practice engaged in by the Federal Reserve Banks of purchasing government securities and bankers' acceptances from member and non-member banks and stock, bond and acceptance brokers under agreements providing that the sellers of these securities or acceptances will repurchase them from the Federal Reserve Bank within a specified period of time. Mr. Wyatt comes to the conclusion that these transactions are illegal.

You have referred to me Mr. Wyatt's opinion and have requested my views on the subject. I have examined his opinion with care. I think his opinion is well considered and logical, and I believe his statement of the principles of law involved to be generally sound. Hence, it is with hesitation that I venture to suggest a different view from that expressed by Mr. Wyatt.

Mr. Wyatt's general conclusion may be best summarized by quoting the concluding sentences of his opinion which read as follows:

See memo 11/6/23 See memo 11/7/23

"The practice which has grown up in the Federal reserve banks of buying bonds and bankers' acceptances under so-called "repurchase agreements" amounts to nothing more nor less than the making of direct loans on the security of such bonds or acceptances; and the making of such loans to parties other than member banks is manifestly inconsistent with the purposes of the Act in that it enables non-member banks and stock, bond and acceptance brokers to tap the resources of the Federal reserve banks directly and without the intervention of a member bank.

"As stated above, I am of the opinion that these transactions are clearly ultra vires as to Federal reserve banks and it is respectfully recommended that the Board so rule."

In arriving at his final conclusion as quoted above Mr. Wyatt advances arguments which perhaps may be summarized and restated as follows:

(a) That there are certain general principles of law under which a court will look to the substance of a transaction and will not be controlled by the form which an agreement may happen to have, and the actual intent of the parties will be the controlling factor.

(b) That in the present case even though an actual purchase by a Federal Reserve Bank be permitted under section 14 and even though a resale or a contract to resell be permitted under that and other sections of the act, nevertheless looking at the substance rather than the form of the transaction it constitutes a loan not authorized under the act.

(c) That even the form of the contract in some cases indicates an intent to effect a loan rather than a sale. That in particular certain specific features contained in some of the contracts such as (1) provision for additional collateral, (2) provision for sale at public auction or private sale in case of default, and (3) charging of interest, are only consistent with the theory of a loan. (The contracts used by the Federal Reserve Bank of Boston do not contain these specific features.)

(d) That even though the contract for repurchase gives the seller only an option to repurchase and places no obligation on him to do so, nevertheless there is ample authority to construe the transaction as being in the nature of a loan.

(e) That the history of the past six years shows that the "repurchase agreement" was developed for the purpose either of aiding member banks to escape taxes or of aiding non-member banks to secure loans to which they were not legitimately entitled.

In short, it seems to me that Mr. Wyatt approaches this whole question from the point of view that these transactions were contrary to the spirit and intent of the Federal Act and fundamentally wrong. He seems to feel that the "repurchase agreement" was conceived for the sole purpose of accomplishing by indirection that which could not be legitimately accomplished by open and direct methods. If Mr. Wyatt's interpretation of the purpose and intent of this "repurchase agreement" be correct, it would seem to follow as a matter of course that these transactions should be viewed not from the point of view of form but rather of substance, and hence being illegal loans, the practice should cease.

In view of your long and intimate experience with the development of the Federal Reserve system it is hardly for me to place an interpretation on the fundamental intention and purpose which guided the Federal Reserve Board in authorizing as a matter of policy the repurchase agreement. However, from my own personal point of view and from my own personal knowledge of local conditions in Boston at the time the repurchase agreement came into vogue, I should say that the repurchase agreement, at least so far as bankers'

acceptances are concerned, was designed for an entirely different purpose than Mr. Wyatt states. As I recall it, when bankers' acceptances were first being developed as a new form of financial paper, every effort was made to create and stabilize an open market for the purchase and sale of these acceptances in this country. The Boston Reserve Bank legitimately gave its influence in furthering this object. It was quite natural for bankers and brokers who were endeavoring to establish a market for bankers' acceptances to look to the Reserve Bank as one of the larger purchasers. It was likewise natural for the Reserve Bank to exercise its power of purchase within reasonable limits for the purpose of assisting in establishing such a market. As I understood it the repurchase agreement performed a very legitimate function in that it tended on the one hand to keep the resources of the Reserve Bank liquid, and on the other hand it was a means of forcing the brokers to greater energy in the matter of disposing of these acceptances to the public generally and thus establishing a broader market. I personally do not recall a single case where there was the slightest intimation that the repurchase agreement was used as an indirect means of accommodating a broker with a loan. It is my recollection that the repurchase agreement was always used as a means of furthering the object of establishing a market. So far as I know the Federal Reserve Bank of Boston has never considered securities purchased under repurchase agreements as

anything other than the absolute property of the bank.

If my own interpretation of the object and intent of the repurchase agreement be correct, you then would have a situation which is entirely different from that outlined by Mr. Wyatt. You would have a situation where the Federal Reserve Bank was endeavoring to accomplish a beneficial result quite within the scope and purpose of the Federal Reserve Act, and the question would be as to whether the repurchase agreement, as one of the means of accomplishing this result, must be abandoned simply because it was open to the possible construction of constituting a loan. I should say not.

In my own opinion if a court once found that the repurchase agreement was used with the intent and for the purpose of accomplishing a beneficial result within the scope of the Federal Reserve Act, the court would construe such an agreement to be legal if possible. I would assume that the court under such circumstances would place the burden of proof on the party attacking the validity of the agreement. I believe that it is a well recognized principle of law that when a contract, document or transaction is before the court and it is possible to construe the contract, document or transaction in two ways, under one of which it will be valid and under the other, invalid or illegal, then in the absence of evidence it will be presumed that the interpretation which makes the contract, document or transaction legal will be the one used. This is especially so in connection with transactions by corporations which may be (according to the respective

interpretations placed upon them) either (1) intra vires, or (2) ultra vires. In such cases the court presumes them to be intra vires. See the following:-

Ohio etc. R.R. v. McCarthy,	96 U.S. 258.
Cincinnati Etc. R.R. Co. v. Rankin,	241 U.S. 319 (1916).
Insurance Co. v. Association,	54 Ala. 73
Fites v. Marsh,	171 Calif. 487 (1915).
Printup v. Johnson,	19 Ga. 73 (1855).
Russell v. Union,	73 Ill. 337 (1874).
Association No. 2 v. Wall,	153 Ind. 554 (1899).
In re Brown,	92 Iowa 379 (1894).
Lyons v. Jordan,	117 Me. 117 (1918).
University v. Society,	12 Mich. 138.
Telegraph Co. v. Showns,	112 Miss. 411 (1916).
Downey v. Mt.Washington R.R.,	40 N. H. 230.
Curtis v. Gokey,	68 N. Y. 300 (1877).
In re Rochester,	110 N. Y. 119.
Ellerman v. Chicago Jct. Co.,	49 N. J. Eq. 217 (1892).
Mallett v. Simpson,	94 N.C. 37.
Howard v. Boovman,	17 Wisc. 459 (1863).

So also in England,

Railroad etc. v. Stewart,	3 Masq. (H. of L.) 382.
Shrewsbury etc. R.R. v. R.R.Co.,	6 H.L.C. 113, 125.

See further, -

Fletcher:Corporations,	p. 4694
Cook: Corporations,	p.
22 Corpus Juris,	p. 147.
Woods: Railway Law,	p. 526.

Curtis v. Gokey, 68 N. Y. 300 (1877):

> "The law will not presume an agreement void as illegal or against public policy when it is capable of a construction which would make it consistent with the laws and valid."

The power of a Reserve Bank to purchase government securities or bankers' acceptances under section 14 is not denied. The power of the Reserve Bank to sell these securities is not denied. The power of the Reserve Bank to enter into a contract to resell is not denied. Consequently, I believe that the repurchase agreement as a matter of

presumption should be considered legal and is only to be construed as illegal or ultra vires in case it forms part of a transaction which is fundamentally wrong.

I believe that it will be apparent from a study of the Congressional debates, the Committee reports and miscellaneous publications regarding the Federal Reserve Act that section 14 was included in the Act for the purpose of accomplishing other objects than the mere investment of surplus funds. I believe the chief purposes for which this section was inserted may be summarized as follows:

1. To allow Federal Reserve Banks to earn expenses and pay reasonable returns to member banks during the period between times of emergency, since in these quiescent periods it may be that the re-discount powers of the bank (under section 13) will not be employed by member banks and consequently the Reserve Bank might be without opportunity to employ its surplus funds.

Federal Reserve Bulletin, Vol. II, p. 15.
Senate Report, No. 133, 63d Cong., Part 2.
Reed, Federal Reserve Policy, p. 185.

2. To give the Federal Reserve Bank power to control in part at least, money rates during periods when there is little re-discount, and also, to prevent or control the shipment of gold bullion in and out of the country in settlement of international balances.

As above; also,
Congressional Record, Vol. 51, pp. 428, 524 and 1192.

3. To aid in establishing the dollar as a medium of foreign exchange.

As above; also,
Congressional Record, Vol. 50, p. 5058.

4. To aid the development of bankers' acceptances and bills of exchange as a means for financing both domestic and foreign credit transactions.

As above; also,
Congressional Record, Vol. 51, p. 282.

October 26, 1923.

The relative importance of section 14 and the powers conferred by it with reference to the other purposes and aims of the whole Reserve Act are well brought out by the report to the Senate, 63d Congress, 2d Session, Report No. 133, Part 2, which thus describes this section:

"OPEN-MARKET CONDITIONS.

One of the most important features of this bill is the establishment of what is called an open market for bills of exchange and bankers' acceptances such as has long prevailed in Europe, but which has not existed to any great extent in the United States. In Europe the various banks and private bankers carry on a very large scale commercial bills of exchange and acceptances based on actual commercial transactions of short maturities and which are regarded as self-liquidating. Such bills have behind them actual merchandise for which a purchaser has been found, and these bills are held in their portfolios as almost the exact equivalent of cash, for the reason that the security of such bills is regarded as substantially perfect, their uniform and certain payment constant, and therefore there is an 'open market' for such bills maintained by the great public banks, such as the Bank of France, Reichsbank, the Bank of Belgium, the Bank of Netherlands, the Bank of England, etc., at a very low rate of interest.

It is now proposed that a constant market at a fairly uniform rate of interest be established inthis country by establishing the Federal reserve bank with a large capital and large reserves and with the express power to discount for member banks commercial bills and acceptances of the qualified liquid class, and also to buy and sell in the open market such bills and bankers' acceptances as have been found merchantable and liquid by experience of European banking system. It is anticipated that the effect of this method will be to encourage banking houses to buy commercial bills of the qualified class, and in this way that we may greatly enlarge the market for the bills of manufacturers, merchants, and business men who are handling the actual commerce of the country. (Secs. 14 and 15, pp. 40-44.)"

So far as the alleged purpose of member banks to escape the Federal stamp taxes by selling securities to the Reserve Bank

October 26, 1923.

under a repurchase agreement rather than to execute a fifteen-day note secured by collateral is concerned I believe that such a purpose was incidental and not fundamental if it existed. After all, the Federal Reserve Act authorizes a loan to a member bank. Consequently, even though there was an evasion in some cases where a member bank sold under a repurchase agreement, nevertheless the fundamental principles of the Federal Reserve Act were not violated because the Act contemplated a loan to a member bank. Naturally there can be no accusation that the repurchase agreement was utilized for the purpose of evading taxes so far as non-members are concerned because the non-members had no authority to use the fifteen-day note in any event.

My conclusion, therefore, is that the utilization of the repurchase agreement does not technically, so far as the form is concerned, violate the provisions of the Federal Reserve Act; that inasmuch as the repurchase agreement was conceived for a legitimate purpose and inasmuch as there is a legal presumption in favor of legality, the repurchase agreement should not be abandoned on the ground that it is illegal.

Very truly yours,

Arthur H. Reed.

AHW/EFM

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October 17, 1923.

Dear Governor Wellborn:

I was glad to receive your letter of the 15th stating that Mr. Lane had agreed to withdraw his request for accommodation in the line of purchasing Treasury certificates under repurchase agreement at the present time.

I suppose you have received by this time telegram from the Clerk of the Congressional Commission which is investigating the reasons why more state banks do not join the Federal Reserve System. Mr. McFadden, who is the Chairman of the House Banking and Currency Committee and also of this Commission, told me that he expected to have telegrams sent to the Federal reserve banks which they are going to visit asking for the use of rooms in the banks for their hearings. I have looked over their itinerary pretty carefully and it seems to me that it is so strenuous that they are hardly likely to carry it out. They are scheduled to reach Atlanta on the 15th, when you and Mr. McCord will probably still be in Washington, and are scheduled to stay there until the 17th. You can undoubtedly, I should think, get back there in time to see them by at least the 16th, supposing they keep to their schedule. It seems to me very likely, however, that they will be unable to keeP to their schedule and will reach Atlanta a day or two later than the 15th.

It is rather unfortunate that they decided to take this trip covering the time when the Governors and Reserve Agents will be in Washington but it did not seem to us or to Mr. McFadden that it was worth while to postpone our Joint Conference and the Commission will see at their home banks nearly all the Governors and Reserve Agents they particularly want to see. Dallas appears to be the only place where it will be impossible to see either the Governor or Agent if both come to Washington and it may be thought advisable, it seems to me, for Governor McKinney to stay there, especially as he has been in Washington on committee work very recently.

Yours very truly,

Vice Governor.

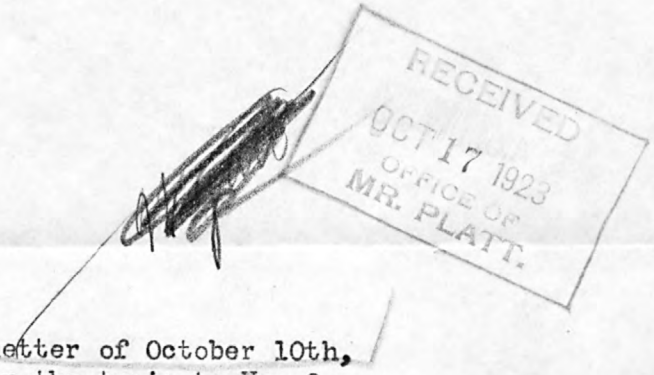
Mr. M. B. Wellborn, Governor,
Federal Reserve Bank,
Atlanta, Georgia.

FEDERAL RESERVE BANK
OF ATLANTA

3323-6

OFFICE OF
GOVERNOR

October 15th, 1923.



Hon. Edmund Platt,
Vice Governor,
Federal Reserve Board,
Washington, D.C.

Dear Governor Platt:-

In connection with your letter of October 10th, which was handed to me by Mr. James on the train to New Orleans last Thursday, I wish to advise that I saw Mr. Edward W. Lane, President of the Atlantic National Bank, Jacksonville, Florida, at New Orleans, and had a talk with him regarding the correspondence which has taken place between your Board, this Bank, and himself over the question of our purchasing from our members Treasury Certificates under what is known as a Repurchase Agreement.

After hearing my side of the question, Mr. Lane very graciously consented to withdraw his request for such accommodation at this time. He says that he will, however, in all probability, take the matter up again at the next meeting of the Advisory Council, which action on his part will then be entirely agreeable to me.

Very truly yours,

M B Wellborn

Governor.

MBW.w.

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October 10, 1923.

Dear Governor Wellborn:

Your letter of October 8th, with relation to the question of taking Treasury certificates under repurchase agreements from your member banks, is at hand. I talked the matter over somewhat informally with the Board this morning and read a part of your letter. It is the Board's belief that your bank should exercise its own discretion and I wrote you merely to call attention to the fact that the Board itself had put out no new ruling or regulation or decision that would call for any change of policy on your part. I rather inferred from Mr. Lane's letter that you had been taking Treasury certificates on repurchase agreements but had discontinued the practice somewhat recently because of the legal questions which were discussed before the Federal Advisory Council.

It is my own opinion, and I think the Board generally is inclined to the same view, that the Federal Reserve Bank of New York is performing a valuable service not only to the Treasury but in the line of stabilizing interest rates by taking Treasury certificates and acceptances from dealers as well as from member banks on repurchase agreements. In the case of member banks, of course, they can put in their fifteen-day notes and rediscount with Treasury certificates as collateral, in which case the notes could be used, I presume, as collateral for issues of Federal Reserve notes. I presume that has been done frequently and is still being done to some extent in the Sixth District and I don't see that from the standpoint of member banks a repurchase agreement has much advantage over this, unless they are really desirous of avoiding any showing of borrowed money in their statements as your letter indicates.

I am glad you are going to see Mr. Lane at New Orleans and discuss the matter with him.

Inasmuch as this letter would not be likely to reach you until after you had left Atlanta, I am going to give it to Mr. James to give to you.

Yours very truly,

Vice Governor.

Mr. M. B. Wellborn, Governor,
Federal Reserve Bank,
Atlanta, Georgia.

FEDERAL RESERVE BANK
OF ATLANTA

3323-6

OFFICE OF
GOVERNOR

October 8th, 1923.

Mr. Edmund Platt,
Vice Governor,
Federal Reserve Board,
Washington, D.C.

Dear Governor Platt:-

Replying to your letter of October 4th, permit me to give you our reasons for not desiring to purchase from our member banks Treasury Certificates under a repurchase agreement.

It is true that this is being done in New York City, but, as I understand it, it is done solely in order to aid the United States Treasury Department in floating its temporary loans. To some extent, it seems as though the same policy might apply in our District; but we feel that, if we followed such a procedure with our member banks, an undue expansion of loans might follow.

Have you considered the fact that, in handling these Certificates under a repurchase agreement, we could not put them up with our Federal Reserve Agent to take down Federal Reserve Notes, which would result in the curtailment of our lending power ?

Another phase to be considered is that such an action on our part might encourage our member banks to purchase these Certificates of Indebtedness in order to swell their deposits, and relieve themselves of showing any borrowed money in their statements. Obtaining a temporary deposit through the Treasury Department by means of the purchase of such Certificates might seem very attractive to our members, and the result would be - as I have stated - that there would, at times, be too heavy a load to carry upon us.

You observe, further, that, in taking the position we do take on this question, we do not lay ourselves open to a charge of discrimination, such as might conceivably be brought against New York for granting this privilege to dealers and denying it to member banks. It is obvious that such action in handling the situation as we propose could not be misconstrued as favoring dealers, because there is no such class in this section to benefit.

