FEDERAL RESERVE BANK OF NEW YORK

Fiscal Agent of the United States

[Circular No. 4340
May 31, 1956]

Offering of $1,600,000,000 of 91-Day Treasury Bills

Dated June 7, 1956 **Maturing September 6, 1956**

To all Incorporated Banks and Trust Companies, and Others Concerned, in the Second Federal Reserve District:

Following is the text of a notice published today:

FOR RELEASE, MORNING NEWSPAPERS,
Thursday, May 31, 1956.

TREASURY DEPARTMENT
Washington

The Treasury Department, by this public notice, invites tenders for $1,600,000,000, or thereabouts, of 91-day Treasury bills, for cash and in exchange for Treasury bills maturing June 7, 1956, in the amount of $1,600,068,000, to be issued on a discount basis under competitive and noncompetitive bidding as hereinafter provided. The bills of this series will be dated June 7, 1956, and will mature September 6, 1956, when the face amount will be payable without interest. They will be issued in bearer form only, and in denominations of $1,000, $5,000, $10,000, $100,000, $500,000 and $1,000,000 (maturity value).

Tenders will be received at Federal Reserve Banks and Branches up to the closing hour, one-thirty o'clock, p.m., Eastern Daylight Saving time, Monday, June 4, 1956. Tenders will not be received at the Treasury Department, Washington. Each tender must be for an even multiple of $1,000, and in the case of competitive tenders the price offered must be expressed on the basis of 100, with not more than three decimals, e. g., 99.925. Fractions may not be used. It is urged that tenders be made on the printed forms and forwarded in the special envelopes which will be supplied by Federal Reserve Banks or Branches on application therefor.

Others than banking institutions will not be permitted to submit tenders except for their own account. Tenders will be received without deposit from incorporated banks and trust companies and from responsible and recognized dealers in investment securities. Tenders from others must be accompanied by payment of 2 percent of the face amount of Treasury bills applied for, unless the tenders are accompanied by an express guaranty of payment by an incorporated bank or trust company.

Immediately after the closing hour, tenders will be opened at the Federal Reserve Banks and Branches, following which public announcement will be made by the Treasury Department of the amount and price range of accepted bids. Those submitting tenders will be advised of the acceptance or rejection thereof. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders, in whole or in part, and his action in any such respect shall be final. Subject to these reservations, noncompetitive tenders for $200,000 or less without stated price from any one bidder will be accepted in full at the average price (in three decimals) of accepted competitive bids. Settlement for accepted tenders in accordance with the bids must be made or completed at the Federal Reserve Bank on June 7, 1956, in cash or other immediately available funds or in a like face amount of Treasury bills maturing June 7, 1956. Cash and exchange tenders will receive equal treatment. Cash adjustments will be made for differences between the par value of maturing bills accepted in exchange and the issue price of the new bills.

The income derived from Treasury bills, whether interest or gain from the sale or other disposition of the bills, does not have any exemption, as such, and loss from the sale or other disposition of Treasury bills does not have any special treatment, as such, under the Internal Revenue Code of 1954. The bills are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority. For purposes of taxation the amount of discount at which Treasury bills are originally sold by the United States is considered to be interest. Under Sections 454(b) and 1221(5) of the Internal Revenue Code of 1954 the amount of discount at which bills issued hereunder are sold is not considered to accrue until such bills are sold, redeemed or otherwise disposed of, and such bills are excluded from consideration as capital assets. Accordingly, the owner of Treasury bills (other than life insurance companies) issued hereunder need include in his income tax return only the difference between the price paid for such bills, whether on original issue or on subsequent purchase, and the amount actually received either upon sale or redemption at maturity during the taxable year for which the return is made, as ordinary gain or loss.

Treasury Department Circular No. 418, Revised, and this notice, prescribe the terms of the Treasury bills and govern the conditions of their issue. Copies of the circular may be obtained from any Federal Reserve Bank or Branch.

This Bank will receive tenders up to 1:30 p.m., Eastern Daylight Saving time, Monday, June 4, 1956, at the Securities Department of its Head Office and at its Buffalo Branch. Please use the form on the reverse side of this circular to submit a tender, and return it in an envelope marked "Tender for Treasury Bills." Tenders may be submitted by telegraph, subject to written confirmation; they may not be submitted by telephone. *Payment for the Treasury bills cannot be made by credit through the Treasury Tax and Loan Account. Settlement must be made in cash or other immediately available funds or in maturing Treasury bills.*

ALLAN SPROUL, *President.*

Results of last offering of Treasury bills (91-day bills dated May 31, 1956, maturing August 30, 1956)

Total applied for ... $2,604,922,000

Total accepted ..... $1,600,097,000 (includes $211,855,000 entered on a noncompetitive basis and accepted in full at the average price shown below)

Average price ... 99.350 Equivalent rate of discount approx. 2.573% per annum

Range of accepted competitive bids:

