

**FEDERAL RESERVE BANK
OF NEW YORK**
Fiscal Agent of the United States

[Circular No. 2420]
April 21, 1942

FOREIGN FUNDS CONTROL

*To all Banking Institutions, and Others Concerned,
in the Second Federal Reserve District:*

For your information we quote below the text of a telegram received today from the Treasury Department:

The following are the texts of General Ruling No. 12 and a press release explanatory thereof issued by the Treasury Department.

TREASURY DEPARTMENT
Office of the Secretary
April 21, 1942

GENERAL RULING NO. 12
UNDER EXECUTIVE ORDER NO. 8389, AS AMENDED, SECTIONS 3(A) AND 5(B)
OF THE TRADING WITH THE ENEMY ACT, AS AMENDED BY THE FIRST WAR
POWERS ACT, 1941, RELATING TO FOREIGN FUNDS CONTROL

(1) Unless licensed or otherwise authorized by the Secretary of the Treasury, (a) any transfer after the effective date of the Order is null and void to the extent that it is (or was) a transfer of any property in a blocked account at the time of such transfer; and (b) no transfer after the effective date of Order shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property while in a blocked account (irrespective of whether such property was in a blocked account at the time of such transfer).

(2) Unless licensed or otherwise authorized by the Secretary of the Treasury, no transfer before the effective date of Order shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property while in a blocked account unless the person with whom such blocked account is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to the effective date of the Order.

(3) Unless otherwise provided, an appropriate license or other authorization issued by the Secretary of the Treasury before, during or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of section 5(b) of the Trading with the enemy Act, as amended, and Order, regulations, instructions and rulings issued thereunder.

(4) Any transfer affected by the Order and/or this general ruling and involved in, or arising out of, any action or proceeding in any court within the United States shall, so far as affected by the Order and/or this general ruling, be valid and enforceable for the purpose of determining for the parties to the action or proceeding the rights and liabilities therein litigated: provided, however, that no attachment, judgment, decree, lien, execution, garnishment, or other judicial process shall confer or create a greater right, power, or privilege with respect to, or interest in, any property in a blocked account than the owner of such property could create or confer by voluntary act prior to the issuance of an appropriate license.

(5) For the purposes of this general ruling:

(a) The term "transfer" shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and without limitation upon the foregoing shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or other fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power; provided, however, that the term "transfer" shall not be deemed to include transfers by operation of law.

(b) The term "property" includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in section 2(1) of the Securities Act of 1933, as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book credits, debts, claims, contracts, negotiable documents of title, mortgages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term "property" shall not, except to the extent indicated, be deemed to include chattels or real property.

(c) The term "blocked account" shall refer to a blocked account (including safe deposit box) of a party to the transfer and shall have the meaning prescribed in General Ruling No. 4 except that it shall not be deemed to include an account not treated as a blocked account by the person with whom such account is held or maintained.

(d) The term "effective date of the Order" shall have the meaning prescribed in General Ruling No. 4 except that "the effective date of the Order" as applied to any person whose name appears on The Proclaimed List of Certain Blocked Nationals shall be the date upon which the name of such person first appeared on such list.

(e) The term "transfer by operation of law" shall be deemed only to mean any transfer of any dower, curtesy, community property, or other interest of any nature whatsoever, provided that such transfer arises solely as a consequence of the existence or change of marital status; any transfer to any person by intestate succession; any transfer to any person as administrator, executor, or other fiduciary by reason of any testamentary disposition; any transfer to any person as administrator, executor, or fiduciary by reason of judicial appointment or approval in connection with any testamentary disposition or intestate succession; and any transfer pursuant to (i) Netherlands Royal Decree of May 24, 1940, and (ii) Norwegian Provisional Decree of April 22, 1940, concerning the monetary system, etc.

(6) Nothing contained in this general ruling shall be deemed to affect in any way criminal liability for violation of the Order, or the regulations, rulings, circulars or instructions issued thereunder, or in connection therewith, or to otherwise modify any provision thereof.

By direction of the President:

H. MORGENTHAU, JR.
Secretary of the Treasury.

TREASURY DEPARTMENT
Washington

FOR IMMEDIATE RELEASE
April 21, 1942

PRESS SERVICE
No. 31-28

The Treasury Department in a formal statement issued today called attention to the fact that all unlicensed transfers of blocked assets in the United States are void and unenforceable.