I expect to see Mr. E.W. Lane the latter part of this week, on the occasion of the opening of our new branch bank building in New Orleans. I will talk the matter over with him thoroughly, and I believe that I can induce him to withdraw his request. I think that the principal motive which actuated him in opening the question was a belief that we should possess whatever privileges New York possesses. I am of the opinion, however, that we should be careful to take into consideration the fact that New York is the financial center of the country, and that the Treasury Department finds it necessary to have that Bank aid them in the market in floating their temporary loans from time to time.

Very truly yours,

M.B. Wellborn,
Governor.

MBW/W.

Repurchase paper.
Inquiry E. W. Lane.

#6

333

~~3323~~

332.3-6

October 4, 1923.

Dear Governor Wellborn:

10/2/23

I received this morning a letter from Edward W. Lane, President of the Atlantic National Bank of Jacksonville, of which the enclosed is a copy. On taking up the matter with the Board this morning it was thought best that I should write to you instead of answering Mr. Lane's letter directly and send him a copy of my letter to you.

I have no information as to just what transactions Mr. Lane's letter refers but generally speaking I see no reason why the Federal Reserve Bank of the Sixth District should decline to purchase from its member banks Treasury certificates on the same terms as they are being purchased by the Federal Reserve Bank of New York from its member banks. I presume that Mr. Lane's letter refers to the matter of purchasing Treasury certificates on what are known as repurchase agreements. Certain legal phases of these agreements have been called into question but the Board has taken no action in the matter and has issued no instructions to the Federal reserve banks. Furthermore repurchase agreements with member banks would seem to be warranted anyway, the only question in such cases being whether they should be included in the Federal reserve bank statements as loans or as securities owned by the Reserve bank.

As Mr. Lane's letter indicates the Federal Advisory Council strongly recommended in favor of making these repurchase agreements even with dealers, taking the ground that if it is determined that they cannot be made legally an amendment to the law should be sought.

Yours very truly,

Vice Governor.

Mr. M. B. Wellborn, Governor,
Federal Reserve Bank,
Atlanta, Georgia.

332.3 -6

October 4, 1923.

Dear Mr. Lane:

I am enclosing copy of a letter (10/2/23) I have just been writing to Governor Wellborn.

Yours very truly,

Vice Governor.

Mr. Edward W. Lane, President,
The Atlantic National Bank of Jacksonville,
Jacksonville, Florida.

THE ATLANTIC NATIONAL BANK OF JACKSONVILLE

UNITED STATES DEPOSITARY

CAPITAL AND SURPLUS $1,600,000.00

JACKSONVILLE, FLORIDA

October 2, 1923.

Mr. Edmund Platt, Vice Governor,
Federal Reserve Board,
Washington, D. C.

My dear Mr. Platt:

I beg to refer to recommendation No. 2, dated September 17, of the Federal Advisory Council, and in this connection draw your attention to the fact that the Federal Reserve Bank in the Sixth District declines to purchase from its member banks Treasury Certificates on the same terms as they are being purchased by the Federal Reserve Bank in New York from member banks, corporations and firms.

Don't you think the Federal Reserve System should accord its member banks at least the same facilities in whatever district they might be located as are accorded by the Federal Reserve Bank in New York to firms and corporations not belonging to the System. Won't you be good enough to give me your views on the subject.

I am not writing to the Governor as he was not at the meeting in Washington and is perhaps not familiar with recommendation No. 2 above mentioned.

With kind regards, I am,

Very truly yours,

Mamber Federal Advisory Council.

FEDERAL RESERVE BANK

OF MINNEAPOLIS

October 24, 1923.

Federal Reserve Board,
Washington, D.C.

Attention: Mr. Walter L. Eddy,
Secretary

Dear Mr. Eddy:

This will acknowledge receipt of the Board's letter x3855 dated October 11,1923. The Federal Reserve Bank of Minneapolis discontinued the practice of purchasing Government securities and acceptances from member and non-member banks, stock, bond and acceptance brokers upon repurchase agreements, about three years ago, and we have no such transactions in our bank at the present time.

However, for the past year we have carried some short time U. S. Government obligations for the Federal Land Bank of St. Paul. It is our practice to have the Board of Directors of the Land Bank of St. Paul pass a resolution authorizing the officers to enter into such transaction (Copy of such a resolution is enclosed herewith), then when the land bank sells these securities to us, the President writes us a letter offering the securities for sale and agreeing, in event of our purchasing, to repurchase at a certain definite date. Both the sale to us and the repurchase by the Land Bank are made at par and accrued interest, so that the profit to our institution is represented by the rate of interest that the Government securities bear.

Yours respectfully,

Governor

RAY-C

Copy

"RESOLVED, That the President, E. G. Quamme, be authorized to negotiate a sale and repurchase agreement with the Federal Reserve Bank of Minneapolis, covering the sale and repurchase of Government Securities in the aggregate amount of $8,000,000.00 it being hereby understood that said Government Securities are to be repurchased from the Federal Reserve Bank of Minneapolis, on or before October 15,1923. Said Securities to be sold at par and accrued interest and to be repurchased at par and accrued interest on date of repurchase.

AND BE IT FURTHER RESOLVED, That the President, Secretary or Treasurer be authorized to endorse and transmit by letter, Trust Receipts covering Government Securities in connection with the sale of such Securities to the Federal Reserve Bank of Minneapolis, binding the Federal Land Bank of Saint Paul to repurchase said Securities at par and accrued interest on or before October 15,1923, in accordance with the repurchase agreement made with the Federal Reserve Bank of Minneapolis, under this authority".

(SEAL)

I, H. K. Jennings, Secretary of the Federal Land Bank of St. Paul, St. Paul, Minnesota, hereby certify that the above is a true and correct copy of a resolution adopted by the Board of Directors of The Federal Land Bank of Saint Paul at a meeting held June 26th,1923.

(Signed) H. K. Jennings

St.Paul,Minnesota,
June 26,1923.

#6

Counsel

RECEIVED

OCT 22 1923
OFFICE OF COUNSEL

3323-6

October 22, 1923.

Dear Governor Wellborn:

I acknowledge receipt of and thank you for your letter of the 19th inst., forwarding to the Board, as requested in letter X-3855, copies of the repurchase agreement forms used by your bank.

10/11/23

Very truly yours,

Walter L. Eddy,
Secretary.

Mr. M. B. Wellborn, Governor,
Federal Reserve Bank,
Atlanta, Ga.

FEDERAL RESERVE BANK
OF ATLANTA

OFFICE OF
GOVERNOR

October 19, 1923.

Dear Mr. Eddy: 10/11/23

Agreeable to the request contained in the Board's Letter X-3855, there is enclosed copy of repurchase agreement form that was used by us several years ago when purchasing United States Securities from member banks, together with copy of board resolution and receipt incident thereto. These forms were submitted to and approved by the Federal Reserve Board before they were put into use.

These are the only forms that were used by us, as we did not engage in any other repurchase transactions.

Yours very truly,

M. B. Wellborn,
Governor.

LCA/a

Mr. Walter L. Eddy,
Secretary,
Federal Reserve Board,
Washington, D. C.

AGREEMENT.

MEMORANDUM OF AGREEMENT? Made this _____ day of _____, 19___, between FEDERAL RESERVE BANK OF ATLANTA, hereinafter sometimes, for convenience, designated the "seller", and _____Bank of _____,hereinafter sometimes, for convenience, designated the "purchaser".

WITNESSETH:

That the said Federal Reserve Bank of Atlanta has agreed to sell, and the said purchaser has agreed to buy, upon terms and conditions hereinafter set out, the following listed United States bonds and notes, hereinafter called bonds:

1. The price to be paid for said bonds is _____ _____Dollars ($_____) together with an amount equivalent to any interest accrued and uncollected on said bonds at the time of delivery to the purchaser pursuant to this agreement.

E.

2. The purchase price of said bonds is to be paid in full by the purchaser on or before _____years from date, except that the seller may, at any time prior thereto and at its absolute option, require a payment of that portion of the purchase money then unpaid upon notice to the purchaser that it will demand payment of the entire unpaid purchase money sixty days from the date of said notice. Any such notice shall be in writing and shall be sufficiently given, or mailed, duly addressed, to the purchaser at its office in _____, State of _____. In event of such notice and demand, the purchaser binds itself, its successors and assigns, to make due, punctual and prompt settlement of the full unpaid purchase money on or before sixty days from the date of said notice.

3. At monthly intervals, beginning on the _____ day of _____, 19____, the purchaser will pay on account of the purchase price a sum equivalent to one-tenth of one per cent of the aggregate principal amount, par value, of the said bonds herein agreed to be purchased, which amounts shall be credited monthly on account of the said purchase price, provided always that nothing herein contained shall alter, abridge or weaken the force and effect of the absolute covenant, hereinbefore set out, to pay in full for said bonds at the expiration of sixty days from and after the notice herein provided for, and provided, further, that the entire purchase price shall be paid in full on or before _____years from date, as hereinbefore set out.

4. To secure its covenants, obligations and undertakings herein set forth, the purchaser has deposited with the Federal Reserve Bank of Atlanta certain collateral securities, duly endorsed, set forth and described in a list hereto attached. With the consent of the said Federal Reserve Bank any of the said collaterals may be taken down and acceptable collateral substituted therefor. When and if such substitutions shall be made, the substituted collaterals shall be subject to this agreement in all respects as though the same had been originally deposited hereunder. The proceeds and avails of said collateral securities or substitutions therefor shall, when and if collected by the said Federal Reserve Bank, or for its account, be held, to the full extent of such proceeds and avails, in lieu of the said securities, except that if there be no default hereunder at the time any of

said securities are collected or realized on, the said Reserve Bank will credit the reserve account of the purchaser with the net amount of such proceeds or avails upon substitution therefor of acceptable collateral of at lease equal value.

5. Upon any default hereunder by the purchaser, the seller shall have the right forthwith to collect, or otherwise liquidate, said securities or any of them, and to apply the amount, so realized, in discharge, pro tanto, of the said purchase price, and to do any other or further thing necessary or proper to be done in order to avail itself of the benefit and security of the collaterals aforesaid.

6. With respect to any of the securities so deposited, and also with respect to the bonds which the purchaser hereby agrees to purchase, the Federal Reserve Bank of Atlanta shall have the right immediately upon any default hereunder to sell the same or any part thereof at public or private sale, with or without notice, and to apply the net proceeds of such sale on the purchase price of said Government bonds. At any such sale the Federal Reserve Bank of Atlanta may be a purchaser.

7. Any remedy or right herein granted shall be cumulative to any legal or equitable right or remedy which the seller may have in the premises.

8. Upon any default in the carrying out of any obligation or undertaking on the part of the purchaser hereunder, the entire purchase money for said bonds then unpaid shall forthwith become due and payable, without notice, anything herein contained to the contrary notwithstanding, time being of the essence of this agreement.

9. Until the purchase price of such bonds has been paid and liquidated in full, the interest collected thereon shall be the absolute property of the Federal Reserve Bank of Atlanta, and such interest so collected by the Federal Reserve Bank of Atlanta for its own account and as its own property, shall in no wise affect the purchase price or be counted as purchase money paid in, except that there shall be added to the purchase price above set out, at the time of final settlement, an amount equivalent to interest earned and then uncollected. Until the purchase price of said bonds has been fully paid, title thereto shall remain in the seller and the same shall be in its custody and control.

10. Should at any time the aggregate value of the securities so deposited with the Federal Reserve Bank of Atlanta as collateral be insufficient to furnish a margin of security, based upon a ratio of $120 to each $100, of the difference between the par value of the said bonds so sold and the prevailing market price thereof, the purchaser will, promptly upon demand, deposit additional collateral acceptable to the seller and of a value, in the opinion of the seller, sufficient to furnish a margin in security, based upon the ratio aforesaid. To this end the purchaser covenants and agrees to deposit and maintain at all times with the Federal Reserve Bank of Atlanta, as collateral, notes, bills of exchange, or securities acceptable to the said Reserve Bank, in an aggregate amount, at a ratio of $120 to $100, to cover the difference between the principal amount of the bonds so sold and the prevailing market prices therefor.

11. This contract is made and entered into between the parties pursuant to and under the authority of the following respective resolutions evidencing due corporate action of the respective parties, to-wit: A resolution of the Board of Directors of the Federal Reserve Bank of Atlanta, passed on March 11, 1921, and a resolution of the Board of Directors of the undersigned purchaser, passed on the _____ day of _____, 19____.

WITNESS the hands and seals of the undersigned parties hereunto affixed, in duplicate, by their proper officers, duly authorized in the premises, the day and year first above written.

FEDERAL RESERVE BANK OF ATLANTA

BY_____

ATTEST:

_____

CASHIER.

(S E A L)

ATTEST: _____ BANK OF _____

By_____

_____

CASHIER.

RECEIPT.

STATE OF _____
COUNTY OF _____

Received of FEDERAL RESERVE BANK OF ATLANTA, _____ _____Dollars ($_____), said amount being paid by said Federal Reserve Bank of Atlanta, as the purchase price of the following listed bonds and notes of the United States, hereinafter called bonds, all of which the undersigned acquired under original subscriptions or by taking over original subscriptions.

Said amount is accepted by the undersigned in full payment of said bonds to the full extent of its interest therein, the amount so paid being the exact amount at which said bonds are now carried on the books of the undersigned. The Federal Reserve Bank of Atlanta is hereby authorized to apply the entire amount of the purchase money, hereby receipted for, or any part thereof, toward the payment of any notes or other obligations due or to become due by the undersigned to said Federal Reserve Bank of Atlanta and secured, either in whole or in part, by the bonds herebefore listed.

E.

In consideration of said purchase of said bonds by said Reserve Bank and for other good and valuable considerations, the undersigned agrees with the said Reserve Bank to reduce the aggregate of all of its obligations to said Reserve Bank, secured by United States bonds or notes, by monthly payments to said Reserve Bank at the rate of _____Dollars ($_____) per month, the first payment to be made thirty days from date, it being understood, however, that such Reserve Bank is under no obligations to renew or extend any loan or advance heretofore made by it to the undersigned or to grant to the undersigned any new loan or advance.

In consideration of such purchase of said bonds by said Reserve Bank and for other good and valuable considerations, the undersigned further agrees with said Reserve Bank to further secure all outstanding loans and advances made to it by said Reserve Bank, and secured by United States bonds and notes, by the deposit with said Reserve Bank of additional collateral acceptable to said Reserve Bank equal to the difference between the amount of such loans and advances made to the undersigned upon the security of United States bonds or notes and the market value of such bonds and notes, and the undersigned does covenant and agree to deposit and maintain at all times with said Reserve Bank acceptable collateral sufficient to keep the said loans and advances secured as aforesaid.

The sale of said bonds to the Federal Reserve Bank of Atlanta and the agreements herein set forth are made under and pursuant to a resolution passed by the Directors of the undersigned at a meeting of said Board held on the _____ day of _____, 19____.

Witness the hand and seal of the undersigned, affixed by its proper officers duly authorized in the premises, this _____ day of _____, 19____.

_____BANK OF_____

BY_____

ATTEST:

_____

E.

RESOLUTION.

WHEREAS, this bank has heretofore acquired, under original subscriptions or by taking over original subscriptions, and now owns certain Liberty bonds and Victory notes issued by the United States: and

WHEREAS, the Federal Reserve Bank of Atlanta is willing to purchase certain of said bonds, at a price equivalent to the amount at which this bank is at this time carrying said bonds on its books, upon condition, however, that this bank will re-purchase the same at the same price paid therefor by the said Federal Reserve Bank of Atlanta and upon terms and conditions fully set forth and contained in a contract proposed to be entered into between the said Reserve Bank and this Bank, a copy of which proposed contract is hereby made in all respects a part of this resolution and is to be spread upon the minutes as a part thereof;

THEREFORE BE IT RESOLVED, that the President or Vice-President and Cashier of this bank be and they are hereby authorized, for and in behalf of this bank, to sell Government securities which this bank owns, or in which it may have an interest, to the aggregate par value of _____ Dollars ($_____) at and for the price of _____ Dollars ($_____), said price being the same as the amount at which this bank now carries the said securities on its books.

BE IT FURTHER RESOLVED, that said officers of this bank be and they are hereby authorized and directed to enter, for and in behalf of this bank, into an agreement with said Federal Reserve Bank of Atlanta to repurchase said bonds upon the terms and conditions fully set forth in said proposed contract. Said officers are further authorized to deposit collateral securities with said Reserve Bank in order to secure the carrying out by this bank of its obligations as set forth in said agreement. Said agreement, when executed, to become the binding corporate obligation of this bank.

BE IT FURTHER RESOLVED, that for and in consideration of the purchase of said bonds by the Federal Reserve Bank of Atlanta, the said officers, or any of them, be and they are hereby authorized , empowered and directed to agree with said Federal Reserve Bank of Atlanta that this bank will reduce the aggregate of all its obligations to said Reserve Bank, secured by United States bonds or notes by monthly payments to said Reserve Bank at such rate as shall be required by said Reserve Bank, it being understood, however

that said Reserve Bank is under no obligation to renew or extend any loan or advance heretofore made by it to this bank, or to grant to this bank any new loan or advance.

BE IT FURTHER RESOLVED, that for and in consideration of the purchase of said bonds by the Federal Reserve Bank of Atlanta, the said officers, or any of them, be and they are hereby authorized , empowered and directed to agree with said Reserve Bank that this bank will further secure all of the outstanding loans and advances made to it by said Federal Reserve Bank, secured by Government War Securities, by the deposit with said reserve Bank of acceptable additional collateral equivalent to the difference between the amount of such loans and advances so made upon the security of Government bonds or notes and the market value of the same. Said officers are further authorized, empowered and directed to agree with said Federal Reserve Bank of Atlanta to maintain at all times collaterals sufficient to keep said loans and advances secured as aforesaid.

BE IT FURTHER RESOLVED, that the directors and officers of this bank understand that the amount due by this bank on account of the purchase of such bonds shall, to all intents and purposes, be considered as a part of the discount line accorded this bank by said Federal Reserve Bank of Atlanta.

BE IT FURTHER RESOLVED, that said officers, or any of them, be and they are hereby authorized and directed to do any other or further thing which they may deem necessary or proper in order to effectuate this resolution to consummate said agreements and to carry out the same in all respects.

I, _____, Cashier of the _____ Bank of _____, do hereby certify that the above and foregoing is a true copy of a resolution introduced and passed at a meeting of the Board of Directors of said bank held on the _____ day of _____, 19____, which said meeting was regularly called and at which a quorum was present.

I do further certify that the above and foregoing is a true excerpt from the minutes and that the same correctly sets forth and declares the corporate action of this bank in the respects set out therein.