High ..... 99.352 Equivalent rate of discount approx. 2.564% per annum

Low ..... 99.348 Equivalent rate of discount approx. 2.579% per annum

(67 percent of the amount bid for at the low price was accepted)

Federal Reserve District	*Total Applied for*	*Total Accepted*
Boston	$ 34,348,000	$ 20,833,000
New York	1,976,954,000	1,155,145,000
Philadelphia	33,111,000	11,506,000
Cleveland	67,815,000	65,332,000
Richmond	11,769,000	8,569,000
Atlanta	28,209,000	25,659,000
Chicago	272,914,000	193,701,000
St. Louis	12,300,000	11,355,000
Minneapolis	9,505,000	9,405,000
Kansas City	35,250,000	20,005,000
Dallas	28,365,000	16,033,000
San Francisco	94,382,000	62,554,000
Total	$2,604,922,000	$1,600,097,000

(OVER)

IMPORTANT—If you desire to bid on a *competitive* basis, fill in rate per 100 and maturity value in paragraph headed "Competitive Bid." If you desire to bid on a *noncompetitive* basis, fill in only the maturity value in paragraph headed "Noncompetitive Bid." *DO NOT fill in both paragraphs on one form.* A separate tender must be used for each bid, except that banks submitting bids on a competitive basis for their own and their customers' accounts may submit one tender for the total amount bid at each price, provided a list is attached showing the name of each bidder, the amount bid for his account, and method of payment. Forms for this purpose will be furnished upon request.

No.....

TENDER FOR 91-DAY TREASURY BILLS

Dated June 7, 1956 **Maturing September 6, 1956**

To Federal Reserve Bank of New York,
Fiscal Agent of the United States.

Dated at .....
..... 1956

COMPETITIVE BID

Pursuant to the provisions of Treasury Department Circular No. 418, Revised, and to the provisions of the public notice on May 31, 1956, as issued by the Treasury Department, the undersigned offers .....* for a
(Rate per 100)
total amount of $..... (maturity value) of the Treasury bills therein described, or for any less amount that may be awarded, settlement therefor to be made at your Bank, on the date stated in the public notice, as indicated below:

☐ By surrender of maturing Treasury bills amounting to .....$_____

☐ By cash or other immediately available funds

**Price must be expressed on the basis of 100, with not more than three decimal places, for example, 99.925.*

NONCOMPETITIVE BID

Pursuant to the provisions of Treasury Department Circular No. 418, Revised, and to the provisions of the public notice on May 31, 1956, as issued by the Treasury Department, the undersigned offers a noncompetitive tender for a total amount of $.....
(Not to exceed $200,000)
(maturity value) of the Treasury bills therein described, at the average price (in three decimals) of accepted competitive bids, settlement therefor to be made at your Bank, on the date stated in the public notice, as indicated below:

☐ By surrender of maturing Treasury bills amounting to .....$_____

☐ By cash or other immediately available funds

The Treasury bills for which tender is hereby made are to be dated June 7, 1956, and are to mature on September 6, 1956.

This tender will be inserted in special envelope marked "Tender for Treasury Bills."

Name of Bidder .....
(Please print)

By....., ...
(Official signature required) (Title)

Street Address .....

.....
(City, Town or Village, P. O. No., and State)

If this tender is submitted by a bank for the account of a customer, indicate the customer's name on line below:

....
(Name of Customer) (City, Town or Village, P. O. No., and State)

IMPORTANT INSTRUCTIONS:

1. No tender for less than $1,000 will be considered, and each tender must be for an even multiple of $1,000 (maturity value).

2. If the person making the tender is a corporation, the tender should be signed by an officer of the corporation authorized to make the tender, and the signing of the tender by an officer of the corporation will be construed as a representation by him that he has been so authorized. If the tender is made by a partnership, it should be signed by a member of the firm, who should sign in the form "....., a copartnership, by ....., a member of the firm."

3. Tenders will be received without deposit from incorporated banks and trust companies and from responsible and recognized dealers in investment securities. Tenders from others must be accompanied by payment of 2 percent of the face amount of Treasury bills applied for, unless the tenders are accompanied by an express guaranty of payment by an incorporated bank or trust company.

4. If the language of this tender is changed in any respect, which, in the opinion of the Secretary of the Treasury, is material, the tender may be disregarded.

Payment by credit through Treasury Tax and Loan Account will not be permitted.

at 4340

ADMINISTRATIVE INTERPRETATIONS

OF

REGULATION F - SECTION 17

***

Common Trust Funds

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Board of Governors
of the
Federal Reserve System

April 1956

INTRODUCTION

This booklet contains all rulings of the Board issued in reference to section 17 of the Board's Regulation F - Common Trust Funds. The rulings have been arranged by subject matter, and each is annotated to the Federal Reserve BULLETIN in which it was first published. Supplements to this booklet will be issued from time to time as necessitated by new administrative interpretations of the Regulation.