General Ruling No. 12, issued by the Secretary of the Treasury, makes clear that unlicensed transfers of blocked assets in violation of the freezing Orders, and transfers designed or having the effect of evading such Orders, always have been void and unenforceable.

Secretary Morgenthau, commenting on today's general ruling, pointed out that these unlicensed transfers of blocked assets always have been void and unenforceable under the freezing Orders and that today's ruling serves the purpose of emphasizing this fact for the benefit of any of the public who may have overlooked this aspect of freezing control.

He also called attention to the provisions of the ruling, making it possible for persons who have been parties to unlicensed transfers of blocked assets to file applications for licenses to validate these transfers. "The Treasury, of course, wants to be reasonable about this matter", he stated, "we do not propose to allow our regulations, intended for the protection of our country, and the United Nations, to become an instrumentality for defeating their interests or producing unconscionable advantages or unreasonable hardships. These matters can be dealt with by licenses without undue interference with the purposes of freezing control".

Treasury officials pointed out that there are more than seven billion dollars in blocked assets in the United States. The Government's policy on this matter, as reflected in today's formal ruling, has nullified attempts by the Axis to gain title to the billions of dollars in assets belonging to nationals of the countries overrun by the Axis. It has defeated efforts of the Axis to wrest control of such assets away from their lawful owners and hold them in the hopes that in the post-war period it will be possible to realize on such assets if freezing restrictions are lifted. Of equal significance is the fact that it has destroyed any possible black market in neutral countries for blocked assets—one of the ways the Axis would like to be able to obtain the foreign credit necessary to finance imports from neutral countries into Axis territory and also one of the ways the Axis would like to be able to gain the funds necessary to subsidize espionage, sabotage and fifth column activities in the United Nations, Latin America and elsewhere.

Treasury officials explained that based on the evidence of what the Axis was doing with assets of the overrun countries within their physical control, Axis efforts in an operation of this character would follow no single pattern. Rather they would run the gamut from outright duress—assignments at the point of a gun, or with the gestapo as "witnesses"—through to the more subtle "legal" transfers—the purchase of such blocked assets against payment in local currency obtained as occupation costs or by forced loan from banking institutions in the occupied areas. In these latter cases the point of the gun would not be levelled at the individual but would be levelled at the central bank and "Quisling" governments who would provide the credit for the Axis to "buy" their country's birthright.

The net effect of such transfers would not vary however, they would be intended to mulct the overrun countries of the very life-blood of any post-war reconstruction, namely, the foreign exchange needed to obtain the goods and services necessary for rebuilding the economies of these countries. Axis war psychology would be benefited also—by depriving the holders of their title to these assets the Axis would encourage a spirit of defeatism and a willingness to succumb to the German "new order".

Officials also explained that based on the operation of the neutral black market in looted assets physically in the control of the Axis, it was easy to anticipate the type of black market the enemy might try to foster for "blocked assets". This neutral black market operation would be designed to give the Axis immediate returns on blocked assets even though the Axis could not get such assets out from under our freezing regulations. In this case the assets would be assigned or otherwise transferred to neutral speculators at heavy discount in order that the Axis could obtain credit now to buy goods and services in neutral countries and thus assist the war effort. Of course some of these black market operations would be for the obvious purpose of lining the pockets of Axis officialdom as insurance against the day when the Axis is crushed. Neutral speculators would either hold such assignments with the intent of salvaging on them after the war or in the hope of being able to squeeze the blocked assets through the freezing control by one trick or another.

As was pointed out, since freezing control makes null and void or unenforceable all transfers with respect to blocked assets unless licensed by the Secretary of the Treasury, Axis attempts to gain title to these assets are frustrated and the true owner's interests are protected and he continues to have a valuable stake in a victory by the United Nations.

Commenting upon today's ruling, Secretary Morgenthau stated, "This Government served notice on the world when we froze the assets of Norway and Denmark on April 10, 1940, that we did not intend to permit the Axis to realize any use or benefit from Norwegian and Danish assets in the United States. Since that time we have consistently pursued this policy with respect to every country falling under the Axis yoke. The policy of this Government always has been unequivocal. We will not allow the Axis, directly or indirectly, to gain any interest in the seven

billion dollars in blocked assets in this country. Neither those funds nor any interest in them will be used against the United Nations by the Axis. Neither will they be used as a part of Germany's economic 'new order' in Europe or Japan's 'co-prosperity sphere' in the Pacific".