E.

I do further certify that the agreement executed on behalf of this bank on the _____day of _____, 19_____, by the following officer, to-wit: _____,attested by myself as Cashier, is identical with a copy of the agreement referred to in the above and foregoing resolution and that said agreement as executed is the agreement which was proposed to the said Directors and the execution of which was expressly authorized by the said Board.

Witness my hand and the seal of said bank, this _____ day of _____,19___.

_____

CASHIER.

#1200

337.3-6

FEDERAL RESERVE BANK
OF SAN FRANCISCO

RECEIVED
OCT 25 1923
OFFICE OF COUNSEL

October 19, 1923.

Federal Reserve Board,
Washington, D. C.

Subject: Re-purchase by Federal Reserve Banks of Securities and Bankers' Acceptances under so-called re-purchase agreements.

Dear Sirs:

As requested in your letter of October 11, 1923, (X-3855), we are enclosing copy of our Form BD 81 on which bills are listed at the time they are acquired under re-purchase agreement.

At the foot of this Form, you will find the vendor's agreement to re-purchase, on or before 15 days, the bills listed thereon.

We are also enclosing copy of a general hypothecation agreement which is lodged with us by those from whom bills are acquired under re-purchase agreement.

Yours very truly,

Governor.

RECEIVED
FEDERAL RESERVE BOARD
OCT 25 1923

ACCEPTANCES AND BILLS OF EXCHANGE

OFFERED FOR PURCHASE TO

FEDERAL RESERVE BANK OF SAN FRANCISCO

BY _____ (NAME OF BANK OR FIRM) _____ (CITY) DATE _____ 192__

WE OFFER HEREWITH FOR PURCHASE ***BILLS*** DESCRIBED AS FOLLOWS:

Commodity	Acceptor	Drawer	Due Date	Amount	TOTAL	DISCOUNT No. of Days to Maturity	DISCOUNT Rate	DISCOUNT Amount	Place Where Bills Were Drawn

REPURCHASE AGREEMENT

WE HEREBY AGREE TO REPURCHASE FROM THE FEDERAL RESERVE BANK OF SAN FRANCISCO ON OR BEFORE 15 DAYS FROM DATE THE BANKERS ACCEPTANCES LISTED ABOVE AGGREGATING _____ AT THE VARIOUS RATES SPECIFIED

_____

_____

OFFICIAL SIGNATURES

TOTAL

Certified check in payment of Bills at maturity must be presented to us not later than **ELEVEN A. M.**—or—check of the payer's bank on the **FEDERAL RESERVE BANK** will be acceptable not later than **THREE P. M.** on due date of bills.

We prefer that Bills of same acceptor be grouped and listed in order of their maturity and that Firm Acceptances and Bankers' Acceptances be grouped on separate sheets.

Credit or check in payment will be given on approval of Bills if desired, subject to correction of errors in discount.

M—F R 1004-34-A

Date.....

Receipt is hereby acknowledged of acceptances aggregating

$.....withdrawn from within agreement.

.....

Signature.

Date.....

Receipt is hereby acknowledged of acceptances aggregating

$.....withdrawn from within agreement

.....

Signature.

Date.....

Receipt is hereby acknowledged of acceptances aggregating

$.....withdrawn from within agreement.

.....

Signature.

Date.....

Receipt is hereby acknowledged of acceptances aggregating

$.....withdrawn from within agreement.

.....

Signature.

Date.....

Receipt is hereby acknowledged of acceptances aggregating

$.....withdrawn from within agreement.

.....

Signature.

Date.....

Receipt is hereby acknowledged of acceptances aggregating

$.....withdrawn from within agreement.

.....

Signature.

Date.....

Receipt is hereby acknowledged of acceptances aggregating

$.....withdrawn from within agreement.

.....

Signature.

Date.....

Receipt is hereby acknowledged of acceptances aggregating

$.....withdrawn from within agreement.

.....

Signature.

KNOW ALL MEN BY THESE PRESENTS that in consideration of purchases and sales of bills, securities and/or other property effected between the Federal Reserve Bank of San Francisco and the undersigned by virtue of agreements from time to time entered into between the parties, it is hereby agreed that as collateral security for any and all liability of the undersigned to the said Federal Reserve Bank now or hereafter existing, matured or not matured, absolute or contingent, and wherever payable, including items held by said Federal Reserve Bank as security for any obligations of any sort whatever, said Federal Reserve Bank shall hold, retain and have a lien upon all moneys, negotiable instruments, bonds, stocks, commercial paper, credits, choses in action, claims and demands of every kind at any time in possession or control of said Federal Reserve Bank, or any of its agents or correspondents, or in transit to it by mail or carrier, belonging to, for account of, or subject to the order of the undersigned; and said Federal Reserve Bank shall have the following rights and powers in respect to such collaterals and every part thereof (in addition to any other rights which it may have): Said Federal Reserve Bank may at any time or times collect any of such collaterals, and it may indorse any thereof in behalf and in the name of the undersigned; and in case of failure of the undersigned to pay or discharge when due any such liability, or in case of failure of the undersigned to furnish additional collateral as hereinafter provided, or in case of the insolvency, general assignment, receivership, bankruptcy, or failure in business of the undersigned, said Federal Reserve Bank may sell without notice any of said collaterals at private or public sale, or at broker's board (being at liberty

to become the purchaser if the sale is public or at broker's board) and may apply any and all money or credits, including the proceeds of any such sale, to the payment of expense of any such sale or sales, or of the realization or collection of any of said collaterals or of any of said liability of the undersigned, whether due or not due, and any and all liability of the undersigned shall in any of the cases above stated become due at the option of said Federal Reserve Bank. If the collateral securing any liability of the undersigned to said Federal Reserve Bank shall at any time be unsatisfactory in amount or otherwise to said Federal Reserve Bank, or to any of its officers, the undersigned will immediately furnish such further security as will be satisfactory to said Federal Reserve Bank. Said Federal Reserve Bank may assign or transfer the whole or any part of any obligation or liability of the undersigned, and may transfer therewith as collateral security therefor the whole or any part of the collateral above referred to, and the transferee shall have the same rights and powers with reference to the obligation or liability transferred and the collaterals transferred therewith, as are hereby given to said Federal Reserve Bank. It is also agreed that this instrument constitutes a continuing agreement between the undersigned and the said Federal Reserve Bank applying to all future, as well as existing, transactions between the said parties, and also that the force and effect hereof shall not be terminated by the closing at any time of all transactions between the said parties, but that the same shall apply

thereafter to any new transactions and shall continue in full force until notice is received in writing by either party from the other of the intention to terminate it, whereupon, it shall be of no effect for any indebtedness subsequently created.

IN WITNESS WHEREOF

has caused these presents to be signed this

day of 192____

_____

_____

October 17, 1923.

My dear Governor:

I have read with interest your letter of October 15 in re Mr. Wyatt's opinion on the repurchase contracts.

For your information this subject will be taken up at the Governors' Conference, and we are having it further looked into with a view of trying to find some solution whereby this thing may be carried on within the law. In the meantime I shall be pleased to have the opinion of your counsel when he has it ready for you.

With the assurance of my appreciation, I am,

Very truly yours,

D. R. Crissinger,
Governor.

Hon. W.P.G.Harding, Governor,
Federal Reserve Bank,
Boston, Mass.

#2

FEDERAL RESERVE BANK

OF NEW YORK

3373-6

October 16, 1923.

Mr. Walter L. Eddy,
Secretary, Federal Reserve Board,
Washington, D. C.

Dear Mr. Eddy:

In further reference to your letter of October 11, X-3855, I enclose copies of new and old forms of our agreement with dealers in the matter of re-purchase of securities and bankers' acceptances; also forms of collateral agreement with us in connection therewith.

The so-called "Old Form" is still in use, except in cases where we have sent out new letters since the adoption of the new form. In those cases the "New Form" is in use. The form entitled "Sales Contract" is at present and has been in use in connection with the sales of Government obligations.

Very truly yours,

J. H. Case
Deputy Governor.

Encls.(4)

RECEIVED
OCT 17 1923
OFFICE OF COUNSEL

RECEIVED
FEDERAL RESERVE BANK
OCT. 17 1923.

OLD FORM.

Date_____

Federal Reserve Bank of New York,

New York, N. Y.

Dear Sirs:

We have sent you this day, under separate cover, eligible bankers' acceptances to the amount of $_____, sold to you at _____% discount, which we hereby agree to repurchase at the same rate on or before _____with agreed right, to be exercised at our option, to repurchase these bills, either in whole or in part, prior to _____, to which date discount on today's sale has been calculated. As per detailed memorandum therewith and in accordance with our general agreement, we are delivering as collateral (describe collateral) of a face value of $_____.

Very truly yours,

NEW FORM.

Date_____

Federal Reserve Bank of New York,

New York City.

Gentlemen:

We have sent you this day, under separate cover, eligible bankers' acceptances to the amount of $_____, sold to you at _____% discount, which we hereby agree to repurchase at the same rate on or before _____ with agreed right, to be exercised at our option, to repurchase these bills, either in whole or in part, prior to _____, to which date discount on today's sale has been calculated, as per detailed memorandum herewith.

We are delivering as collateral security for the performance of this contract, acceptance of (name)_____ (city)_____ of a face vaule of $_____ to be held by you subject to the terms and conditions of our general collateral agreement with you.

Yours very truly,

_____

SALES CONTRACT

_____

Federal Reserve Bank of New York,

New York, N. Y.

Gentlemen:

We hand you herewith United States Government _____ _____, amounting to $_____par value, listed below, which we have to-day sold to you for the sum of $_____, and which we hereby agree to repurchase from you on or before _____, for the sum of $_____, and interest thereon at the rate of ____% per annum for the number of days that the said securities are held by you.

We are delivering as collateral security for the performance of this contract _____, of a par value of $_____, to be held by you subject to the terms and conditions of our general collateral agreement with you.

Very truly yours,

_____

_____

SCHEDULE OF SECURITIES OFFERED UNDER ABOVE SALES CONTRACT

Description of issue	Maturity	Amount (Par Value)

KNOW ALL MEN BY THESE PRESENTS that in consideration of purchases and sales of bills, securities and/or other property effected between the Federal Reserve Bank of New York and the undersigned by virtue of agreements from time to time entered into between the parties, it is hereby agreed that as collateral security for any and all liability of the undersigned to the said Federal Reserve Bank now or hereafter existing, matured or not matured, absolute or contingent, and wherever payable, including items held by said Federal Reserve Bank as security for any obligations of any sort whatever, said Federal Reserve Bank shall hold, retain and have a lien upon all moneys, negotiable instruments, bonds, stocks, commercial paper, credits, choses in action, claims and demands of every kind at any time in possession or control of said Federal Reserve Bank, or any of its agents or correspondents, or in transit to it by mail or carrier, belonging to, for account of, or subject to the order of the undersigned; and said Federal Reserve Bank shall have the following rights and powers in respect to such collaterals and every part thereof (in addition to any other rights which it may have): Said Federal Reserve Bank may at any time or times collect any of such collaterals, and it may indorse any thereof in behalf and in the name of the undersigned; and in case of failure of the undersigned to pay or discharge when due any such liability, or in case of failure of the undersigned to furnish additional collateral as hereinafter provided, or in case of the insolvency, general assignment, receivership, bankruptcy, or failure in business of the undersigned, said Federal Reserve Bank may sell without notice any of said collaterals at private or public sale, or at broker's board (being at liberty to become the purchaser if the sale is public or at broker's board) and may apply any and all money or credits, including the proceeds of any such sale, to the payment of expense of any such sale or sales, or of the realization or collection of any of said collaterals or of any of said liability of the undersigned, whether due or not due,

and any and all liability of the undersigned shall in any of the cases above stated become due at the option of said Federal Reserve Bank. If the collateral securing any liability of the undersigned to said Federal Reserve Bank shall at any time be unsatisfactory in amount or otherwise to said Federal Reserve Bank, or to any of its officers, the undersigned will immediately furnish such further security as will be satisfactory to said Federal Reserve Bank. Said Federal Reserve Bank may assign or transfer the whole or any part of any obligation or liability of the undersigned, and may transfer herewith as collateral security therefor the whole or any part of the collateral above referred to, and the transferee shall have the same rights and powers with reference to the obligation or liability transferred and the collaterals transferred therewith, as are hereby given to said Federal Reserve Bank. It is also agreed that this instrument constitutes a continuing agreement between the undersigned and the said Federal Reserve Bank applying to all future, as well as existing, transactions between the said parties, and also that the force and effect hereof shall not be terminated by the closing at any time of all transactions between the said parties, but that the same shall apply thereafter to any new transactions and shall continue in full force until notice is received in writing by either party from the other of the intention to terminate it, whereupon, it shall be of no effect for any indebtedness subsequently created.

IN WITNESS WHEREOF

has caused these presents to be signed this

day of 192_____

_____

by _____

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

Before me, a Notary Public, in and for the County of , came to me known and known to me to be the person who executed the within agreement and who, being duly sworn by me, did depose and say that he is a partner of , and as such is duly authorized to execute the within agreement in behalf of said partnership, and that he so executed it for the uses and purposes therein expressed.

COLLATERAL AGREEMENT

WITH

FEDERAL RESERVE BANK

OF

NEW YORK

#3

FEDERAL RESERVE BANK OF PHILADELPHIA

925 CHESTNUT STREET

332.3 b

October 16, 1923.

Mr. Walter L. Eddy, Secretary,
Federal Reserve Board,
Washington, D. C.

My dear Mr. Eddy:

Pursuant to your request of recent date, we are enclosing a copy of the re-purchase agreement which we use for the purpose of extending accommodation to dealers.

Very truly yours,

C. A. McIlhenny,
Assistant Cashier.

CM.Q

RECEIVED
OCT 17 1923
OFFICE OF COUNSEL

REOEIVED
FEDERAL RESERVE BOARD
OCT 17 1923

4

The Federal Reserve Bank,
Philadelphia.

Gentlemen:

We hereby offer for sale to you at _____% discount, _____eligible bankers' acceptances in the amount of $_____listed in the _____application with the understanding that we hereby agree to repurchase on or before _____with agreed right, to be exercised at our option, to repurchase these bills, either in whole or in part, prior to _____, to which date discount on today's sale has been calculated.

If not purchased on or before _____, you are hereby authorized to sell such said bills and we agree to reimburse you for any loss or expense incidental thereto.

_____
(Authorized signature)

10/19/23(4)

#11

FEDERAL RESERVE BANK
OF DALLAS

3323-6

OFFICE OF THE GOVERNOR

October 16, 1923.

SUBJECT: Re-purchase from Federal Reserve Banks of Securities and Bankers' Acceptances under so-called re-purchase agreement.

Gentlemen:

This will acknowledge receipt of Board's letter X-3855, dated October 11, on the above subject.

The number of repurchase agreements entered into by this bank has been extremely limited and at the present time there are no agreements of this nature outstanding.

We have never taken bankers' acceptances under a re-purchase agreement, with the single exception of the Texas Farm Bureau Cotton Association, whose acceptances were taken in this manner after authority had been secured from the Board. We are attaching hereto copy of the form of agreement entered into with them.

In a few instances we have taken from our member banks under repurchase agreements obligations of the United States Government, but these transactions have been limited to some three or four banks. We are also attaching sample form of agreement entered into in such cases.

RECEIVED
OCT 19 1923
OFFICE OF COUNSEL

For your information we are attaching hereto form of agreement entered into with the San Antonio Joint Stock Land Bank covering the repurchase of U. S. Treasury gold notes, which is self-explanatory. After entering into this agreement and prior to its maturity, we were doubtful as to whether a Federal Reserve Bank could, with propriety, enter into such an agreement and, consequently, we exercised our right to demand repurchase, and this matter has been disposed of.

RECEIVED
FEDERAL RESERVE BOARD
OCT 19 19

I hope the above will furnish the information requested.

Very truly yours,

Governor

Federal Reserve Board,
Washington, D. C.

C O P Y

Dallas, Texas, November 27, 1922

Fifteen-Day Repurchase Agreement

Federal Reserve Bank of Dallas
Dallas, Texas

Gentlemen:

We hand you herewith the following acceptances of the Seaboard National Bank of New York amounting to $500,000, which we have today sold to you less discount, $4,296.87:

Drawn By	Date	Due	Amount
Texas Farm Bureau Cotton Ass'n	11-23-22	1-22-23	$50,000
" " " " "	11-23-22	1-22-23	50,000
" " " " "	11-23-22	1-22-23	50,000
" " " " "	11-23-22	1-22-23	50,000
" " " " "	11-23-22	1-22-23	50,000
" " " " "	11-22-22	2-20-23	50,000
" " " " "	11-22-22	2-20-23	50,000
" " " " "	11-22-22	2-20-23	50,000
" " " " "	11-22-22	2-20-23	50,000
" " " " "	11-22-22	2-20-23	50,000
	Total		$500,000

We hereby agree to repurchase these acceptances on or before fifteen days from this date, on a basis of 4-1/8% discount for the unexpired time to maturity.

Yours very truly,

TEXAS FARM BUREAU COTTON ASS'N

By_____
Treasurer

COPY

Dallas, Texas, June 28, 1923

Federal Reserve Bank of Dallas,
Dallas, Texas.

Gentlemen:

We hand you herewith $210,000.00 par value U. S. Treasury Certificates of Indebtedness as listed below, which we hereby agree to repurchase from you on June 29, 1923, for the sum of $210,000.00 with interest from this date at the rate of 4½% per annum:

Memorandum of Certificates

U. S. Definitive Certificates of Indebtedness No. 6865, Series TS 2-1923, maturing September 15, 1923 . . . . . $10,000

Negotiable Subscription Receipt E-1217 covering U. S. 4½% Certificates of Indebtedness, Tax Series TM-1924, maturing March 15, 1924 100,000

Negotiable Subscription Receipt E-1245 covering U. S. 4½% Certificates of Indebtedness, Tax Series TM-1924, maturing March 15, 1924 100,000

$210,000

Yours very truly,

Republic National Bank of Dallas,

By F. F. Florence,
Vice President.

COPY

San Antonio, Texas
March 15, 1923.

Federal Reserve Bank of Dallas,
Dallas, Texas.

Gentlemen:

We hereby agree to sell to you on a basis of ninety-nine (99) plus accrued interest, Four hundred thousand ($400,000.00) Dollars par value United States Treasury 4½% Gold Notes, Series B-1926, of date August 1, 1922, maturing September 15, 1926, which said notes are now held for our account by the National Park Bank of New York City, New York, who have been instructed to make delivery to you on above basis.