It is hoped that publication in this form of the Board's administrative interpretations of the provisions of section 17, Regulation F, will be found useful by bank supervisors and examiners, bank auditors, trust administrators, and others who have frequent need to refer to the Regulation and related rulings concerning common trust fund administration.

CONTENTS

OPERATION AS INVESTMENT TRUST
(September 1947 BULLETIN, p. 1115)

The Board has received a request for a ruling with respect to whether a national bank may invest certain funds in participations in a common trust fund operated by the bank.

The facts as set forth in the bank's letter are as follows:

"We have been approached by a local corporation which wishes to place $8000 in our common trust fund. They assure me that this money is not needed in their business at the present time and probably will not be needed until the next serious depression such as 1932. They insist that any trust fund which they set up is a bona fide one to permit them to have this small sum of money invested properly from the diversification point of view.

"It is true however that the settler company reserves the right to revoke the agreement at any time or to withdraw part of the money placed in this trust fund. The trust fund was established with the idea of having it placed in the common trust fund. * * * We have been approached indirectly by other small corporations along the same lines and they all want to protect their reserve position as much as possible. They have indicated to me that the savings banks will not take their money and they apparently are not satisfied to obtain the small income return available on the short term government bonds that we first recommend to such people for investment purposes."

Section 17(a) of Regulation F provides in part as follows:

"The purpose of this section is to permit the use of Common Trust Funds, as defined in section 169 of the Internal Revenue Code, for the investment of funds held for true fiduciary purposes; and the operation of such Common Trust Funds as investment trusts for other than strictly fiduciary purposes is hereby prohibited. * * * The trust investment committee of a bank operating a Common Trust Fund shall not permit any funds of any trust to be invested in a Common Trust Fund if it has reason to believe that such trust was not created or is not being used for bona fide fiduciary purposes."

Under the facts presented, it appears that there is no reason for the creation of the trust other than the desire of the corporation to invest its funds in participations in the common trust fund. The trust merely is a mechanism designed to enable the corporation to acquire such participations in lieu of other investments. The analogy with the purchase of investment trust certificates is apparent; and the use of a common trust fund for this purpose amounts in substance to the operation of the fund as an ordinary investment trust. In the circumstances, the Board is of the opinion that the proposed investment in participations in the common trust fund is clearly contrary to the above-quoted provisions of Regulation F.

OPERATION OF COMMON TRUST FUNDS AS INVESTMENT TRUSTS FOR OTHER THAN STRICTLY FIDUCIARY PURPOSES
(May 1940 BULLETIN, pp. 393-94)

Section 17 of the Board's Regulation F, Trust Powers of National Banks, provides in part as follows:

> "The purpose of this section is to permit the use of Common Trust Funds, as defined in section 169 of the Internal Revenue Code, for the investment of funds held for true fiduciary purposes; and the operation of such Common Trust Funds as investment trusts for other than strictly fiduciary purposes is hereby prohibited. No bank administering a Common Trust Fund shall issue any document evidencing a direct or indirect interest in such Common Trust Fund in any form which purports to be negotiable or assignable. The trust investment committee of a bank operating a Common Trust Fund shall not permit any funds of any trust to be invested in a Common Trust Fund if it has reason to believe that such trust was not created or is not being used for bona fide fiduciary purposes."

In amending Regulation F to permit the operation of Common Trust Funds, the Board intended that a Common Trust Fund should be used merely to aid in the administration of trusts by a trust institution through the commingled investment of funds of various trusts. While the operation of a Common Trust Fund might thus enable a trust institution to accept small trusts which it otherwise would be unwilling to handle, it was contemplated that

trust guise or form should not be used to enable a trust institution to operate a Common Trust Fund as an investment trust attracting money seeking investment alone and to embark upon what would be in effect the sale of participations in a Common Trust Fund to the public as investments. In dealing with this matter, it appeared desirable to use largely general language, omitting certain exact, arbitrary restrictions which might unduly hamper the use of Common Trust Funds for proper purposes, and, accordingly, the above-quoted provisions were incorporated in the regulation. By adopting this approach, the Board placed reliance upon the exercise of sound judgment and good faith on the part of trust institutions and their trust investment committees in carrying out the broad intent and purposes of such provisions. In determining whether a particular trust is created and used for "bona fide fiduciary purposes", it is necessary to consider, in the light of such intent and purposes, not only the terms of the trust instrument but also other facts and circumstances concerning the creation and use of the trust. The regulation forbids the investment of funds of a trust in a Common Trust Fund if the trust investment committee "has reason to believe" that the trust does not conform.