It was emphasized that while freezing control attempted to interfere as little as possible with normal legitimate commercial transactions, still the Government was combatting a menace of sweeping proportions and was compelled to block all corrosive efforts of infiltration through loop-holes. Freezing control and the Government's policy is therefore comprehensive and the licensing technique must be freely used to prevent hardship in legitimate cases. Thus, under the freezing Orders, more than eighty general licenses have been issued, permitting vast categories of transactions under appropriate safe-guards without even filing an application. In addition, more than 400,000 specific licenses also have been issued.

Paragraph (1) of today's general ruling deals with unlicensed transfers made after the effective date of the freezing Orders involving property in blocked accounts. If any such transfer was made after the account was actually blocked then the transfer is null and void unless licensed. Thus, if a bank blocked the account of a national of Denmark on April 10, 1940, and on June 10, 1940, the national attempted to assign title to the account to a German, the transfer would be null and void unless the Treasury licensed it. On the other hand, if a transfer were made before the account was actually blocked, but attempt was made to enforce it while the account was in fact blocked, the transfer would be unenforceable. By way of example: on July 15, 1941, John Doe, resident in Argentina, assigned his account with an American bank to Richard Roe in the United States. On September 15, 1941, the Treasury instructed the bank to block the account of John Doe as a national of Rumania. After September 15, 1941, the assignment would be unenforceable against John Doe's blocked account unless the transfer were licensed by the Treasury Department.

Paragraph (2) of the general ruling deals with transfers alleged to have been made before the effective date of the freezing Orders but involving accounts thereafter blocked. These transfers are unenforceable against blocked accounts unless the person with whom the blocked account was held or maintained had written notice of the transfer or had recognized it in writing prior to the effective date of the Order. Thus, if in the example above, the national of Denmark had assigned the bank account to the German in 1937 and the bank was not notified of the assignment until June 10, 1940, the assignment would be unenforceable against the blocked account unless licensed. If, on the other hand, the bank was notified in writing of the assignment before April 10, 1940, then the assignment is enforceable against the blocked account (but, of course, payment from the blocked account could only be made pursuant to Treasury license).

Treasury officials pointed out that the policy behind paragraph (2) of the general ruling was understandable. If the general ruling had been merely prospective in operation, it would be easy for Axis agents to validate transfers obtained under duress by the subterfuge of dating them prior to the effective date of the Executive Order. This would, of course, defeat one of the major purposes of freezing control. Officials pointed out that in those cases where notice of the transfer was given to the person maintaining the account in this country and where the transfer had been accepted by that person as valid, the provisions of the general ruling are inapplicable since under those circumstances the notice is an adequate precaution to guarantee that the transfer was made prior to the effective date of freezing control.

Paragraph (3) of the ruling provides that a license issued by the Treasury Department, either before or after a transfer, completely validates the transfer for the purposes of freezing control. Of course, if an assignment would have been invalid without freezing control, (e.g., because not properly executed) a Treasury license does not purport to remedy this type of invalidity.

Paragraph (4) is but a formal statement of the position which the Treasury Department has always taken on litigation (including attachments) affecting blocked assets. The Treasury has no desire to limit the bringing of suits in courts within the United States, provided that no greater interest is created by virtue of the attachment, judgment, etc., than the owner of the blocked account could have voluntarily conferred without a license. Thus, the Treasury does not want to interfere with the orderly consideration of cases by the courts provided that the results of court proceedings are subject to the same policy consideration from the point of view of freezing control as those arising through voluntary action of the parties.

Paragraph (5) defines various terms employed in the ruling. For example: the term "transfer" is given a very comprehensive meaning, excepting only certain types of transfers by operation of the law (e.g., transfer by intestate succession). The term "property" is broad but by and large does not include mere chattels or real property. The term "blocked account" is in effect limited to accounts actually treated as blocked accounts by the person with whom such account is held or maintained.

Paragraph (6) is technical in character and reserves the full right of the Government to prosecute for violations of the freezing Orders and emphasizes that General Ruling No. 12 is not intended to modify outstanding freezing orders, regulations, etc.

Additional copies of this circular will be furnished upon request.

ALLAN SPROUL, President.