In consideration of your purchase of the notes above referred to, we agree to repurchase all of said notes from you, on or before sixty (60) days after the date of the consumation of our sale to you, on a basis of ninety-nine (99) plus accrued interest to the date of said repurchase.

It is further understood and agreed that, should there be a decline in the market value of these Gold Notes below 99 at any prior to their repurchase by us, at your request we will remit you in cash an amount sufficient to cover the difference between the market value and the purchase price of 99. Any amounts so remitted are to be held by you as security for the faithful performance of our repurchase agreement on the terms above specified. Should we fail to repurchase in accordance with this agreement, then it is understood that you may make sale of said notes at the prevailing market price in New York, and the money so advanced shall be used by you to make good any deficiency between the market price you may thus receive and the price we agree herein to pay on repurchase. If the amount so advanced is not sufficient to make good this difference, then and in that event we shall be liable to you for any remaining difference, but if the amount so advanced is more than sufficient to make good such difference, you shall return to us any excess.

Very truly yours,

THE SAN ANTONIO JOINT STOCK LAND BANK,

By Wm. B. Lupe (Signed)
President.

Form No. 131

Office Correspondence

FEDERAL RESERVE BOARD

332.3-6

Date Oct. 16, 1923.

To Governor Crissinger

From Mr. Eddy.

Subject: Purchase of Government securities and bankers acceptances under re-purchase agreements.

2—8495

10/15/23

In accordance with the instructions of the Board at its meeting this afternoon, I have sent a copy of the attached letter to each member of the Board and to Mr. Wyatt. It is returned to you with the thought that you may wish to acknowledge same.

332.3 - Board DRb

FEDERAL RESERVE BANK
OF BOSTON

Ordered circulated
AT BOARD MEETING
OCT 16 1923
MO

October 15, 1923.

Dear Governor Crissinger:

I enclose usual weekly report from our Havana agency, and am also enclosing extract from a personal letter received by one of our officers from Mr. Snow who is in charge of the agency.

I have read Mr. Wyatt's memorandum in which he expresses the opinion that Federal Reserve Banks have no power to buy Government securities and bankers' acceptances under repurchase agreements, and note that he advises the Board to issue a ruling that all such transactions be prohibited in the future. I sincerely hope that the Board will consider this question from every angle and that no definite action will be taken until after the conference next month.

Mr. Wyatt's opinion reverses opinions which have hitherto been given the Board by the Counsel's office. You may remember that when the Board authorized the Federal Reserve Bank of Atlanta to buy a large amount of Government bonds held by the Fourth and First National Bank of Nashville and to make a contract under which the Nashville bank obligated themselves to purchase and the Atlanta bank to resell, the whole question was discussed from two angles; first, as to the legality of the transaction, and second, as to the policy involved. While it was the consensus of opinion that the policy was bad, the Board nevertheless decided to allow the transaction to be made because of the emergency which confronted the Nashville bank. Agreement as drawn by the Atlanta bank was reviewed by the Board's Counsel.

In reading Mr. Wyatt's brief I was struck by the fact that he was looking at the question from one angle alone. He did not seem to take into consideration the merits of a policy looking toward the maintenance of a broad market for Government securities and bankers' acceptances, and he ignored altogether the powers of Federal Reserve Banks as defined in Section 4 of the Act. Among the powers enumerated is the right to make contracts. I do not think that there is any question that subject to regulations of the Board, Federal Reserve Banks have the right to buy and sell bonds and notes of the United States in the open market, and that they also have the right to buy and sell bankers' acceptances and eligible bills of exchange. Having acquired such assets I do not see how there can be any question as to the right of a bank, under the powers given it in Section 4, to make a contract or agreement as to the disposition of these securities.

Our Counsel, Mr. Weed, agrees with me on this subject and at my request is preparing a brief which I shall be glad to send you when he has it ready.

If as a matter of policy, the Board should decide that no bills or Government securities should be bought under repurchase agreements, I would suggest that the ruling be based entirely upon the Board's conception of a proper policy; but for the Board to take the position that such transactions are illegal would be to reverse its own position in the past and might have a serious effect upon the Atlanta Bank if the Fourth and First National Bank of Nashville should make good its threat to bring suit against that institution.

With all respect to Mr. Wyatt, I think that his opinion on this subject should be carefully reviewed before it is accepted.

Very truly yours,

W.P.G. Harding,
Governor.

Hon. D. R. Crissinger, Governor,
Federal Reserve Board,
Washington, D. C.

10/16/23

#1

FEDERAL RESERVE BANK
OF BOSTON

FEDERAL RESERVE BOARD FILE

332.3
3323-6
X. 3855
10/11/23

October 15, 1923.

My dear Mr. Eddy:

X3855 10/11/23

In accordance with your request, we hand you herewith, copies of repurchase agreements used by this bank in connection with purchases of United States securities and bankers' acceptances.

Very truly yours,

W.P.G. Harding,
Governor.

Mr. W. L. Eddy, Secretary,
Federal Reserve Board,
Washington, D. C.

RECEIVED

OCT 16 1923

OFFICE OF COUNSEL

REPURCHASE AGREEMENT
U. S. Securities

the Federal Reserve Bank
Boston, Mass.

Date _____

We hand you herewith United States Government securities amounting to $..... par value, listed below, which we have today sold to you for the sum of $..... and which we hereby agree to repurchase from you on or before .....days (Not to exceed 15) from the date hereof for the sum of $..... and interest thereon at the rate of.....per cent per annum for the number of days that the said securities are held by you.

_____
Official Signature

Issue	Due	Rate	Days	Par Amount	Price	Cost

REPURCHASE AGREEMENT
BANKERS' ACCEPTANCES

Date..

To the Federal Reserve Bank,
Boston, Mass.

We hand you herewith the bankers' acceptances listed below, aggregating $.., which we hereby agree to repurchase from you on or before.....................days from the date hereof at the various rates specified, delivery to be taken by us at the banking rooms of the Federal Reserve Bank of Boston unless otherwise requested in writing by us. It is understood and agreed that in the event of delivery being made elsewhere the acceptances will be transmitted by registered mail uninsured, unless we make written request to the contrary, and that all costs and any loss resulting from shipment of said acceptances are to be borne by us.

B. D. 1

Official Signature

Acceptor	Due	Days to Run		Rate	Principal	Discount	Net
		Bills	Agreement				

Date, ______________________

Receipt is hereby acknowledged of acceptances aggregating $______________________ withdrawn from within agreement.

____
Signature

Date, ______________________

Receipt is hereby acknowledged of acceptances aggregating $______________________ withdrawn from within agreement.

____
Signature

Date, ______________________

Receipt is hereby acknowledged of acceptances aggregating $______________________ withdrawn from within agreement.

____
Signature

Date, ______________________

Receipt is hereby acknowledged of acceptances aggregating $______________________ withdrawn from within agreement.

____
Signature

Date, ______________________

Receipt is hereby acknowledged of acceptances aggregating $______________________ withdrawn from within agreement.

____
Signature

#4

333.2-6

FEDERAL RESERVE BANK
OF CLEVELAND

October 15, 1923.

SUBJECT: Re-purchase by Federal Reserve Banks of Securities and Bankers' Acceptances under so-called re-purchase agreement.

Mr. Walter L. Eddy, Secretary,
The Federal Reserve Board,
Washington, D. C.

Dear Sir: 10/11/23

I am very glad to give you the information requested in your letter X-3855. It has not been our policy to purchase under re-purchase agreements Government securities from our member or non-member banks nor from stock and bond houses. In fact, we have not been called upon for such accommodation. When our member banks are in need of funds and have Government securities upon which they desire to borrow, they pledge these securities to a collateral note drawn for the desired period (up to fifteen days) and discount such note with us. In the early days of the War period and prior to the amendment to the Federal Reserve Act authorizing direct advances to member banks by Federal Reserve Banks, we did for a short time purchase Certificates of Indebtedness under a so-called "Sale and Re-purchase Agreement", a copy of which is enclosed herewith (marked No. 1) but this practice was discontinued with the amendment to the Act mentioned above.

Regarding the purchase of acceptances under a re-purchase agreement - this procedure was followed to a very limited extent and only in carrying local dealers in acceptances for short periods pending the sale of bills held in their portfolios. Our only local dealer in bills has discontinued their Bill Department, and for some time we have not been called upon for such accommodation. The form used in such transactions is also enclosed (marked No. 2).

There is another form enclosed (marked No. 3) which is used in discounting for our member banks, for short periods, eligible paper; this is practically acquiring paper from our member banks under a re-purchase agreement. Such transactions are quite active and were put into operation on the suggestion of the Federal Reserve Board at or about the time that the United States Revenue Act was passed, which included the requirement of a stamp tax of two cents per hundred dollars on notes secured by commercial paper.

Very truly yours,

ERF.Zd.

Governor.

#1

AGREEMENT FOR SALE AND RE-PURCHASE OF CERTIFICATES OF INDEBTEDNESS OF THE UNITED STATES OF AMERICA

PLACE _____ DATE _____

To the Federal Reserve Bank of Cleveland:

We hereby offer to sell to you Certificates of Indebtedness of the United States of America, listed on the attached schedule submitted herewith, of an aggregate par value of

.....Dollars,

at par less discount at.....% for.....days.

Upon your acceptance of this offer, you will forthwith credit the purchase price to our account with you, and thereupon we shall be irrevocably bound to re-purchase said certificates from you, at par, ...days after the date on which you credit our account with the proceeds of said sale to you. In the event we fail so to do, you are hereby authorized, at the close of business on the day on which we agree to re-purchase said certificates, to charge our account with the par value thereof, and return said certificates to us at our expense.

_____
Bank

_____
Place

_____
By

AGREEMENT FOR SALE AND RE-PURCHASE OF CERTIFICATES OF INDEBTEDNESS OF THE UNITED STATES OF AMERICA

PLACE _____ DATE _____

To the Federal Reserve Bank of Cleveland:

We hereby offer to sell to you Certificates of Indebtedness of the United States of America, listed on the attached schedule submitted herewith, of an aggregate par value of

.....Dollars,

at par less discount at.....% for.....days.

Upon your acceptance of this offer, you will forthwith credit the purchase price to our account with you, and thereupon we shall be irrevocably bound to re-purchase said certificates from you, at par, ...days after the date on which you credit our account with the proceeds of said sale to you. In the event we fail so to do, you are hereby authorized, at the close of business on the day on which we agree to re-purchase said certificates, to charge our account with the par value thereof, and return said certificates to us at our expense.

_____
Bank

COPY TO BE RETAINED BY MEMBER BANK.

_____
Place

_____
By

D 23 500 SETS 2-21

AGREEMENT FOR SALE AND RE-PURCHASE OF BANKER'S ACCEPTANCES

#2

CLEVELAND, OHIO.....

TO FEDERAL RESERVE OF CLEVELAND:

WE HEREBY OFFER TO SELL TO YOU BANKER'S ACCEPTANCES AS LISTED HEREON AND SUBMITTED HEREWITH, OF AGGREGATE AMOUNT OF $..... LESS DISCOUNT AT THE RATES PER ANNUM SPECIFIED HEREON, FOR FIFTEEN DAYS.

UPON YOUR ACCEPTANCE OF THIS OFFER, YOU WILL FORTHWITH PAY THE PURCHASE PRICE TO US, AND THEREUPON WE SHALL BE IRREVOCABLY BOUND TO RE-PURCHASE SAID ACCEPTANCES FROM YOU, AT THE SAME RATES OF DISCOUNT, ON OR BEFORE FIFTEEN DAYS AFTER DATE.

_____

BY_____

ACCEPTOR	DUE	DAYS	RATE	PRINCIPAL	DISCOUNT	NET

DATE ....

RECEIPT IS HEREBY ACKNOWLEDGED OF ACCEPTANCES WITHDRAWN FROM THE WITHIN AGREEMENT, AS FOLLOWS:

....
SIGNATURE

RE-SALE PRICE $..

DATE ....

RECEIPT IS HEREBY ACKNOWLEDGED OF ACCEPTANCES WITHDRAWN FROM THE WITHIN AGREEMENT, AS FOLLOWS:

....
SIGNATURE

RE-SALE PRICE $..

DATE ....

RECEIPT IS HEREBY ACKNOWLEDGED OF ACCEPTANCES WITHDRAWN FROM THE WITHIN AGREEMENT, AS FOLLOWS:

....
SIGNATURE

RE-SALE PRICE $..

DATE ....

RECEIPT IS HEREBY ACKNOWLEDGED OF ACCEPTANCES WITHDRAWN FROM THE WITHIN AGREEMENT, AS FOLLOWS:

....
SIGNATURE

RE-SALE PRICE $..

DATE ....

RECEIPT IS HEREBY ACKNOWLEDGED OF ACCEPTANCES WITHDRAWN FROM THE WITHIN AGREEMENT, AS FOLLOWS:

....
SIGNATURE

RE-SALE PRICE $..

D 23 500 SETS 2-21

AGREEMENT FOR SALE AND RE-PURCHASE OF BANKER'S ACCEPTANCES

CLEVELAND, OHIO.....

TO FEDERAL RESERVE OF CLEVELAND:

WE HEREBY OFFER TO SELL TO YOU BANKER'S ACCEPTANCES AS LISTED HEREON AND SUBMITTED HEREWITH, OF AGGREGATE AMOUNT OF $..... LESS DISCOUNT AT THE RATES PER ANNUM SPECIFIED HEREON, FOR FIFTEEN DAYS.

UPON YOUR ACCEPTANCE OF THIS OFFER, YOU WILL FORTHWITH PAY THE PURCHASE PRICE TO US, AND THEREUPON WE SHALL BE IRREVOCABLY BOUND TO RE-PURCHASE SAID ACCEPTANCES FROM YOU, AT THE SAME RATES OF DISCOUNT, ON OR BEFORE FIFTEEN DAYS AFTER DATE.

_____

BY_____

ACCEPTOR	DUE	DAYS	RATE	PRINCIPAL	DISCOUNT	NET

DATE

RECEIPT IS HEREBY ACKNOWLEDGED OF ACCEPTANCES WITHDRAWN FROM THE WITHIN AGREEMENT, AS FOLLOWS:

SIGNATURE

RE-SALE PRICE $

DATE

RECEIPT IS HEREBY ACKNOWLEDGED OF ACCEPTANCES WITHDRAWN FROM THE WITHIN AGREEMENT, AS FOLLOWS:

SIGNATURE

RE-SALE PRICE $

DATE

RECEIPT IS HEREBY ACKNOWLEDGED OF ACCEPTANCES WITHDRAWN FROM THE WITHIN AGREEMENT, AS FOLLOWS:

SIGNATURE

RE-SALE PRICE $

DATE

RECEIPT IS HEREBY ACKNOWLEDGED OF ACCEPTANCES WITHDRAWN FROM THE WITHIN AGREEMENT, AS FOLLOWS:

SIGNATURE

RE-SALE PRICE $

DATE

RECEIPT IS HEREBY ACKNOWLEDGED OF ACCEPTANCES WITHDRAWN FROM THE WITHIN AGREEMENT, AS FOLLOWS:

SIGNATURE

RE-SALE PRICE $

D 56 2M 6-21

SPECIAL APPLICATION FOR REDISCOUNT FOR 15 DAYS OR LESS OF BILLS OF LONGER MATURITY

1

Date .....19.....

To the Federal Reserve Bank of Cleveland:

The undersigned member bank hereby makes application for the rediscount, for.....days at your current published rate, of the notes, drafts, and bills of exchange enclosed herewith and listed in detail and totaled on the reverse side of this application; and hereby certifies that to the best of its knowledge and belief, the loans which are evidenced by these notes, drafts and bills of exchange were made for agricultural, industrial or commercial purposes; and that they conform in all other respects with the provisions of the Federal Reserve Act and the regulations issued by the Federal Reserve Board relating to rediscounts.

It is hereby certified that no borrower upon the notes, drafts and bills of exchange hereby offered for discount to the Federal Reserve Bank of Cleveland and scheduled in this application, is liable to this bank, or company, in an amount, or amounts, greater than ten percentum of the capital and surplus of this bank, or combany, (bills of exchange drawn against actually existing values and commercial or business paper actually owned by such borrowers not included) and that none of said borrowers will be permitted to become liable to this bank in excess of the said amount while his notes, drafts or bills of exchange are under discount with the Federal Reserve Bank of Cleveland.

You are hereby authorized to charge each item to our account at the expiration of.....days.

The following information relative to the condition of this bank at the date of this application is hereby certified:

Capital			
Surplus			
Undivided Profits			
Bills Payable {Including certificates of deposit for money borrowed} {With you			
{With others			
Bills Rediscounted {With you			
{With other Banks.....			
Bonds borrowed			
Bonds or Securities Pledged {or delivered under agreement to re-purchase}			
Reserve.....% with Federal Reserve Bank, amounting to			
Total officers' and directors' liability reported in last called statement.....			
Any material increase in above item since?.....If so, approximate amount			

Purpose for which this rediscount is made.....

NOTICE

Prompt action on applications will be facilitated if the applying bank will furnish information concerning makers or endorsers of paper submitted, on the information slips provided for this purpose.

Signed .....

.....

By .....

(Signature and title of officer or officers designated in authorizing resolution.)

PRINCIPAL REQUIREMENTS FOR DISCOUNT

Authorizing Resolution:

Certified copy of the resolution of the Board of Directors of the member bank authorizing the proper officers to rediscount, must be on file at the Federal Reserve Bank.

Application:

Each application should be in the form prescribed by this bank, and must be signed by an officer or officers authorized by resolution to rediscount.

Endorsement of Member Bank:

All paper must be endorsed by one of the officers named in the resolution authorizing officers to rediscount with the Federal Reserve Bank, in the following form:

.....National Bank of.....

By.....
(Title of signing officer.)

Character of Paper Eligible:

Paper to be acceptable must have a fixed maturity, and be based upon current commercial or industrial transactions, or agricultural or live-stock operations. The proceeds must have been used, or must have been borrowed to be used, for the costs of producing, purchasing, carrying or marketing goods in one or more of the steps of the process of production, manufacture and distribution. A statement showing the borrower to have reasonable excess of quick assets over current liabilities may be accepted as evidence that paper represents a current transaction. Paper secured by collateral such as warehouse receipts representing staple commodities, may be accepted if otherwise eligible.

Maturities:

Commercial paper must have a maturity at the time of rediscount of not more than 90 days; agricultural or live-stock paper may have a maturity at the time of rediscount of not more than six months.