In a recent ruling, the Board had occasion to consider the application of the above-quoted provisions of the regulation to the facts of a particular case. In that instance, a national bank proposed to create a Fund as a part of a plan under which the bank would solicit the public (through paid solicitors or agents of the bank, newspaper advertisements, circulars, etc.) to create uniform revocable trusts designed specifically to participate in the Fund. With this in view, the bank had prepared an application and receipt form and a so-called "Participating Trust Agreement" form. Under such trust agreement form, the creator of a trust was to deposit with the bank, as trustee, a stated principal sum in 120 equal monthly deposits and the bank was directed to invest such deposits, less authorized deductions, in participations in the Fund. The trust was to terminate upon revocation, death of the creator, notice delivered to the creator after continued default in making deposits, or the expiration of 10 years (i.e., the expiration of the period during which the deposits were to be made). In addition to an acceptance fee of $10, an annual fee of 6 per cent of the income of the trust, and a termination fee of 2 per cent of the then cash value of the trust assets, the bank was to receive the first year a fee of 2 per cent of the stated principal sum and each year thereafter a fee of $5. Among other things, the trust agreement form referred to the fact that "other trust estates have been or are being established under participating trust agreements respectively, substantially similar to this instrument". In the application form, the person desiring to create such a trust applied for the execution of a Participating Trust Agreement, such "participation" to be in a stated principal sum. Such application form recited that there was paid therewith a stated sum, consisting of an acceptance fee of $10 and the first of 120 equal deposits, and also that the bank would be empowered to invest the net deposits of the applicant in a Common Trust Fund to be held and managed by the bank as Collective Trustee pursuant to a Collective Trust Plan of a specified date. The bank's representative receiving the application was to give a receipt for the money but there was to be no binding agreement until the application was accepted by the bank and a Participating Trust Agreement was executed by the bank and the applicant.

These facts indicate broadly the nature of the bank's plan with respect to the creation and operation of the proposed Fund; and in view of such facts and other details of the plan, the Board expressed the opinion that the Fund could not be considered to be one operated in conformity with the Board's Regulation F and particularly those provisions of the regulation quoted above.

PUBLICATION OF INFORMATION ON COMMON TRUST FUNDS
(February 1955 BULLETIN, p. 142)

The Board of Governors has been asked to comment with respect to the limitations contained in section 17 of Regulation F concerning the publication of information on common trust funds maintained by a bank. Preparation of a pamphlet descriptive of the operations of a common trust fund which would contain information taken from the annual audit report of such fund, including information concerning the earnings realized on the fund and the value of the assets thereof, was proposed. It was planned to make the pamphlet available to directors and stockholders of the bank, to present and prospective customers, to selected attorneys, and to correspondent banks for the purpose of furnishing information relative to the common trust fund and presumably to point out the desirability of its use by prospective trust customers. It is believed that the following discussion will clarify the principles and restrictions embodied in Regulation F with respect to the advertising of common trust funds.

The annual reports of audits required to be made of common trust fund operations are for use solely in informing those persons to whom a regular periodic accounting of the trusts participating in the fund ordinarily would be rendered. Material contained in these audit reports, or similar to that so contained, cannot, under existing provisions of Regulation F, be publicized in booklet form, or in any other form, with the intent to inform the general public concerning the operations of a common trust fund. The word "publish", as used in the publicity prohibition contained in sections 17(*a*) and 17(*c*)(3) of the Regulation, refers not only to publication in newspapers or periodicals, but to publication in any form designed to reach outside the group comprising those who ordinarily would receive periodic accountings related to administration of a common trust fund.

The unsolicited furnishing of information to the general public, or to selected portions of the public, should be confined to acquainting the reader with the existence of the common trust fund and the purpose and use of such fund. It is wholly appropriate, therefore, to publicize the fact that a common trust fund has been established or is maintained by a bank, as well as to make known its special and restricted purposes and uses. However, the common trust fund is not to be regarded as an investment "entity" to be popularized in and of itself. Publicity efforts of a trust institution operating a common trust fund should be directed toward demonstrating the desirability of and need for corporate fiduciary services. Reference to the common trust fund in such publicity should be incidental to the provision of such services and should be discussed only as one medium possibly to facilitate the investment of funds held for true fiduciary purposes. Furthermore, trusts created and used for bona fide fiduciary purposes are to be distinguished from trusts created by individuals primarily seeking the benefits to be derived from corporate fiduciary investment management.

While banks operating common trust funds are enjoined to use particular care in the preparation of advertising and publicity material to see that it is in every way compatible with the spirit as well as with the letter of provisions of sections 17(*a*) and 17(*c*)(3) of Regulation F, the Board has not adopted a practice of determining the propriety of any specific common trust fund advertising in advance of its use.

ADVERTISING
(March 1956 BULLETIN, p. 228)

The following opinion has been expressed by the Board of Governors relative to the advertising of common trust funds and the solicitation through such advertising of revocable trusts:

The pertinent provisions of section 17 of Regulation F, authorizing the establishment and maintenance of common trust funds, provide in part as follows:

> The purpose of this section is to permit the use of Common Trust Funds . . . for the investment of funds held for true fiduciary purposes; and the operation of such Common Trust Funds as investment trusts for other than strictly fiduciary purposes is hereby prohibited. . . . The trust investment committee of a bank operating a Common Trust Fund shall not permit any funds of any trust to be invested in a Common Trust Fund if it has reason to believe that such trust was not created or is not being used for bona fide fiduciary purposes. A bank administering a Common Trust Fund shall not, in soliciting business or otherwise, publish or make representations which are inconsistent with this paragraph . . .