Negotiability, Etc.:

Autograph signatures of makers and endorsers must appear on all notes and endorsements. All instruments must be unquestionably negotiable. Title of any collateral should be clearly conveyed, together with insurance.

Paper Not Eligible:

No paper is eligible for rediscount which has been issued for carrying or trading in investment securities, for speculative investment, or for permanent or fixed investment of any kind. Demand notes, not having fixed maturities, are not eligible.

Amount Due at Maturity Principal Plus Interest	MATURITY	Rate Charged by Member Bank	MAKER'S NAME	NATURE OF BUSINESS	LOCATION	ENDORSERS (AND COLLATERAL, IF ANY)	Renewal? Yes or No	Customers or Purchased Paper?	Signed Statement On File? If so - Date

TOTAL DISCOUNTED TO ______________________

REMARKS

....

....

....

....

TO BE FILLED IN BY FEDERAL RESERVE BANK

Date Received	Date Approved ....
Amount Accepted $....................	By ....
Discount Deducted	By ....
Amount Credited	By ....

D 56 2M 6-21

SPECIAL APPLICATION FOR REDISCOUNT FOR 15 DAYS OR LESS OF BILLS OF LONGER MATURITY

Date .....19.....

To the Federal Reserve Bank of Cleveland:

The undersigned member bank hereby makes application for the rediscount, for.....days at your current published rate, of the notes, drafts, and bills of exchange enclosed herewith and listed in detail and totaled on the reverse side of this application; and hereby certifies that to the best of its knowledge and belief, the loans which are evidenced by these notes, drafts and bills of exchange were made for agricultural, industrial or commercial purposes; and that they conform in all other respects with the provisions of the Federal Reserve Act and the regulations issued by the Federal Reserve Board relating to rediscounts.

It is hereby certified that no borrower upon the notes, drafts and bills of exchange hereby offered for discount to the Federal Reserve Bank of Cleveland and scheduled in this application, is liable to this bank, or company, in an amount, or amounts, greater than ten percentum of the capital and surplus of this bank, or company, (bills of exchange drawn against actually existing values and commercial or business paper actually owned by such borrowers not included) and that none of said borrowers will be permitted to become liable to this bank in excess of the said amount while his notes, drafts or bills of exchange are under discount with the Federal Reserve Bank of Cleveland.

You are hereby authorized to charge each item to our account at the expiration of.....days.

The following information relative to the condition of this bank at the date of this application is hereby certified:

Capital			
Surplus			
Undivided Profits			
Bills Payable {Including certificates of deposit for money borrowed} {With you			
Bills Payable {Including certificates of deposit for money borrowed} {With others			
Bills Rediscounted {With you			
Bills Rediscounted {With other Banks.....			
Bonds borrowed			
Bonds or Securities Pledged {or delivered under agreement to re-purchase}			
Reserve.....% with Federal Reserve Bank, amounting to			
Total officers' and directors' liability reported in last called statement.....			
Any material increase in above item since?.....If so, approximate amount			

Purpose for which this rediscount is made.....

NOTICE

Prompt action on applications will be facilitated if the applying bank will furnish information concerning makers or endorsers of paper submitted, on the information slips provided for this purpose.

Signed .....

.....

By .....

(Signature and title of officer or officers designated in authorizing resolution.)

PRINCIPAL REQUIREMENTS FOR DISCOUNT

Authorizing Resolution:

Certified copy of the resolution of the Board of Directors of the member bank authorizing the proper officers to rediscount, must be on file at the Federal Reserve Bank.

Application:

Each application should be in the form prescribed by this bank, and must be signed by an officer or officers authorized by resolution to rediscount.

Endorsement of Member Bank:

All paper must be endorsed by one of the officers named in the resolution authorizing officers to rediscount with the Federal Reserve Bank, in the following form:

.....National Bank of.....

By.....
(Title of signing officer.)

Character of Paper Eligible:

Paper to be acceptable must have a fixed maturity, and be based upon current commercial or industrial transactions, or agricultural or live-stock operations. The proceeds must have been used, or must have been borrowed to be used, for the costs of producing, purchasing, carrying or marketing goods in one or more of the steps of the process of production, manufacture and distribution. A statement showing the borrower to have reasonable excess of quick assets over current liabilities may be accepted as evidence that paper represents a current transaction. Paper secured by collateral such as warehouse receipts representing staple commodities, may be accepted if otherwise eligible.

Maturities:

Commercial paper must have a maturity at the time of rediscount of not more than 90 days; agricultural or live-stock paper may have a maturity at the time of rediscount of not more than six months.

Negotiability, Etc.:

Autograph signatures of makers and endorsers must appear on all notes and endorsements. All instruments must be unquestionably negotiable. Title of any collateral should be clearly conveyed, together with insurance.

Paper Not Eligible:

No paper is eligible for rediscount which has been issued for carrying or trading in investment securities, for speculative investment, or for permanent or fixed investment of any kind. Demand notes, not having fixed maturities, are not eligible.

Amount Due at Maturity Principal Plus Interest	MATURITY	Rate Charged by Member Bank	MAKER'S NAME	NATURE OF BUSINESS	LOCATION	ENDORSERS (AND COLLATERAL, IF ANY)	Renewal? Yes or No	Customers or Purchased Paper?	Signed Statement On File? If so - Date

DUPLICATE
TO BE RETAINED BY
APPLYING BANK

TOTAL DISCOUNTED TO ____________________

REMARKS

TO BE FILLED IN BY FEDERAL RESERVE BANK

Date Received .... Date Approved ....
Amount Accepted $.................... By ....
Discount Deducted .... By ....
Amount Credited .... By ....

#10

3323-6

FEDERAL RESERVE BANK
OF
KANSAS CITY

October 15th, 1923.

Mr. Walter L. Eddy, Secretary,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Eddy:

In compliance with the request contained in Board's letter X-3855, 10/11/23 there is enclosed copy of form of Purchase and Resale Contract which we have entered into on several occasions with our member banks and with the Federal Land Banks at Wichita and Omaha.

Yours very truly,

Governor.

Encl.

PURCHASE AND RESALE CONTRACT.

_____

To Federal Reserve Bank of Kansas City,

Kansas City, Missouri,

Gentlemen:

We hand you herewith United States Government securities amounting to _____ par value as listed below, which we have today sold to you for the sum of _____ and which we hereby agree to repurchase from you on or before _____ for the sum of _____ and interest thereon at the rate of _____ per annum for the number of days that the securities are held by you.

In consideration of this repurchase agreement and as collateral security for the performance of this contract, we hereby agree to deliver to the Federal Reserve Bank of Kansas City an additional amount of acceptable United States Government issues as and when, in the opinion of the Federal Reserve Bank of Kansas City, market conditions warrant.

It is further agreed that in the event repurchase is not made on or before _____, authority is hereby given the Federal Reserve Bank of Kansas City to sell the United States Government securities covered by this contract, together with such United States Government issues as have been pledged as additional security, if any, and to apply the proceeds arising therefrom in payment of this obligation, remitting any residue after payment of expenses incurred in connection therewith, if any, to us.

_____

BY _____
President.

SCHEDULE OF SECURITIES OFFERED UNDER ABOVE PURCHASE AND RESALE CONTRACT

Description of Issue	Maturity	Amount (Par Value)

#7

3323-6

FEDERAL RESERVE BANK OF CHICAGO

230 SOUTH LA SALLE STREET

October 13, 1923.

Mr. Walter L. Eddy, Secretary,
Federal Reserve Board,
Washington, D. C.

Dear Sir:

In accord with your letter X-3855, dated October 11th, we are enclosing a copy of our agreements which we enter into with a few reputable dealers to repurchase from us within fifteen days Bankers' Acceptances, U. S. Treasury Certificates of Indebtedness and notes.

Yours very truly,

Governor.

FC

Federal Reserve Bank,

Chicago, Illinois.

Gentlemen:

We hereby offer to you for purchase at par, United States Treasury Certificates of Indebtedness or Notes, described below:

In consideration of your purchasing the above Securities, we hereby agree to repurchase the same from you on or before fifteen days from date at par and accrued interest.

Please place proceeds of above to the credit of _____ for our use and advise them.

Yours very truly,

Federal Reserve Bank,

Chicago, Illinois.

Gentlemen:

We hereby offer to you for purchase at par, United States Treasury Notes, described below:

In consideration of your purchasing the above Treasury Notes, we hereby agree to repurchase the same from you on or before fifteen days from date at par and accrued interest.

In further consideration of the above agreement, we hereby pledge as Collateral an additional amount of these Securities equal to 2% of the par value.

Please place proceeds of above to the credit of _____ for our use and advise them.

Yours very truly,

Federal Reserve Bank,
Chicago, Illinois.

Gentlemen:

We hereby offer to you for purchast at _____ per cent discount, banker's acceptances described below and delivered to you herewith.

$_____	Bank	%
$_____	"	%
$_____	"	%
$_____	"	%

Please place proceeds of the above to the credit of our account with the _____ Bank.

We hereby certify that the rate above stated represents the rate of discount at which the said acceptances were purchased by us.

In consideration of your purchasing said acceptances, we hereby agree to repurchase the same from you on or before fifteen days at the rate of discount at which sold to you.

Very truly yours,

Mrs Wyatt

#6

3323-6

FEDERAL RESERVE BANK
OF RICHMOND

October 13, 1923.

RECEIVED

OCT 15 1923
OFFICE OF COUNSEL

SUBJECT: Repurchase Agreements.

Federal Reserve Board,
Washington, D.C.

Gentlemen:

Supplementing our letter of yesterday under the above caption, I am sending you herewith comments of our Counsel upon the opinion rendered by the Counsel of the Board, in which particular reference is made to the form of repurchase agreement used by this Bank.

We have been of the opinion, as stated by our Counsel, that our form of agreement is, in nature and effect, a promissory note. If that is held to be the case, there will remain to be considered whether it is subject to the stamp tax when used by member banks in obtaining advances on their bills and notes not secured by Government obligations.

Very truly yours,

GEO. J. SEAY,
Governor.

GJS-CCP
1 Encl.

RECEIVED
FEDERAL RESERVE BOARD

OCT 15 1923

[redacted]RAL RESERVE BANK OF RI[redacted]D

OFFICE CORRESPONDENCE

Date October 12, 1923.

To Mr. George J. Seay, Governor.

Subject Repurchase agreements of the Federal Reserve Bank of Richmond.

From M. G. Wallace, Counsel.

My dear Governor Seay:

I have read with interest the opinion of the General Counsel of the Federal Reserve Board, dated August 18, 1923, upon the subject of repurchase agreements by Federal reserve banks. I thoroughly agree with Mr. Wyatt in his conclusion that if a repurchase agreement contains a provision under which the so-called seller is bound to repurchase the thing sold for an amount named in the agreement and at a time named in that agreement, and the so-called buyer is bound to resell the thing at the time and for the price mentioned, then the transaction is essentially a loan of money and an agreement to repay the same, and the fact that the parties use words which imply a sale and an absolute transfer of title to the property does not alter the real nature of the transaction, for, in such cases, the transfer of the property must be regarded as collateral to the main intent of the parties, which is the advance and repayment of money.

The repurchase agreement used by us contains an absolute promise on the part of the member bank to pay us the face value of the paper sold on a fixed date. Our agreement, therefore, falls within the first class of transactions mentioned on Page 4 of Mr. Wyatt's opinion, and, as I stated above, I thoroughly agree with him in saying that transactions had under this form of agreement are loans and not sales.

It follows from the above that we could only properly use this form, if at all, in making advances to member banks and could not use it when purchasing property upon the open market. I do not, however, fully follow Mr. Wyatt to his conclusion that the transaction is a loan but the instrument that evidences the loan is not a promissory note and that, therefore, we could not engage in transactions of this character, even under Section 13.

I think it may be safely assumed that the instrument in question is not a negotiable note. However, the term "promissory note" is not limited to notes which comply with the somewhat rigid requirements of the Negotiable Instrument Law, but is applied freely to instruments evidencing an agreement to pay money, although such instruments could not by any chance be considered negotiable notes.

Black's Law Dictionary defines a promissory note as follows: "A promise or engagement in writing to pay a specified sum at a time therein limited, or on demand, or at sight, to a person therein named, or to his order, or bearer."

It seemed to me that the very reasoning which led to the conclusion that the transaction evidenced by our repurchase agreement was a loan and not a sale, because the agreement amounted to an absolute

[redacted]RAL RESERVE BANK OF RI[redacted]D

OFFICE CORRESPONDENCE

Date October 12, 1923.

To Mr. George J. Seay, Governor.

Subject Repurchase agreements of the Federal Reserve Bank of Richmond.

From M. G. Wallace, Counsel.

promise to repay the purchase price, led also to the conclusion that the written instrument which evidenced this engagement to pay the specific sum (that is to say, the face value of the paper transferred), at a time mentioned in the repurchase agreement to the Federal Reserve Bank of Richmond, was a promissory note. Mr. Wyatt's opinion, of course, does not deal with our particular form of note, and I am not familiar with the forms in use by other banks; but I notice that his chief reason for holding that a repurchase agreement is not a promissory note is that the "debt in such cases is not evidenced by notes of any kind". Our written repurchase agreement contains, I believe, a complete statement of the transaction, including specifically the amount which must be repaid and the time at which it is to be repaid. It, therefore, seems to me that it would necessarily follow that if it be held that the transaction evidenced by the agreement creates a debt, then it must follow that the written note or memorandum containing a full statement of the transaction contains the evidence of the debt.

I need hardly to say that, since the real question involved in this matter is whether or not our repurchase agreement should be regarded as a promissory note within the meaning of the Federal Reserve Act, it is a question which will, for all practical purposes, be settled by a ruling of the Board or an opinion of its Counsel. I am, therefore, taking the liberty of suggesting that you submit to the Counsel for the Board a copy of our repurchase agreement and request a ruling as to whether or not it is proper to continue to use it as a substitute for a fifteen-day note in transactions with member banks.

Very truly yours,

M. G. Wallace

M. G. Wallace,
Counsel.

MGW:W.

FEDERAL RESERVE BANK
OF
ST. LOUIS

October 13, 1923

Federal Reserve Board,
Washington,
D. C.

Att. Mr. W. L. Eddy, Secretary.

Gentlemen:-

Replying to your letter of the 11th X-3855, you are advised that this bank has never carried any Government securities for member banks, nonmember banks, or dealers under so called re-purchase agreement.

There have been times in the past when we have carried acceptances for dealers having offices in this district. The form of re-purchase agreement used in such cases is enclosed herewith.

Very truly yours,

O. M. Attebery,
Deputy Governor.

D 37.

REPURCHASE AGREEMENT

BANKERS' ACCEPTANCE

FEDERAL RESERVE BANK OF ST. LOUIS.

Date _____

We hereby agree to repurchase from the Federal Reserve Bank of St. Louis, on or before 15 days from date, the Bankers' Acceptances herein described, aggregating $_____ at the rates specified.

We certify that the rate stated below represents the rate of discount at which the said acceptances were purchased by us.

Please credit proceeds through the following bank,

_____

_____

Official Signature.

ACCEPTOR	Due	Days	Rate	Principal	Discount	Net

Date,..

Receipt is hereby acknowledged of acceptances aggregating $............................withdrawn from within agreement.

....
Signature

Our Numbers, from........................to........................

Date,..

Receipt is hereby acknowledged of acceptances aggregating $............................withdrawn from within agreement.

....
Signature

Our Numbers, from........................to........................

Date,..

Receipt is hereby acknowledged of acceptances aggregating $............................withdrawn from within agreement.

....
Signature

Our Numbers, from........................to........................

Date,..

Receipt is hereby acknowledged of acceptances aggregating $............................withdrawn from within agreement.

....
Signature

Our Numbers, from........................to........................

Date,..

Receipt is hereby acknowledged of acceptances aggregating $............................withdrawn from within agreement.

....
Signature

Our Numbers, from........................to........................

Willyatt,
"

FEDERAL RESERVE BANK

OF RICHMOND

332.3-6

October 12, 1923.

SUBJECT: Repurchase by Federal Reserve Banks of Securities and Bankers' Acceptances under so-called repurchase agreement.

Federal Reserve Board,
Washington, D. C.

Gentlemen:

In response to the request contained in the Board's letter X-3855, October 11, 1923, we enclose two copies of our Circular No. 130, under the title "Anticipations of Rediscounted Paper and Repurchase Agreements," on page 3 of which will be found the only form of repurchase agreement used by this Bank.

It will be noticed that this form is an agreement or promise to pay to the Federal Reserve Bank of Richmond on a specified date a certain sum, comprising the aggregate sum of eligible bills and notes, of varying maturities, offered to us for the purpose of obtaining short-time advances; and that this form of agreement was used not in substitution of but in addition to the direct provision of Section 13 of the Act, which permits the Federal Reserve Banks to make advances to their member banks on their promissory notes for a period not exceeding 15 days. It will be understood that the primary purpose of the arrangement is to obviate the use of revenue stamps required to be affixed to the ordinary form of promissory note of member banks when not secured by Government obligations.

This form of repurchase agreement was not adopted by this Bank until it became advised that a repurchase agreement in some form was in use between all other Federal Reserve Banks and their member banks, and until it was advised (informally) that the Internal Revenue Department had expressed the opinion that this form of agreement did not require revenue stamps to be affixed.

This Bank does not permit the use of a repurchase agreement in the case of bankers acceptances bought by it, although such acceptances might be included in the bills and notes offered to us by member banks for discount under the repurchase agreement; neither is this repurchase agreement used with member banks or others in connection with Government securities of any character.

Very truly yours,

Geo. J. Seay

GJS-CC.

GEO. J. SEAY,
Governor.

Forms of agreement Repurchase proposed

FEDERAL RESERVE BOARD

WASHINGTON

X-3855
October 11, 1923.

SUBJECT: Re-purchase by Federal Reserve Banks of Securities and Bankers' Acceptances under so-called re-purchase agreement.

Dear Sir:

Certain questions have arisen as to the propriety and legality of the practice engaged in by the Federal Reserve Banks in purchasing Government securities and acceptances from member and nonmember banks, and stock, bond and acceptance brokers, under agreements providing that the sellers of these securities or acceptances will re-purchase the same from the Federal Reserve Banks within a specified period of time. In considering these questions it is very desirable that the Board have before it copies of the agreements used by the Federal Reserve Banks in order that it may be properly informed as to the details of the transactions. You are requested, therefore, to furnish the Board with a form of any such re-purchase agreement which your bank is now using or which it may have used heretofore.