The Board has placed considerable reliance upon the exercise of sound judgment and good faith on the part of trust institutions and their trust investment committees in carrying out the intent and purposes of these provisions which are

necessarily expressed in broad, general terms. Particularly is this so with respect to the phrase "bona fide fiduciary purposes" which cannot be simply or categorically defined. Determination of bona fide fiduciary purpose depends not only on the provisions of a trust instrument but in considerable measure upon other facts and circumstances relating to the creation and the use of a particular trust. This, it seems to the Board, is particularly true in the field of revocable living trusts where legal trust form is not, by itself, sufficient evidence of bona fide fiduciary purpose. Authorization of revocable trusts for common trust fund participation should be preceded by particularly careful determination of the bona fides of their use and purpose to avoid improper use of the common trust fund as a medium attracting individuals primarily seeking investment management of their funds.

In recognition of the usefulness of common trust funds when soundly administered within the framework of their intended purposes, it would seem that the tone of common trust fund advertising should in every manner be appropriate to the collective uses and advantages of such funds without seeking to popularize any particular use or advantage. However, advertising which fails to make clear that a common trust fund is solely a facility for the investment of funds held for true fiduciary purposes or advertising which overemphasizes the advantages of such funds for investment or estate building purposes would be inconsistent with the applicable restrictions on publicity of such funds. Banks operating common trust funds are enjoined to use particular care in the preparation or the approval of advertising copy and to see that it is in every way compatible with the spirit as well as the letter of the provisions of section 17(*a*) of Regulation F.

LIMITATIONS UPON INVESTMENTS IN COMMON TRUST FUND BY TWO OR MORE TRUSTS HAVING SAME REMAINDERMAN

(July 1941 BULLETIN, p. 618)

Section 17(c)(5) of Regulation F relating to trust powers of national banks provides in part as follows:

> "No funds of any trust shall be invested in a participation in a Common Trust Fund if such investment would result in such trust having an interest in the Common Trust Fund in excess of 10 per cent of the value of the assets of the Common Trust Fund, as determined by the trust investment committee, or the sum of $25,000, whichever is less at the time of investment. * * * In applying the limitations contained in this paragraph, if two or more trusts are created by the same settlor or settlors and as much as one-half of the income or principal or both of each trust is payable or applicable to the use of the same person or persons, such trust shall be considered as one."

The Board recently considered an inquiry concerning the application of the above-quoted provisions of the regulation in two situations which were described as follows:

> "(1) A settlor creates two trusts of $25,000 each. In one trust the life tenant is 'A', and in the other the life tenant is 'B'. Upon the death of each life tenant, the principal in each trust is payable to 'C'.
>
> "(2) A settlor creates two trusts of $25,000 each. In one trust the life tenant is 'A', upon whose death the principal is payable to 'C'. The life tenant of the other is 'B', upon whose death the principal is payable to 'D', or if 'D' be not living, to 'C'."

The Board concluded that in neither situation should the two trusts be considered as one for the purpose of such limitations upon investments in common trust funds. It was pointed out, however, that the ruling was based upon an understanding that there were no powers of revocation or other additional facts which might have a bearing on the matter.

LIMITATIONS ON PARTICIPATION

(September 1948 BULLETIN, p. 1113)

Section 17(*c*)(5) of Regulation F, dealing with limitations upon investments in common trust funds, provides in part as follows:

> "No funds of any trust shall be invested in a participation in a Common Trust Fund if such investment would result in such trust having invested in the aggregate in the Common Trust Fund an amount in excess of 10 per cent of the value of the assets of the Common Trust Fund at the time of investment, as determined by the trust investment committee, or the sum of $50,000, whichever is less. * * * In applying the limitations contained in this paragraph, if two or more trusts are created by the same settlor or settlors and as much as one-half of the income or principal

or both of each trust is payable or applicable to the use of the same person or persons, such trusts shall be considered as one."

The Board of Governors has considered an inquiry with respect to the application of the above-quoted provisions of the Regulation in the following situation:

> "Two trusts are created by the same settlor. The first trust is for her benefit for life, then for the benefit of the life of a second party with remainder over to a third party. The second trust is for the life benefit of the second party with remainder over to a third party. The beneficial interest might merge for a time for the remaining period of the life of the second party if he should survive the settlor, and then upon the second party's death there would be an ultimate merger upon vesting of the principal of both trusts in the third party."

The Board pointed out that this situation was very similar to the one considered in a ruling published in the 1941 Federal Reserve BULLETIN at page 618, the only difference being in the possible merger of the beneficial interests for a time in one of the two life tenants before ultimate merger upon vesting of the principal of both trusts in the remainderman. The Board concluded that this situation came within the scope of the 1941 ruling and that investments in a common trust fund might be made without considering the two trusts as one for the purpose of applying the limitations of section 17(*c*)(5) quoted above.

The Board also stated that the merger of the beneficial interests through vesting thereof in one person at some future date would not necessitate at such time withdrawal or reduction of the participation by either trust in the common trust fund, as section 17(*c*)(5) is intended to deal only with the act of investing in participations in common trust funds and does not require the withdrawal or reduction of participations once legally acquired.

LIMITATION UPON AGGREGATE INVESTMENTS BY SINGLE TRUST
(November 1953 BULLETIN, p. 1152)

The Board has been requested to interpret the following sentence of section 17(*c*)(5) of its Regulation F:

> "No funds of any trust shall be invested in a participation in a Common Trust Fund if such investment would result in such trust having invested in the aggregate in the Common Trust Fund an amount in excess of 10 per cent of the value of the assets of the Common Trust Fund at the time of investment, as determined by the trust investment committee, or the sum of $100,000 whichever is less."

The specific question was whether (1) the actual amount previously invested in participations in the common trust fund *or* (2) the present market value of such participations, should determine the amount of additional investments, if any, which may be made in such participations.

It is the Board's view that under this language of the regulation the additional amount which a trust may invest in a common trust fund is determined by the dollar amount which the trust actually invested in the participations which it now holds, rather than by the present market value of such participations. For example, if a total of $75,000 was paid for units purchased for the trust on previous occasions, the amount which could now be invested would be $25,000 (assuming that $100,000 does not exceed 10 per cent of the present value of the assets of the common trust fund), regardless of the present market value of the units already held by the trust.

This interpretation supersedes the one published in the 1938 Federal Reserve BULLETIN at page 762 which was to the opposite effect, but was based on a provision of the regulation which was revised in 1945.

INTER-TRUST TRANSFER OF PARTICIPATIONS
(August 1954 BULLETIN, pp. 834-35)

The Board of Governors has been presented with two questions with respect to the inter-trust transfer of participations in a common trust fund.

In the first case, a donor wishes to combine two trusts, both revocable and created by him at different times, all assets of each having been invested in the common trust fund. The trustee wishes to consummate this transaction by transfer of the units of participation in the common trust fund rather than by liquidation and reinvestment of such units.

In the second case, the beneficiary of a terminating testamentary trust, invested in the common trust fund, wishes to create a living trust with his distributable share. In carrying out this transaction, the trustee wishes to transfer units of participation rather than liquidate them and reinvest the proceeds in the living trust.

The only provision of Regulation F pertaining to this matter is the second sentence of the third paragraph of section 17(*a*), which provides that "No bank administering a Common Trust Fund shall issue any document evidencing a direct or indirect interest in such Common Trust Fund in any form which purports to be negotiable or assignable."

The purpose of this provision was to minimize the possibility of common trust funds being used as investment trusts, the shares of which ordinarily are negotiable or assignable, and to preclude any evidence of participation in such funds reaching the hands of the general public. It was not the intent of this provision to prohibit, in all instances, inter-trust transfers of participations in a common trust fund.

The Board is of the opinion, therefore, that, in these two cases, the transfer of units in a common trust fund does not violate the spirit and purpose of the regulation and is not prohibited. However, it should be borne in mind that any trust which acquires, by inter-trust transfer, an investment in a common trust fund must be one created and used for bona fide fiduciary purposes.

The possible tax aspects of the cases submitted have not been explored, but it is assumed that a bank will take appropriate steps to satisfy itself that transactions of this kind would not be used to accomplish an improper avoidance of tax liability.

VALUATION OF UNITED STATES SAVINGS BONDS

(April 1948 BULLETIN, p. 397)

The Board has received inquiries concerning the question whether, in the periodic valuation of assets in a Common Trust Fund operated in accordance with section 17(*c*) of the Board's Regulation F, it is permissible to value Series G United States Savings Bonds at par value rather than redemption value.

In a statement published in the Federal Reserve Bulletin for January 1942 at page 7, the Board expressed the opinion that redemption value was the most appropriate basis for valuing such bonds. As pointed out at that time, however, the only provision of the Board's Regulation F which is pertinent to this matter is the requirement, in section 17(*c*)(1), that the written plan for the operation of a Common Trust Fund shall include, among other things, provisions relating to the basis and method of valuing the assets in the Fund, and the Regulation does not undertake to prescribe any precise basis or method of valuation. Accordingly, Regulation F does not prohibit the valuing of Series G United States Savings Bonds at par value in the periodic valuation of assets in a Common Trust Fund, and such action is permissible if it is consistent with the terms of the written plan governing the Common Trust Fund and with applicable State law.