Very truly yours,

Walter L. Eddy,
Secretary.

TO GOVERNORS OF F.R. BANKS

FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

October 11, 1923.

X-3855

Letter to all ~~Federal Reserve Agents.~~

Dear Sir :

Certain questions have arisen as to the propriety and legality of the practice engaged in by the Federal reserve banks in purchasing Government securities and acceptances from member and nonmember banks, and stock, bond and acceptance brokers, under agreements providing that the sellers of these securities or acceptances will re-purchase the same from the Federal reserve banks within a specified period of time. In considering these questions it is very desirable that the Board have before it copies of the agreements used by the Federal reserve banks in order that it may be properly informed as to the details of the transactions. You are requested, therefore, to furnish the Board with a form of any such re-purchase agreement which your bank is now using or which it may have used heretofore.

Yours very truly,

Walter L. Eddy
Secretary

SUBJECT: Re-purchase by F.R.Banks of Securities and Bankers' Acceptances under so-called Re-purchase agreement.

#2

FEDERAL RESERVE BANK

OF NEW YORK

~~3323~~

3323-6

October 11, 1923

Walter L. Eddy, Esq.,
Secretary, Federal Reserve Board,
Washington, D. C.

8/18/23

Dear Mr. Eddy:

Many thanks for your confidential letter of October 10, enclosing, at the request of Miss Parker of the General Files, copy of confidential memorandum of Mr. Wyatt, General Counsel, to the Governor, with reference to purchases of Government securities and bankers' acceptances by Federal reserve banks under so-called repurchase agreements, which I am indeed glad to have.

Very truly yours,

E. R. Kenzel

E. R. Kenzel,
Deputy Governor.

October 10, 1923.

CONFIDENTIAL

Mr. E. R. Kenzel, Deputy Governor,
Federal Reserve Bank,
New York, N. Y.

Dear Sir:

In response to the telephone request of Miss Parker of the General Files, there is enclosed a copy of the confidential memorandum (8/15/23 by Mr. Wyatt, General Counsel, to the Governor with reference to purchases of Government securities and bankers' acceptances by Federal Reserve Banks under so-called re-purchase agreements.

Very truly yours,

Walter L. Eddy,
Secretary.

(Enclosure)

Form No.

Office Correspondence

FEDERAL RESERVE BOARD

332.36

Date October 10, 1923.

To Mr. Eddy-Secretary

From Mr. Wyatt- General Counsel.

Subject: Transmission of copies of opinion on "Repurchase Agreements" to Governors of all Federal reserve banks

2—8405

In your memorandum of October 9th transmitting a copy of the program for the Governors' Conference as submitted to the Board by the Secretary of that conference, you suggest that a copy of my opinion on the subject of "Repurchase Agreements", which is listed for discussion as Topic F, should be sent to the Governor of each Federal reserve bank, and you inquire whether there is any reason why this should not be done. It is my understanding that the Board ordered copies of this opinion sent to the Governors of all Federal reserve banks at the same time that it ordered copies sent to the members of the Federal Advisory Council. If this has not been done, I think it should be done immediately.

Walter Wyatt
General Counsel.

WW OMC

See our letter Oct 11th Eddy

Form No. [illegible].

Office Correspondence

FEDERAL RESERVE BOARD

Date October 9, 1923

To Mr. Wyatt

Subject:

From Mr. Eddy

2—8495

For your own confidential information, there is attached copy of program for the Governors' Conference as submitted to the Board by the Secretary of that conference. I want to call your attention particularly to item "F" in which reference is made to an opinion rendered by you under date of August 18th, our index X-3817. Our records do not show that a copy of the opinion in question was sent to the governors of all Federal reserve banks, and as the matter is one which is to be discussed at the Governors' Conference it occurs to me that a copy of the opinion should be sent to all governors at this time in order that they may be familiar with it before coming to Washington. Is there any reason why this should not be done?

Form No. 131.

Office Correspondence

FEDERAL RESERVE BOARD

333

FEDERAL RESERVE BOARD

Date August 21, 1923.

To Mr. Hamlin Chairman, Law Committee

Subject: 333.23

From Mr. Hoxton

2—8495

At the meeting of the Federal Reserve Board this morning, the attached memorandum from General Counsel dated August 18, 1923, on the subject "Purchase of Government Securities and Bankers' Acceptances by Federal Reserve banks under so-called Repurchase Agreements", was referred to the Law Committee for revision. The memorandum is later to be referred to the Federal Advisory Council and the Conferences of the Governors and Chairmen of the Federal Reserve banks.

L.8. Service
L.9
L.10

Form No. 131.

Office Correspondence

FEDERAL RESERVE BOARD

333.

Date August 20, 1923.

To Mr. Miller

From Mr. Hoxton

Subject: 332.3 F-L

332.3

2-8405

8/18/23

Governor Crissinger has ordered that the attached memorandum from General Counsel, subject, "Purchase of Government Securities and Bankers' Acceptances by Federal Reserve Banks under so-called Repurchase Agreements", be docketed for the meeting tomorrow with a view of referring same to the Federal Advisory Council, and desires that you read the memorandum of Counsel before tomorrow's meeting.

Refer to Law Committee for revision before submission to Fed Advisory Council

3323-6

CONFIDENTIAL

COPY

X-3817

OFFICE CORRESPONDENCE

Date, August 18, 1923.

To Governor Crissinger

From Mr. Wyatt, General Counsel.

Subject: Purchase of Government Securities and Bankers' Acceptances by Federal Reserve Banks under so-called Repurchase Agreements.

Wyatt Opinion

Question has been raised as to the propriety of the practice engaged in by the Federal reserve banks of purchasing Government securities and bankers' acceptances from member and nonmember banks, and stock, bond and acceptance brokers, under agreements providing that the sellers of these securities or acceptances will repurchase the same from the Federal reserve banks within a specified period of time.

The details of such transactions vary, but it appears that in all cases United States Government securities or bankers' acceptances are transferred to the Federal reserve bank at a certain agreed price while at the same time an agreement is entered into obligating or permitting the seller of the securities or acceptances to repurchase the same within a certain period. It is sometimes provided that the Federal reserve banks shall have the right to require the seller to repurchase the securities or acceptances at any time within this period upon giving a certain number of days' written notice. The Federal reserve bank charges interest for the period during which it holds the securities or acceptances, and this interest is sometimes computed in advance and sometimes when the resale is effected. It is also provided in some of these agreements that the seller shall keep on deposit with the Federal reserve bank additional securities sufficient to maintain a margin of safety, based upon a ratio of $120 to each $100 of the difference between the par value of the securities purchased and the market value thereof.

The Comptroller's Office has ruled that national banks which have sold securities to Federal reserve banks under such agreements shall consider the transactions as borrowings of money and shall carry them on their books accordingly. On the contrary, the Federal Reserve Board has held in connection with the reports of member State banks and trust companies that such a transaction is not to be considered as a borrowing but should be included in a special item on the report as securities sold under repurchase agreements. You have requested the opinion of this office as to the true nature of such transactions, i.e., whether they constitute purchases on the open market by Federal Reserve banks as authorized by Section 14 of the Federal Reserve Act or merely loans secured by the deposit of securities or acceptances as collateral.

In my opinion, a transaction whereby securities or acceptances are sold to a Federal Reserve bank under an agreement obligating the seller to repurchase the same on or before a certain date is in legal effect merely a loan secured by collateral, and not a sale; and Federal reserve banks have no legal authority to participate in such a transaction. Where the agreement merely permits, but does not obligate, the seller to repurchase the securities or acceptances, no universal rule can be laid down; but it is believed that even in these cases the transactions would generally be construed by a court as loans secured by collateral. The reasons upon which my opinion is based are stated below.

GENERAL PRINCIPLES

In construing an agreement such as that described above, a court would be guided by the intention of the parties as far as it can be ascertained from the agreement itself and the surrounding circumstances. For this purpose it is settled that parol evidence will be admitted to show the facts and circumstances attending the execution of the agreement. The court will look to the substance of the transaction and will not be controlled by the form which the agreement may happen to have. The actual intent of the parties will be the controlling factor. Where there is a contract of sale and a contemporaneous agreement to resell at a certain time the two agreements will be construed together in the endeavor to ascertain the true intention of the contracting parties. In 5 Ruling Case Law, p. 589, it is said:

> "Sometimes a bill of sale intended as a security for money lent is accompanied by the execution of a separate instrument of defeasance, by the terms of which, on the repayment of the loan at a certain time, the bill to be surrendered to the vendor. In such a case the two instruments must be construed together and constitute a mortgage."

In discussing the distinction between a conditional sale and a chattel mortgage 11 Corpus Juris at page 412, states as follows:

> "Intention of the parties. Whether a transaction constitutes a chattel mortgage or a conditional sale ultimately depends on the intention of the parties, which must be ascertained from their conduct and the attendant circumstances, as well as from the terms of the agreement. Further, the intention must be collected from the entire transaction and not from any particular feature of it, and from the actual agreement of the parties and not from their characterization of it, although the construction placed on the contract by the parties is properly considered. <u>The form of the instrument is of little importance.</u> A contract of conditional sale will not be regarded as a chattel mortgage merely because it is recorded as such."

With regard to the specific provisions of the contract which indicate the intention of the parties as to the transaction, it is further stated in 11 Corpus Juris, at page 413, as follows:

> "Conditions Permitting Repurchase. A bill of sale with an agreement permitting repurchase may constitute either a chattel mortgage or a conditional sale, its character depending on the surrounding circumstances and the intention of the parties. The fact that a bill of sale contains an agreement to resell the property to the seller at a fixed price or confers on him an option to repurchase it does not, in itself, establish that the transaction is a mortgage, especially when there is no debt to be secured and no obligation to repay. But the transfer may be shown to be a mortgage by evidence that the vendor's obligation continued, that he bound himself to pay interest, that the bill of sale was given to secure a loan, or that the amount of consideration was inadequate as a purchase price."

From this statement of the law it is obvious that the specific provisions of a particular contract must be known in order to determine whether or not a conditional sale or a loan in the nature of a chattel mortgage is intended. This question turns upon the provisions of the particular contract and, therefore, an examination of each agreement entered into by the Federal reserve banks would be necessary for a definite opinion as to the effect of that particular agreement. There are, however, certain of these agreements which classify themselves very readily either as sales on condition or loans secured by chattel mortgage or pledges.

COMMON CHARACTERISTICS OF LOANS

There are several features found in many of the repurchase agreements of Federal Reserve banks which indicate that loans rather than conditional sales are intended. One of the most important of these is the stipulation that additional securities shall be deposited by the seller withthe Federal reserve bank to maintain a certain margin over and above the market value of the securities. If the parties intended a sale there would be no necessity for such a provision. This is a clause which is usually found in connection with chattel mortgages, pledges or other forms of loans secured by collateral; in such cases the provision is very desirable. The purpose of the provision is plainly to protect the Federal reserve bank from any possible loss by reason of fluctuation in the value of the securities or acceptances held by it as security for a loan.

Another important characteristic of a loan is present when it is provided that the Federal reserve bank may sell at a public or private sale the securities or acceptances upon which it has advanced money, in case the so-called seller fails to comply with the agreement of repurchase and to buy back the securities or acceptances at the time specified. This also is a clause which is usually found in all forms of loan agreements but for which there can be no possible need in a contract of sale, even though such contract reserves to the seller the privilege of repurchasing within a certain time. If these securities or acceptances are really owned by the Federal reserve bank it would be entirely unnecessary to go through the form of a sale in order to transfer the title thereto to the Federal reserve bank, because it already has title; and if it is desired by the Federal reserve bank to have someone else purchase them, the Federal reserve bank, being the owner of the securities or acceptances, may make such sale in the ordinary manner and it would be entirely superfluous to provide for this kind of a sale in the agreement. But if the Federal reserve bank does not, as a matter of fact, take absolute title to the securities or acceptances, a provision for sale in case of default is necessary in order that the Federal reserve bank, or any other party purchasing at such sale, may acquire a clear title.

The fact that the Federal reserve banks charge interest on such transactions, and that this interest is computed in the same way as in the case of any ordinary loan is a very strong factor in evidencing the intention of the parties to this agreement in reality to negotiate a loan, although in form the transaction is an absolute sale with a right to repurchase reserved to the seller. In the case of an actual sale with right to repurchase there probably would be some form of fee or commission provided for to compensate the Federal reserve bank for its services, but it is unlikely that this fee or commission would take the form of interest and be computed in the same manner as interest, unless the parties were attempting to consummate a loan rather than a sale.

TWO CLASSES OF REPURCHASE AGREEMENTS.

Transactions of the kind under consideration may be divided into two general classes (1): Those in which the seller is obligated to repurchase the securities and acceptances on or before a certain specified date; and (2) those in which the seller is given the privilege of repurchasing if he so desires. In the first of these classes, the nature of the transactions seems entirely clear, but the proper construction of the second class of transactions depends largely on the terms of each particular agreement.

SELLER OBLIGATED TO REPURCHASE.

Where the so-called seller has not only a right or privilege to repurchase, but is absolutely required to repurchase by the terms of the agreement, this is conclusive of the intention of the parties to

effect a loan secured by the deposit of securities or acceptances as collateral. Where the agreement entered into by the Federal reserve bank, therefore, contains a provision obligating the seller to repurchase the securities or acceptances within a certain specified period, or at the option of the Federal reserve bank upon a certain number of days written notice, there is no question but that the transaction is a loan, although in form a conditional sale. This position is sustained by the authorities.

In the case of Robinson v. Farrelly, 16 Ala., 472, the Court in discussing the nature of a transaction similar to that under consideration states as follows:

> "The nature of a sale, with the right to repurchase for a given sum, and within a specified time, is a conveyance of the title to the purchaser; he is the owner of the property, but the vendor has the right to repurchase if he sees fit; no obligation rests on him to do so, it is a mere matter of volition, whether he will or not. If he declines to repurchase, he is not bound to refund the money, and the purchaser has no cause of action against him because he does not see fit to claim his privilege. If the purchaser retain the right to demand the money of the vendor, notwithstanding his purchase, a debt is then due from the vendor to him, and the existence of this debt within itself shows that the conveyance is a mere security for its payment."

In the case of Cake v. Shull, (N.J.) 16 Atl. 434, the court made the following statement:

> "The right of a court of equity to declare a deed or bill of sale, which is absolute on its face, to be a mortgage, is clear, as is also the competency of parol evidence to prove the fact. The question turns upon the actual intention of the parties at the time of the transaction. Crane v. Decamp, 21 N.J. Eq. 414. If that intention was that the instrument should constitute security for the payment of money, or the performance or non-performance of any other act, then it is deemed a mortgage; but, if a real sale was intended, then it takes effect according to its terms, even though a contemporaneous right or privilege to purchase back the property sold was contracted for by the vendor. Gassert v. Bogk, (Mont.) 19 Pac. Rep. 281; Conway's Ex'r v. Alexander, 7 Cranch 218; notes to Thornbrough v. Baker, 2 Lead. Cas. Eq. 1030. An obligation to repurchase, or any other duty resting on the vendor by the performance of which the property was to revert to him, could ordinarily be conclusive evidence of a mortgage, while the absence of such obligation or duty, either expressed or implied, would be indicative of a sale."

SELLER WITH OPTION TO REPURCHASE.

Where the agreement provides that the seller shall have the right or privilege of repurchasing within a certain specified period, but there is no obligation upon him to do so, there may be some question as to the intention of the parties; it is sometimes uncertain whether such a transaction should properly be construed as a sale or a loan. In such cases the courts have, in endeavoring to ascertain the true intention of the parties, reached different conclusions, depending upon the purpose of the transaction, the result to be accomplished, and the other surrounding circumstances. As has been heretofore stated, each agreement must be construed according to its own particular terms and it is difficult to lay down any general rule which will be applicable to all cases. The fact that most of the repurchase agreements entered into by Federal reserve banks provide for the payment or deduction of interest is a strong indication of an intention to effect a loan rather than a sale. Further indication of such an intention is sometimes found in the payment of a price other than the market value for the securities or acceptances and in the provision for deposit of additional collateral. In view of these facts, I believe that it may be fairly said that most if not all sale agreements made by Federal reserve banks reserving to the seller the privilege of repurchasing are, properly construed, loans and not sales.

The cases hereafter cited show under what circumstances agreements reserving to the seller merely the privilege to repurchase are to be construed as loans secured by collateral although the transactions are in form conditional sales.

In the case of Dickinson v. Oliver, 89 N.Y. Supp., 52 (Affirmed in 88 N.E. 44), where a bill of sale was given for certain property together with an agreement permitting the seller to repurchase within a certain time, the transaction was held to constitute a loan in the nature of a chattel mortgage and not a sale with the right of repurchase. The court quotes with approval the following head note from the case of Susman v. Whyard, 149 N.Y. 127, 43 N.E. 413:

> "Where the provisions of an instrument which is in form an absolute bill of sale, taken in connection with the surrounding facts, indicate that the parties contemplated a loan of money and a sale of the property, upon the condition, however, that the property should be returned upon the payment of the money so loaned, the instrument is in effect a chattel mortgage, and the fact that it employs the term 'resale' will not change its meaning when no other sum than the amount of the loan is mentioned or contemplated as the price of such resale."

In the case of O'Niell v. Walker, (La.) 12 South. 872, an agreement of sale permitted the seller to buy back timber purchased at any time within six months at cost plus eight per cent interest, the repurchaser to stand any loss incurred in the meantime. The court held that this agreement, in the light of all the surrounding circumstances, was in effect merely a transaction giving security for a loan and could not be construed as a sale.

In Sparks v. Robinson, (Ark) 515, S.W. 460, which was a case involving the usury laws, an absolute bill of sale, which purported to sell certain property at a price far less than the market value thereof, was construed as a cover for a loan. The court said that "The law shells the covering and extracts the kernel."

In the case of Mercantile Trust Company v. Kastor, (Ill.) 112 N.E. 988, the Trust Company, which had no power to make loans entered into a contract purporting to be a sale by a certain corporation of its accounts receivable to the Trust Company. The Trust Company was by the terms of this agreement to pay no more than 77% of the value of the said accounts. The corporation and the defendant guaranteed to pay these accounts if they were not paid at maturity. On a certain account which was unpaid the Trust Company brought suit against the defendant on this guaranty. It was held that the transaction constituted not a sale, but merely a loan with the accounts receivable assigned to the Trust Company as security, and the Trust Company was permitted to recover nothing because the contract was ultra vires and therefore void.