VALUATION OF NONMARKETABLE UNITED STATES BONDS

(April 1951 BULLETIN, p. 392)

The recent Treasury Department announcement regarding a new investment series of 2-¾% Treasury Bonds which will be offered March 26, 1951, in exchange for outstanding 2-½% Treasury Bonds of June 15 and December 15, 1967-72, has given cause to inquiries concerning the question whether, in the periodic valuation of assets in a Common Trust Fund operated in accordance with the provisions of Section 17 (*c*) of the Board's Regulation F, it would be permissible to value the new nonmarketable 2-¾% Treasury Bonds at par value or whether such bonds should be valued at the market value of the 5 year 1-½% Treasury Notes for which they will be exchangeable.

In a statement published in the Federal Reserve Bulletin for April 1948 at page 397, regarding a similar inquiry relating to the valuation of Series G United States Savings Bonds, reference was made to the fact that Regulation F does not undertake to prescribe any precise basis or method of valuation and that the only provision of the regulation which is pertinent to this matter is the requirement, contained in Section 17 (*c*) (1), that the written Plan for the operation of a Common Trust Fund shall include, among other things, provisions relating to the basis and method of valuing the assets in the Fund.

Accordingly, Regulation F does not prohibit the valuing of Series G United States Savings Bonds,

or other nonmarketable direct obligations of the United States, at par value in the periodic valuation of assets in a Common Trust Fund, and such action is permissible if it is consistent with the terms of the written Plan governing the Common Trust Fund and with applicable State Law.

TRANSFER TO FUND OF UNITED STATES BONDS

(May 1951 BULLETIN, p. 510)

The Treasury Department has issued a ruling to the effect that the Department does not object to the transfer at par value of the nonmarketable 2¾ per cent Treasury bonds from individual trusts to a common trust fund. A similar ruling was contained in Public Debt Bulletin No. 21 of March 6, 1945, with respect to the transfer of Series F or G United States savings bonds.

Although it is provided in the second paragraph of section 17(*a*) of Regulation F that the term "common trust fund" means a fund maintained by a national bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as trustee, executor, administrator, or guardian, the Board will not object to the direct transfer at par value of United States savings bonds or the recently issued 2¾ per cent nonmarketable Treasury bonds from individual trust estates to a common trust fund in exchange for participations therein.

ACQUISITION OF INTEREST IN PARTICIPATIONS

(August 1947 BULLETIN, pp. 980-81)

The Board was recently advised by a bank that it occasionally makes loans to the trustors of revocable living trusts secured by assignments of their interests in the trusts. The bank inquired whether, when such a loan is made to the trustor of a trust which holds participations in the common trust fund operated by the bank, the bank acquires an interest in such participations within the meaning of the following provisions of section 17(*a*) of Regulation F:

> "(2) A bank administering a Common Trust Fund shall not invest any of its own funds in such Common Trust Fund and if a bank, because of a creditor relationship or any other reason, acquires any interest in a participation in a Common Trust Fund under its administration the participation shall be withdrawn on the first date on which such withdrawal can be effected in accordance with the provisions of this section;"

The Board is of the opinion that a loan such as that described may cause the bank to have an interest in participations in the common trust fund, within the meaning of Regulation F, even though there has been no default on the loan.

The Board has heretofore expressed the opinion that a plan for the operation of a common trust fund which contained the following provision is not in conflict with Regulation F:

> "The Trust Company shall not be deemed to have acquired an interest in a participation in the common fund by reason of an advance to the trust holding such participation (1) if the Trust Company is not entitled to reimbursement out of the principal of the participating trust, or (2) if the advance is adequately secured by assets of the participating trust other than the participation in the common fund."

The Board believes that the same principles apply to loans of the character described above, and that this is as liberal an interpretation of the Regulation as can be justified. Under the facts presented, it appears that the bank could resort to the principal of the participating trusts to collect the loans. Accordingly, in making such a loan, the bank acquires an interest in participations in the common trust fund, within the meaning of the Regulation, unless the loan is adequately secured by assets other than such participations.

ASSIGNMENT OF INCOME TO BANK

(March 1956 BULLETIN, pp. 228-29)

The following opinion has been expressed by the Board of Governors with respect to the assignment of a beneficiary's income from a participation in a common trust fund as collateral security for loans made to such beneficiary by the bank's commercial department:

Regulation F provides that if a bank, because of a creditor relationship or any other reason, acquires any interest in a participation in a common trust fund under its administration, the participation shall be withdrawn on the first date on which such withdrawal can be effected. The purpose of this provision obviously is to preclude or

minimize the development of conflicts of interest in the administration of common trust funds.

The answer to this question therefore depends upon whether the bank, because of the loan by its Commercial Department to the income beneficiary, would acquire an "interest" in a participation in the common trust fund.