In the case of Home Bond Company v. McChesney, 239 U.S. 568, the Supreme Court of the United States approved the findings of a special master holding that a transaction very similar in its terms to that in the Kastor case, which is discussed above, was a mere loan with collateral security, and not a sale. The Supreme Court quotes with approval the language of the United States District Court as follows:

> "In so far as the contracts in question here used words fit for a contract of purchase, they are mere shams and devices to cover loans of money at usurious rates of interest."

ORIGIN OF PRACTICE

That these transactions are in substance loans rather than bona fide purchases of securities on the open market is further confirmed by a consideration of the origin of the practice.

The practice of the Federal Reserve banks in purchasing Government securities and bankers' acceptances under re-sale agreements originated in November, 1917, when demands for accomodation upon the Federal reserve banks were very heavy and the Government was floating large issues of Liberty bonds. On December 1, 1917, the stamp tax on promissory notes was to become effective and this would have been a very heavy expense upon member banks in obtaining funds from Federal reserve banks upon their fifteen day collateral notes under Section 13 of the Act. The Federal Reserve Board, therefore, suggested that in order to avoid the payment of this stamp tax member banks might obtain short time advances from Federal reserve banks by rediscounting eligible commercial paper of longer maturities under re-purchase agreements. The Board pointed out that interest might be charged only for the period covered by the agreement, that is, from the date of discount to the date of repurchase, and that the interest might be adjusted in advance or at the time of the re-sale. The suggestion of the Board was adopted and the Federal reserve banks began purchasing paper from member banks under repurchase agreements as a substitute for the fifteen day collateral notes of member banks. Notes secured by Liberty Bonds or United States certificates of indebtedness were subsequently exempted from the stamp tax and thereupon at least one of the Federal reserve banks (Richmond) discontinued this practice. Other Federal reserve banks, (notably New York) have not discontinued it, however, but on the contrary have extended it by entering into transactions of this kind not only with their member banks but also with non-member banks and stock, bond, and acceptance brokers.

It is clear, therefore, that these transactions originated as loans (presumably under the authority to make direct loans to member banks) and the practice has simply grown and spread until it has gone far beyond the original purpose of the Board's ruling, and has been taken advantage of by the Federal reserve banks as a justification for making direct loans to non-member banks and to brokers - parties to whom the Federal Reserve Act never intended that Federal reserve banks should extend credit in any way without the intervention of a member bank.

CONCLUSIONS OF LAW.

When the transactions between the Federal reserve bank and the various member and non-member banks, and other corporations, therefore, are considered in the light of all the surrounding circumstances it seems clear that under the principles announced by the courts, most if not all

of these transactions should be considered loans secured by the deposit of securities or acceptances as collateral, instead of sales with the right to repurchase reserved to the seller. The agreements, though in form sales, are in substance loans secured by the pledge of collateral.

The transaction described being a loan secured by collateral, instead of a sale which it purports to be, Federal reserve banks have no power to engage in such transactions and such agreements on the part of these banks are entirely ultra vires. Federal reserve banks have no power to make loans direct to the person or corporation primarily liable under any conditions, except that they make advances to their member banks upon promissory notes for a period not exceeding 15 days when properly secured in accordance with Section 13 of the Federal Reserve Act. Advances under repurchase agreements such as described above, however, can not be considered advances upon promissory notes, because the debt in such cases is not evidenced by notes of any kind. Federal reserve banks, therefore, can not in my opinion, make advances even to member banks under repurchase agreements.

POLICY

This subject has been discussed above largely as a question of general law, and I have not discussed the effect of its application to the Federal reserve banks. I think, however, it is perfectly manifest that the application of these conclusions of law to the operations of the Federal reserve banks will lead to a much closer adherence to the fundamental purposes and principles of the Federal Reserve Act than exists at the present time. The original Federal Reserve Act gave the Federal reserve banks no power to make direct loans even to their member banks.

The power to make direct loans to member banks on their fifteen day notes was granted on the recommendation of the Federal Reserve Board as a means of enabling Federal reserve banks to extend credit to their member banks for short periods of time on the security of paper eligible for rediscount. An amendment to the Act granting this power to Federal reserve banks was recommended by the Federal Reserve Board in 1916 when little use was being made of the rediscount facilities of the Federal reserve banks and it was hoped that this would induce the member banks to make more use of the system. The Board's proposed amendment, however, was not acted upon before it became evident that this country might be drawn into the world-war and in order that the banks of the country might be in position to facilitate Government financing in such an event, the Board made a further suggestion that the proposed fifteen-day collateral notes of member banks might be made eligible when secured by bonds and notes of the United States as well as when secured by paper eligible for rediscount.

It was never contemplated by Congress that the Federal reserve banks should make direct loans to non-member banks nor to stock, bond and acceptance brokers or other individuals, partnerships or corporations which ordinarily would seek such accommodations from member banks. The practice which has grown up in the Federal reserve banks of buying bonds and bankers' acceptances under so-called "repurchase agreements" amounts to nothing more nor less than the making of direct loans on the security of such bonds or acceptances; and the making of such loans to parties other than member banks is manifestly inconsistent with the purposes of the Act in that it enables non-member banks and stock, bond and acceptance brokers to tap the resources of the Federal reserve banks directly and without the intervention of a member bank.

As stated above, I am of the opinion that these transactions are clearly ultra vires as to Federal reserve banks and it is respectfully recommended that the Board so rule.

Respectfully,

(Signed) Walter Wyatt,
General Counsel.

...ce Correspondence

FEDERAL RESERVE BOARD

X 3817

Date Aug. 18, 1923

3323-6

To Governor Crissinger

From Mr. Wyatt, General Counsel

Subject: Purchase of Government Securities and Bankers' Acceptances by Federal Reserve Banks under so-called Repurchase Agreements.

2—6495

Referred to Law Committee for discussion AT BOARD MEETING AUG 21 1923

7/6/23 7/6/23

question has been raised as to

(The attached memorandum addressed to you by Mr. Smead) (questions) the propriety of the practice engaged in by the Federal reserve banks of purchasing Government securities and bankers' acceptances from member and nonmember banks, and stock, bond and acceptance brokers, under agreements providing that the sellers of these securities or acceptances will repurchase the same from the Federal reserve banks within a specified period of time.

The details of such transactions vary, but it appears that in all cases United States Government securities or bankers' acceptances are transferred to the Federal reserve bank at a certain agreed price while at the same time an agreement is entered into obligating or permitting the seller of the securities or acceptances to repurchase the same within a certain period. It is sometimes provided that the Federal reserve banks shall have the right to require the seller to repurchase the securities or acceptances at any time within this period upon giving a certain number of days' written notice. The Federal reserve bank charges interest for the period during which it holds the securities or acceptances, and this interest is sometimes computed in advance and sometimes when the resale is effected. It is also provided in some of these agreements that the seller shall keep on deposit with the Federal reserve bank additional securities sufficient to maintain a margin of safety, based upon a ratio of $120 to each $100 of the difference between the par value of the securities purchased and the market value thereof.

The Comptroller's Office has ruled that national banks which have sold securities to Federal reserve banks under such agreements shall consider the transactions as borrowings of money and shall carry them on their books accordingly. On the contrary, the Federal Reserve Board has held in connection with the reports of member State banks and trust companies that such a transaction is not to be considered as a borrowing but should be included in a special item on the report as securities sold under repurchase agreements. You have requested the opinion of this office as to the true nature of such transactions, i.e., whether they constitute purchases on the open market by Federal reserve banks as authorized by Section 14 of the Federal Reserve Act or merely loans secured by the deposit of securities or acceptances as collateral.

In my opinion, a transaction whereby securities or acceptances are sold to a Federal reserve bank under an agreement obligating the seller to repurchase the same on or before a certain date is in legal effect merely a loan secured by collateral, and not a sale; and Federal reserve banks have no legal authority to participate in such a transaction. Where the agreement merely permits, but does not obligate, the seller to repurchase the securities or acceptances, no universal rule can be laid down; but it is believed that even in these cases the transactions would generally be construed by a court as loans secured by collateral. The reasons upon which my opinion is based are stated below.

GENERAL PRINCIPLES.

In construing an agreement such as that described above, a court would be guided by the intention of the parties as far as it can be ascertained from the agreement itself and the surrounding circumstances. For this purpose it is settled that parol evidence will be admitted to show the facts and circumstances attending the execution of the agreement. The court will look to the substance of the transaction and will not be controlled by the form which the agreement may happen to have. The actual intent of the parties will be the controlling factor. Where there is a contract of sale and a contemporaneous agreement to resell at a certain time the two agreements will be construed together in the endeavor to ascertain the true intention of the contracting parties. In 5 Ruling Case Law, p. 589, it is said:

> "Sometimes a bill of sale intended as a security for money lent is accompanied by the execution of a separate instrument of defeasance, by the terms of which, on the repayment of the loan at a certain time, the bill to be surrendered to the vendor. In such a case the two instruments must be construed together and constitute a mortgage."

In discussing the distinction between a conditional sale and a chattel mortgage 11 Corpus Juris at page 412, states as follows:

> "Intention of the parties. Whether a transaction constitutes a chattel mortgage or a conditional sale ultimately depends on the intention of the parties, which must be ascertained from their conduct and the attendant circumstances, as well as from the terms of the agreement. Further, the intention must be collected from the entire transaction and not from any particular feature of it, and from the actual agreement of the parties and not from their characterization of it, although the construction placed on the contract by the parties is properly considered. The form of the instrument is of little importance. A contract of conditional sale will not be regarded as a chattel mortgage merely because it is recorded as such."

With regard to the specific provisions of the contract which indicate the intention of the parties as to the transaction, it is further stated in 11 Corpus Juris, at page 413, as follows:

> "Conditions Permitting Repurchase. A bill of sale with an agreement permitting repurchase may constitute either a chattel mortgage or a conditional sale, its character depending on the surrounding circumstances and the intention of the parties. The fact that a bill of sale contains an agreement to resell the property to the seller at a fixed price or confers on him an option to repurchase it does not, in itself, establish that the transaction is a mortgage, especially when there is no debt to be secured and no obligation to repay. But the transfer may be shown to be a mortgage by evidence that the vendor's obligation continued, that he bound himself to pay interest, that the bill of sale was given to secure a loan, or that the amount of consideration was inadequate as a purchase price."

From this statement of the law it is obvious that the specific provisions of a particular contract must be known in order to determine whether or not a conditional sale or a loan in the nature of a chattel mortgage is intended. This question turns upon the provisions of the particular contract and, therefore, an examination of each agreement entered into by the Federal reserve banks would be necessary for a definite opinion as to the effect of that particular agreement. There are, however, certain of these agreements which classify themselves very readily either as sales on condition or loans secured by chattel mortgage or pledges.

COMMON CHARACTERISTICS OF LOANS.

There are several features found in many of the repurchase agreements of Federal reserve banks which indicate that loans rather than conditional sales are intended. One of the most important of these is the stipulation that additional securities shall be deposited by the seller with the Federal reserve bank to maintain a certain margin over and above the market value of the securities. If the parties intended a sale there would be no necessity for such a provision. This is a clause which is usually found in connection with chattel mortgages, pledges or other forms of loans secured by collateral; in such cases the provision is very desirable. The purpose of the provision is plainly to protect the Federal reserve bank from any possible loss by reason of fluctuation in the value of the securities or acceptances held by it as security for a loan.

Another important characteristic of a loan is present when it is provided that the Federal reserve bank may sell at a public or private sale the securities or acceptances upon which it has advanced money, in case the so-called seller fails to comply with the agreement of repurchase and to buy back the securities or acceptances at the time specified. This also is a clause which is usually found in all forms of loan agreements but for which there can be no possible need in a contract of sale, even though such contract reserves to the seller the privilege of repurchasing within a certain time. If these securities or acceptances are really owned by the Federal reserve bank it would be entirely unnecessary to go through the form of a sale in order to transfer the title thereto to the Federal reserve bank, because it already has title; and if it is desired by the Federal reserve bank to have someone else purchase them, the Federal reserve bank, being the owner of the securities or acceptances, may make such sale in the ordinary manner and it would be entirely superfluous to provide for this kind of a sale in the agreement. But if the Federal reserve bank does not, as a matter of fact, take absolute title to the securities or acceptances, a provision for sale in case of default is necessary in order that the Federal reserve bank, or any other party purchasing at such sale, may acquire a clear title.

The fact that the Federal reserve banks charge interest on such transactions, and that this interest is computed in the same way as in the case of any ordinary loan is a very strong factor in evidencing the intention of the parties to this agreement in reality to negotiate a loan, although in form the transaction is an absolute sale with a right to repurchase reserved to the seller. In the case of an actual sale with right to repurchase there probably would be some form of fee or commission provided for to compensate the Federal reserve bank for its services, but it is unlikely that this fee or commission would take the form of interest and be computed in the same manner as interest, unless the parties were attempting to consummate a loan rather than a sale.

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Transactions of the kind under consideration may be divided into two general classes (1): Those in which the seller is obligated to repurchase the securities and acceptances on or before a certain specified date; and (2) those in which the seller is given the privilege of repurchasing if he so desires. In the first of these classes, the nature of the transactions seems entirely clear, but the proper construction of the second class of transactions depends largely on the terms of each particular agreement.

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effect a loan secured by the deposit of securities or acceptances as collateral. Where the agreement entered into by the Federal reserve bank, therefore, contains a provision obligating the seller to repurchase the securities or acceptances within a certain specified period, or at the option of the Federal reserve bank upon a certain number of days written notice, there is no question but that the transaction is a loan, although in form a conditional sale. This position is sustained by the authorities.

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Where the agreement provides that the seller shall have the right or privilege of repurchasing within a certain specified period, but there is no obligation upon him to do so, there may be some question as to the intention of the parties; it is sometimes uncertain whether such a transaction should properly be construed as a sale or a loan. In such cases the courts have, in endeavoring to ascertain the true intention of the parties, reached different conclusions, depending upon the purposes of the transaction, the result to be accomplished, and the other surrounding circumstances. As has been heretofore stated, each agreement must be construed according to its own particular terms and it is difficult to lay down any general rule which will be applicable to all cases. The fact that most of the repurchase agreements entered into by Federal reserve banks provide for the payment or deduction of interest is a strong indication of an intention to effect a loan rather than a sale. Further indications of such an intention is sometimes found in the payment of a price other than the market value for the securities or acceptances and in the provision for deposit of additional collateral. In view of these facts, I believe that it may be fairly said that most if not all sale agreements made by Federal reserve banks reserving to the seller the privilege of repurchasing are, properly construed, loans and not sales.

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8

ORIGIN OF PRACTICE.

That these transactions are in substance loans rather than bona fide purchases of securities on the open market is further confirmed by a consideration of the origin of the practice.

The practice of the Federal reserve banks in purchasing Government securities and bankers' acceptances under re-sale agreements originated in November, 1917, when demands for accommodation upon the Federal reserve banks were very heavy and the Government was floating large issues of Liberty bonds. On December 1, 1917, the stamp tax on promissory notes was to become effective and this would have been a very heavy expense upon member banks in obtaining funds from Federal reserve banks upon their fifteen day collateral notes under Section 13 of the Act. The Federal Reserve Board, therefore, suggested that in order to avoid the payment of this stamp tax member banks might obtain short time advances from Federal reserve banks by rediscounting eligible commercial paper of longer maturities under re-purchase agreements. The Board pointed out that interest might be charged only for the period covered by the agreement, that is, from the date of discount to the date of repurchase, and that the interest might be adjusted in advance or at the time of the re-sale. The suggestion of the Board was adopted and the Federal reserve banks began purchasing paper from member banks under repurchase agreements as a substitute for the fifteen day collateral notes of member banks. Notes secured by Liberty Bonds or United States certificates of indebtedness were subsequently exempted from the stamp tax and thereupon at least one of the Federal reserve banks (Richmond) discontinued this practice. Other Federal reserve banks, (notably New York) have not discontinued it, however, but on the contrary have extended it by entering into transactions of this kind not only with their member banks but also with non-member banks and stock, bond, and acceptance brokers.

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When the transactions between the Federal reserve bank and the various member and nonmember banks, and other corporations, therefore, are considered in the light of all the surrounding circumstances it seems clear that under the principles announced by the courts most if not all

of these transactions should be considered loans secured by the deposit of securities or acceptances as collateral, instead of sales with the right to repurchase reserved to the seller. The agreements, though in form sales, are in substance loans secured by the pledge of collateral.

The transaction described being a loan secured by collateral, instead of a sale which it purports to be, Federal reserve banks have no power to engage in such transactions and such agreements on the part of these banks are entirely ultra vires. Federal reserve banks have no power to make loans direct to the person or corporation primarily liable under any conditions, except that they make advances to their member banks upon promissory notes for a period not exceeding 15 days when properly secured in accordance with Section 13 of the Federal Reserve Act. Advances under repurchase agreements such as described above, however, can not be considered advances upon promissory notes, because the debt in such cases is not evidenced by notes of any kind. Federal reserve banks, therefore, can not in my opinion, make advances even to member banks under repurchase agreements.

POLICY

This subject has been discussed above largely as a question of general law, and I have not discussed the effect of its application to the Federal reserve banks. I think, however, it is perfectly manifest that the application of these conclusions of law to the operations of the Federal reserve banks will lead to a much closer adherence to the fundamental purposes and principles of the Federal Reserve Act than exists at the present time. The original Federal Reserve Act gave the Federal reserve banks no power to make direct loans even to their member banks.

The power to make direct loans to member banks on their fifteen day notes was granted on the recommendation of the Federal Reserve Board as a means of enabling Federal reserve banks to extend credit to their member banks for short periods of time on the security of paper eligible for rediscount. An amendment to the Act granting this power to Federal reserve banks was recommended by the Federal Reserve Board in 1916 when little use was being made of the rediscount facilities of the Federal reserve banks and it was hoped that this would induce the member banks to make more use of the system. The Board's proposed amendment, however, was not acted upon before it became evident that this country might be drawn into the world-war and in order that the banks of the country might be in position to facilitate Government financing in such an event, the Board made a further suggestion that the proposed fifteen-day collateral notes of member banks might be made eligible when secured by bonds and notes of the United States as well as when secured by paper eligible for rediscount.

It was never contemplated by Congress that the Federal reserve banks should make direct loans to non-member banks nor to stock, bond and acceptance brokers or other individuals, partnerships or corporations which ordinarily would seek such accommodations from member banks. The practice which has grown up in the Federal reserve banks of buying bonds and bankers' acceptances under so-called "repurchase agreements" amounts to nothing more nor less than the making of direct loans on the security of such bonds or acceptances; and the making of such loans to parties other than member banks is manifestly inconsistent with the purposes of the Act in that it enables nonmember banks and stock, bond and acceptance brokers to tap the resources of the Federal reserve banks directly and without the intervention of a member bank.

As stated above, I am of the opinion that these transactions are clearly ultra vires as to Federal reserve banks and it is respectfully recommended that the Board so rule.

Respectfully,

(signed) Walter Wyatt,
General Counsel.

Form

Office Correspondence

FEDERAL RESERVE BOARD

Date August 1, 1923.

To Mr. Eddy

From Mr. Van Fossen

Subject: U. S. securities sold by F. R. Bank of Kansas City to Commerce Trust Co. under repurchase agreement.

Attached hereto is the daily TEND telegram of the Federal Reserve Bank of Kansas City for July 30, also copy of our yesterday's telegram to the bank, a copy of its reply, and a suggested telegram to be sent to the bank, in connection with the $4,000,000 of U. S. securities sold by the Federal Reserve Bank under repurchase agreement.

It is evident that the Federal Reserve Bank has sold these securities to the Commerce Trust Co. of Kansas City and has received a valuable consideration therefor, i.e., the member bank was charged $4,000,000 in its reserve account, which amount is apparently carried on the books of the Federal Reserve Bank among miscellaneous liabilities under the caption "U. S. securities sold under repurchase agreement." Inasmuch as the securities in question are owned by the member bank and pledged by it as collateral for state deposits, it is not believed that the Federal Reserve Bank can properly consider them as part of its earning assets, but that any earnings obtained by it in consequence of this agreement should be considered as miscellaneous earnings.

Form 148

TELEGRAM

FEDERAL RESERVE BOARD

LEASED WIRE SERVICE

WASHINGTON

2—9454

332.3-6

August 1, 1923.

Boardman, Kansas City

Referring your July 31 telegram, United States securities sold to Commerce Trust Company under repurchase agreement should not be included among earning assets of your bank. Please report this transaction as memorandum item on reverse side of balance sheet form 34 and include any earnings derived therefrom among miscellaneous earnings.

EDDY

Form 148

TELEGRAM

FEDERAL RESERVE BOARD

LEASED WIRE SERVICE

WASHINGTON

2—9454

332.3 -6

COPY

July 31, 1923.

McClure, Kansas City

Referring your July 30 TEND telegram, please wire further details regarding $4,000,000 securities sold under repurchase agreement which apparently should not be included in item BUND.

EDDY

TELEGRAM

FEDERAL RESERVE SYSTEM

(LEASED WIRE SERVICE)

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RECEIVED AT WASHINGTON, D. C., 1923 JUL 31 PM 4 32

Kansas City 31 439pm

Eddy
Washn

7/31/23

Answering wire regarding our July 30 Tend telegram the commerce trust Co of this city had obligated itself to accept and secure a fifteen million dollar deposit which was made yesterday with it by the state of Kansas, this deposit being a part of the Solders bonus fund. in order to complete the necessary collateral for this deposit the commerce Trust Co purchased from this bank at par four million dollars in UnitedStates securities under a contract to resell these securities and this bank in turn agreed to repurchase them at par within a certain time limit August 10. Under the contract the earnings on these securities are to revert to this bank and for that reason and due to the fact that we agreed to purchase the securities the item of four million dollars was shown on form 34 under earning assets and under miscellaneous libilities

Boardman

6pm

Form 148

TELEGRAM

FEDERAL RESERVE BOARD

LEASED WIRE SERVICE

WASHINGTON

2—9454

332.3-6

July 31, 1923

McClure, Kansas City

Referring your July 30 TEND Telegram, please wire further details regarding $4,000,000 securities sold under repurchase agreement which apparently should not be included in item BUND

EDDY

Form No. 131. 7/9/23(3)

Office Correspondence

FEDERAL RESERVE BOARD

Date July 6, 1923.

To Gov. Crissinger

From Mr. Smead

Subject: Purchase by F.R.Banks of U.S. securities and bankers' acceptances under resale contracts.

JUL 9 1923
OFFICE OF COUNSEL

At the time the proof for Form 105, Report of Condition of State Bank and Trust Company members, to be used for the June call was approved, we discussed the advisability of taking up with the Comptroller of the Currency the question of reconciling differences between instructions issued by the Federal Reserve Board governing the preparation of condition reports by state bank and trust company members and those issued by the Comptroller to National banks, especially with reference to securities sold under a repurchase agreement. After giving the matter careful consideration it is thought that it might be well for the Board to review its present policy with reference to repurchase agreements and to decide whether or not it is advisable for the Federal reserve banks to continue to purchase U.S. securities and bankers' acceptances from investment dealers and non-member banks under so-called repurchase agreements.

In November 1917, when demands for accommodation upon the Federal reserve banks were very heavy and the Government was floating large issues of Liberty bonds, the Federal Reserve Board advised all Federal reserve banks by telegram on November 30, 1917 that -

> "Promissory notes of member banks are subject to stamp taxes December first stop Efforts will be made to have Congress exempt them, but pending action and until further notice Board suggests that member banks obtain short time advances from Federal Reserve banks by rediscounting eligible commercial paper of longer maturities, under repurchase agreement by member bank on whatever date may be agreed upon stop Federal Reserve banks may adjust rebate of discount in advance so instead of deducting interest for full period of note when making credit in favor of member bank, Reserve bank may charge interest only for the period covered by the agreement, that is, from date of discount to date of repurchase; or Reserve bank may credit member bank with full amount of paper rediscounted at time transaction is made, and on date of repurchase charge member bank with that amount plus amount of discount earned up to date of repurchase. Reserve banks may purchase from member banks United States bonds and Treasury certificates subject to repurchase agreement by member bank on given date.
>
> Harding"

In its letter of December 1, 1917 confirming a telegram of November 28, 1917, regarding the stamp tax required on member banks' promissory notes, the Board stated that "It should also be understood that the Federal reserve banks may further aid the situation by purchasing, either from member or non-member banks, notes or bonds of the United States under similar agreements of resale." Under the authority contained in the Board's instructions

the Federal reserve banks have since been purchasing U.S. securities from non-member banks and investment dealers under resale agreements, and it has been the Board's policy to have the Federal reserve banks report U.S. securities purchased by them under the resale agreements as securities owned. Likewise, State bank and trust company members of the Federal Reserve System have been advised that "Bonds, stocks, and securities sold under repurchase agreements should not be included in the assets of the bank but should be reported against memorandum item 'Securities sold under repurchase agreements' below the body of the statement."

Instructions issued to National Banks by the Comptroller of the Currency, however, have provided that "Securities sold with a repurchase agreement represent a direct obligation of the bank for borrowed money subject to the limit prescribed by section 5202 U.S. R.S. and must be included in the amount of bills payable on the face of the report." It is true that the object accomplished by selling securities under a repurchase agreement is the same as that accomplished by borrowing money for a similar period on a collateral note, but as there is no authority in the Federal Reserve Act under which the Federal reserve banks can loan money to a non-member bank or an investment dealer, it would seem that securities purchased under a resale contract must be treated as securities owned by the Federal reserve bank and the resale contract as a collateral agreement. If the Comptroller's office is correct and securities sold under a repurchase agreement are a direct obligation for borrowed money, it would appear that the Federal reserve banks cannot legally purchase securities under such agreements from non-member banks and investment dealers.

During the period of the war the Federal reserve banks purchased securities under resale contracts for the purpose of assisting the Treasury in financing its war expenditures and the practice undoubtedly was a material benefit to the Treasury. At the present time the short-dated debt of the Treasury has been taken care of and it probably will not be in the market for funds, except to anticipate tax payments, for some time to come, and therefore the prime reason for authorizing Federal reserve banks to purchase securities under a resale contract from non-member banks and investment dealers would no longer seem to exist. The Federal reserve banks could of course support the market, if necessary, by making outright purchases of U.S. securities from non-member banks and investment dealers, and by making loans to member banks as at present on their promissory notes collateraled by Government securities, which are not subject to stamp taxes.

In case, however, the Board should decide that the Federal reserve banks should be allowed to continue to make purchases of U.S.

securities from non-member banks and investment dealers under resale contracts, it is believed that the question should be taken up with the Comptroller of the Currency with a view to having him adopt the Board's interpretation of these contracts and instruct the National banks which sell securities under resale contracts to exclude the amount of such securities from their assets and report them as a contingent liability, on the ground that the agreement to repurchase is a collateral agreement and not in the nature of a bill payable. It might be advisable, if this policy were adopted, to ask Counsel for an opinion which would remove any doubt now existing as to the proper method of reporting such transactions.

The same principle is involved in purchases of bankers' acceptances under resale contracts. The Federal Reserve Bank of New York, we understand, feels that it is necessary to purchase acceptances under resale contracts from non-member banks and investment dealers in order to support the acceptance market. In the past, however, the New York Federal Reserve Bank has not made a practice of selling acceptances in the New York market and the question arises therefore as to whether the market could not be as well supported by its freely buying and selling acceptances according to market requirements, as by making purchases under resale agreements.

In order to give a general idea as to the extent to which securities and acceptances are purchased by the Federal reserve banks under resale contracts, there are attached hereto two tables, one showing the amount of Treasury certificates, Treasury notes, and Victory notes purchased under resale agreements during May 1923, and the other - the amount of bankers' acceptances taken under similar agreements during the same month. It will be noted from these tables that Salomon Bros. & Hutzler, The First National Corporation, The National City Company, The Discount Corporation, The Shawmut Corporation, Scholle Bros., The International Acceptance Bank, C.F.Childs and Company, and Bond and Goodwin are the principal investment houses which are selling securities and acceptances to the Federal reserve banks under repurchase agreements. It is quite likely that the ability to obtain funds from the Federal reserve banks under repurchase agreements enables a number of the corporations named above to do a substantially larger business than would otherwise be possible, and there would undoubtedly be strong objections to discontinuing the present policy.

As stated at the beginning of the memorandum, however, it is thought that the whole question as to whether or not the Federal reserve banks should continue to purchase U.S. securities and bankers' acceptances under resale contracts should be decided by the Board before the question of reconciling the method of reporting such securities by National banks and by State bank and trust company members of the System is taken up with the Comptroller of the Currency.

BANKERS' ACCEPTANCES PURCHASED BY THE FEDERAL RESERVE BANKS UNDER RESALE CONTRACTS DURING MAY 1923.

Purchased from	Total	Purchased by Federal Reserve Bank of						
		Boston	New York	Philadelphia	Cleveland	Chicago	St. Louis	San Francisco
First Nat'l Corp.	$25,963,932	$5,392,706	$18,888,017	-	-	$1,683,209	-	-
Shawmut Corp.	12,916,915	4,215,894	8,701,021	-	-	-	-	-
Bond and Goodwin	3,066,056	1,643,086	1,422,970	-	-	-	-	-
[redacted]ional City Co.	25,427,204	2,428,634	19,811,804	-	-	1,202,000	$105,000	$1,879,766
Salomon Bros. and Hutzler	4,240,901	-	4,097,205	-	-	143,696	-	-
Discount Corporation	14,366,417	-	14,366,417	-	-	-	-	-
Scholle Brothers	8,481,093	-	8,481,093	-	-	-	-	-
Curtis and Sanger	509,528	509,528	-	-	-	-	-	-
McAllister & Huttlinger	19,230	-	-	$19,230	-	-	-	-
Otis and Company	466,760	-	-	-	$466,760	-	-	-
[redacted]kards, Roloson & Co.	775,000	-	-	-	-	775,000	-	-
[redacted]antile Securities Company	2,230,886	-	-	-	-	-	-	2,230,886
	98,463,922	14,189,848	75,768,527	19,230	466,760	3,803,905	105,000	4,110,652

TREASURY NOTES, VICTORY NOTES, AND TREASURY CERTIFICATES PURCHASED BY THE FEDERAL RESERVE BANKS UNDER RESALE CONTRACTS DURING MAY 1923.

Purchased from	Total	Purchased by Federal Reserve Bank of					
		Boston	New York	Chicago	Minneapolis	Kansas City	Dallas
Salomon Bros. and Hutzler	$52,683,850	-	$50,149,000	$2,534,850	-	-	-
First National Corp.	16,401,250	$2,279,150	5,851,300	8,270,800	-	-	-
International Acceptance Bank	5,600,000	-	5,600,000	-	-	-	-
C. F. Childs & Co.	5,459,500	-	-	5,459,500	-	-	-
Halsey Stuart & Co.	2,089,100	-	-	2,089,100	-	-	-
Shawmut Corp.	1,627,000	-	1,627,000	-	-	-	-
Scholle Bros.	803,000	-	803,000	-	-	-	-
C. D. Parker & Co.	240,000	240,000	-	-	-	-	-
Central National Bank Topeka, Kansas	220,000	-	-	-	-	*$220,000	-
Federal Land Bank, St. Paul	2,250,000	-	-	-	$2,250,000	-	-
Federal Land Bank, Omaha	500,000	-	-	-	-	500,000	-
San Antonio Joint Stock Land Bank	1,600,000	-	-	-	-	-	$1,600,000
	89,473,700	2,519,150	64,030,300	18,354,250	2,250,000	720,000	1,600,000

*Includes $125,000 of U. S. bonds.

333

FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

X-3689

337 3

3323-6

April 7, 1923.

SUBJECT: Policy Governing Open Market Purchases by Federal Reserve Banks and the Administration thereof.

Dear Sir:

This is to advise you formally of the action of the Federal Reserve Board taken at its meeting of March 22nd, with respect to open market purchases by Federal Reserve Banks, and which was discussed at the recent conference between the Federal Reserve Board and the Governors of the Federal Reserve Banks.

The Board has adopted the following principles with respect to open market investment operations of the Federal Reserve Banks:

(1) That the time, manner, character and volume of open market investments purchased by Federal Reserve Banks be governed with primary regard to the accommodation of commerce and business, and to the effect of such purchases or sales on the general credit situation.

(2) That in making the selection of open market purchases, careful regard be always given to the bearing of purchases of United States Government securities, especially the short-dated issues, upon the market for such securities, and that open market purchases be primarily commercial investments, except that Treasury certificates be dealt in, as at present, under so-called "Repurchase" agreement.

In order to provide for the proper administration of the policy defined above, the Board rules that on and after April 1, 1923, the present Committee of Governors on Centralized Execution of Purchases and Sales of Government securities be discontinued, and be superseded by a new committee known as the Open Market Investment Committee for the Federal Reserve System, said committee to consist of five representatives from the Federal Reserve Banks and to be under the general supervision of the Federal Reserve Board; and that it be the duty of this committee to devise and recommend plans for the purchase, sale and distribution of the open market purchases of the Federal Reserve Banks in accordance with the above principles and such regulations as may from time to time be laid down by the Federal Reserve Board.

Indexed copy filed
333.-b-1

In accordance with the informal agreement made at the time of the last Governors' Conference, the membership of the Open Market Investment Committee for the Federal Reserve System, will be identical with the membership of the old Committee, as follows:

Federal Reserve Bank of Boston
Federal Reserve Bank of New York
Federal Reserve Bank of Philadelphia
Federal Reserve Bank of Cleveland
Federal Reserve Bank of Chicago

By order of the Federal Reserve Board.

Wm. W. Hoxton,
Secretary.

To Governors of Federal Reserve Banks.
Copies to Agents.

Re Repurchase Papers ✓

#11

~~33.2~~ 3

332.3-6

March 16, 1923.

SUBJECT: U.S. Securities taken under Repurchase Agreement.

Dear Sir:

In reply to your letter of March 6, 1923, I beg to advise that whenever the bank enters into an agreement to extend the maturity of a repurchase agreement, the transaction should be reported on an investment schedule, S-2, in the same manner as an original transaction and the amount thereof should be included among the bank's investment operations as reported on Form A.

Very truly yours,

(Signed) E. L. Smead

E.L.Smead, Chief,
Division of Bank Operations.

Mr. Fred Harris,
Assistant Cashier,
Federal Reserve Bank,
Dallas, Texas.

Assistant Secretary
Files

FEDERAL RESERVE BANK
OF DALLAS

LOAN AND DISCOUNT DEPARTMENT

332.3-6

FRED HARRIS
ASSISTANT CASHIER

March 6, 1923

Federal Reserve Board
Washington, D. C.

Gentlemen:

Attention, Mr. E. L. Smead, Chief
Division of Bank Operations

Please refer to our schedule No. I-431, dated January 12, 1923, covering the purchase of $1,100,000 U. S. Treasury 4¼% Gold Notes, Series B-1926, from the San Antonio Joint Stock Land Bank under an agreement to repurchase said notes under date of March 13, 1923. This bank has recently entered into an agreement with the San Antonio Joint Stock Land Bank to extend this repurchase agreement for sixty days, to May 12, 1923.

As this is our first experience in handling an extension of a repurchase agreement, we are in doubt as to whether or not your office requires another schedule, but assume that this information will be all that is required. In the event, however, that this is not satisfactory, it will be appreciated if you will advise us your wishes.

Yours very truly,

Fred. Harris

Assistant Cashier

FH:t

For[illegible]18

TELEGRAM

FEDERAL RESERVE BOARD

LEASED WIRE SERVICE

WASHINGTON

~~332.3~~

January 4, 1923.

332.3-6

Ramsay, Kansas City.

Replying your today's telegram, Liberty bonds taken under repurchase agreement should be carried at amount advanced and reported against code BISK.

SMEAD.

ASSISTANT SECRETARY

FILES

m 1k

TELEGRAM

FEDERAL RESERVE SYSTEM

(LEASED WIRE SERVICE)

3323-6

RECEIVED AT WASHINGTON, D. C.,

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KansasCity Jan 4 1154A

Board

Washington

Your wire date reference our 34 Wire 3rd $593,000 is amount advanced as purchase of $600,000 par value Liberty Bonds with agreement to resell at amount advanced plus interest should we report amount advanced or par value as Bisk and if par value in what account should difference be carried and should it be amortized

Ramsay

121P

GOVERNMENT PRINTING OFFICE 2—11901

Form 148

TELEGRAM

FEDERAL RESERVE BOARD

LEASED WIRE SERVICE

WASHINGTON

2—9454

332.3-6

January 4, 1923.

Ramsay, Kansas City.

Your Form 34 telegram shows $593,000 U. S. securities held under sales contract. Please distribute these securities against items BISK to BUTE, and wire necessary adjustments.

SMEAD.

Assistant Secretary
Files