In the ruling of the Board published in the 1947 Federal Reserve BULLETIN 980, the Board took the position that a loan was improper in view of the above-mentioned provision of Regulation F, where it appeared that the bank was entitled to resort to the "principal" of the participating trust in order to collect the loan. That case did not involve the assignment of the beneficiary's income from a participation in the common trust fund. In the opinion of the Board, however, no valid distinction can be made between an assignment of the principal and an assignment of the income, having in mind the purpose of the provision of the regulation in question. If the bank holds collateral in the form of an assignment of the income, its capacity as fiduciary would be complicated by that of creditor, and decisions of the bank in its management of the fund might be subject to the accusation, even though unjustified, of being motivated by creditor's rights rather than by a fiduciary's duty.

In the circumstances, it is the Board's opinion that the acceptance of an assignment of a beneficiary's income in a participation in a common trust fund as collateral for a loan by the commercial department of a bank would weaken the fiduciary relationship and would result in the bank having an "interest" in the participation in the common trust fund which would bring the loan within the intent and purpose of the prohibition of section 17(*a*)(2) of Regulation F.

The Board is also of the opinion that the use of an assignment which expressly states that under no circumstances would the assignee have an interest in the common trust fund by virtue of the assignment, and that the assignment would be effective only as to income after it actually had been received into the participating trust account, would not remove the bank's interest in a participation in the common trust fund.

DISTRIBUTION OF ACCRUED INCOME

(July 1949 BULLETIN, pp. 797-98)

The Board has recently considered the question whether a bank operating a common trust fund may make advances to the fund for use in distributing accrued interest and declared dividends receivable on investments of the fund prior to the receipt of such income where such advances are made from a "general trust account" consisting of commingled uninvested funds of all trusts administered by the bank.

The Board has previously expressed the view that the use of uninvested cash in a common trust fund to distribute accrued interest and dividends receivable on investments of the fund prior to receipt is not inconsistent with the Board's Regulation F, and has stated that it would not object if uninvested cash in a common trust fund were so used in reasonable amounts.

The situation is different, however, where the bank operating a common trust fund makes advances to the fund for this purpose. Subject to an exception which is not pertinent here, subdivision numbered (3) of the fourth paragraph of section 17(*a*) of Regulation F provides as follows:

> (3) A bank administering a Common Trust Fund shall not have any interest in the assets held in such Common Trust Fund, other than in its capacity as fiduciary, * * *.

Where a bank operating a common trust fund advances its own funds to the common trust fund in order to distribute accrued but uncollected income of the fund, the bank relies upon the assets of the fund for reimbursement of its advances; and, in the Board's opinion, the bank acquires an interest in assets of the common trust fund which is prohibited by the above-quoted provision of Regulation F.

Where a bank advances uninvested trust funds held in a "general trust account" of the kind referred to above, it is the Board's opinion that, in view of the bank's liability to the trusts whose funds are advanced, the bank acquires an interest in assets of the common trust fund which does not differ, in substance, from the interest which would be acquired by advances of its own funds, and that, in any event, this practice is not permissible because it violates section 11(*c*) of Regulation F which reads as follows:

> (*c*) **Dealings between trust accounts.**—A national bank acting as fiduciary shall not make any advance to any trust from the funds belonging to any other trust, except when the making of such advances to a designated trust is specifically authorized by the trust instrument covering the trust from which such advances are made.

FEES CHARGED TRUSTS HOLDING PARTICIPATIONS

(June 1950 BULLETIN, p. 678)

The Board has considered an inquiry by a national bank relating to the fees which the bank may charge for the administration of trusts which hold participations in a common trust fund operated by the bank.

It appears that the bank has a schedule of trust fees based on principal and that a higher rate is charged for a trust's investments in real estate loans than for its investments in other personal property. Since there is this difference in rates when the funds of a trust are invested separately, the bank inquired whether, upon the investment of funds of a trust in a participation in the bank's common trust fund which holds some real estate loans, the fee charged for the administration of the participating trust may be based in part upon the rate for real estate loan investments. For example, if 15 per cent of the assets of the common trust fund consist of real estate loans, can the bank charge the real estate loan rate on 15 per cent of a trust's participation in the common trust fund?

The bank's inquiry was prompted by the following provision of section 17(c)(8) of Regulation F:

> "A national bank • • • shall not • • • receive, either from the Common Trust Fund or from any trusts the funds of which are invested in participations therein, any additional fees, commissions, or compensations of any kind by reason of such participation."

In the Board's opinion, this provision of Regulation F does not prohibit the bank from basing its fee in part on the real estate loan rate as suggested above. It is the Board's view that the bank would not be receiving any additional fee by reason of the trust's participation in the common trust fund if it received no greater fee than would be charged if the funds of the trust were separately invested in the same classes of investments as are held by the common trust fund.

The Board has not undertaken to rule on any aspect of this matter other than the application of the above-quoted provision of Regulation F. The fees which a national bank may charge for the administration of trusts depend, of course, on the facts of particular cases, including the terms of the trust instruments, court orders, and State laws; and, in this connection, consideration should be given to the provisions of section 14(a) of Regulation F dealing generally with trust fees of national banks.