August 12, 1915.

S i r :

At the request of Mr. Harding, I have examined that part of Section 14, of the Federal Reserve Act which relates to the establishment by Federal reserve banks of foreign agencies with a view of determining whether the several Federal reserve banks may jointly establish one agency in a foreign country, each bank to assume responsibility for such proportion of the business conducted by the agency as may be agreed upon in advance.

Section 14, in enumerating the powers of the Federal reserve banks, provides in paragraph (e) that every Federal reserve bank shall have power

> "To establish accounts with other Federal reserve banks for exchange purposes and, with the consent of the Federal Reserve Board, to open and maintain banking accounts in foreign countries, appoint correspondents, and establish agencies in such countries wheresoever it may deem best for the purpose of purchasing, selling, and collecting bills of exchange, and to buy and sell with or without its indorsement through such correspondents or agencies, bills of exchange arising out of actual commercial transactions which have not more than ninety days to run and which bear the signature of two or more responsible parties."

This section specifically authorizes each Federal reserve bank to establish agencies in foreign countries wheresoever it may deem best, such agencies to be for the exclusive purposes expressed in paragraph (e), quoted above.

The question presented for consideration is merely whether the Federal reserve banks, in exercising the authority vested in each one of them individually, may jointly establish the same agency.

It is clear that Congress has intended to make a distinction throughout the Act between a branch and an agency. Therefore, though it is true that two national banks each of which is authorized by Section 25 to establish foreign branches, could not jointly establish one branch; nevertheless, there is no inherent objection, as a matter of law, in having two or more principals appoint the same agent to do an authorized act or in having the same agent execute one act for the benefit of joint principals.

Section 3 of the Act provides for the establishment of branches of the various Federal reserve banks within the districts in which they are located. These branches are to be operated by a separate board of directors under rules and regulations approved by the Federal Reserve Board. Generally speaking, each "branch" shall exercise the same functions, within the territory to which it is designated, as the parent bank does in the rest of the district. Joint branches of Federal reserve banks would be impossible if only because the Federal Reserve Act specifies that branches of such banks must be located in the same district as the bank itself.

Section 25 authorizes national banks possessing a certain capital and surplus to establish "branches" in foreign countries, but no two or more national banks could legitimately establish a joint branch, even though each is permitted by the Act separately to form a branch.

A "branch," as the name implies, differs from an agency in that it is an integral part of the bank itself, and its power to transact business is derived not from any specific authority given to it by its parent bank, but rather from the provision of law applicable to it because it is a branch or an actual part of the parent corporation. It seems impossible therefore to conceive of one "branch" being an integral part of two corporate units which are in law separate and distinct from one another.

Section 14, however, in providing for the operations of a Federal reserve bank in foreign countries, specifies that such bank shall establish not a branch

but an agency for the purpose not of performing all the functions authorized the parent bank, but rather for the more limited purpose of purchasing, selling, and collecting bills of exchange. In this case the bank appoints agents with authority to exercise these particular, specified functions. Such an agency is not a part of the bank itself but merely acts for and in its behalf in the manner and for the sole purposes which the bank directs, and it can not therefore be considered a "branch" in the sense in which that term is generally used, nor is it subject to the same principles of law.

As previously stated, there is no principle in the law of agency which would prohibit two or more banks from appointing the same agents to do certain authorized acts. If the various Federal reserve banks desire to avail themselves of this right there would seem to be no ground for refusing it, and particularly as it might well be a more effective and a more economical way of carrying out the intent of Congress.

The principle involved is no different from that applicable to transactions engaged in every day by national banks such as participation loans. Each bank is by law authorized separately to make loans on personal security and there is no mention in the law of a joint loan, but a fair and reasonable construction fully justifies such joint transactions. So it would seem in the case now under consideration that Federal reserve banks may, under the terms of the Federal Reserve Act, establish a joint agency in a foreign country.

It would seem to be necessary, however, if the various Federal reserve banks avail themselves of this right, that they clearly define the scope of the power authorized their agent and agree in advance as to what proportion of the acts performed by the agent will be attributable to each bank.

I have communicated with Mr. Elliott by long distance and he agrees fully with the conclusions stated above, but suggests that there might possibly be certain difficulties in the matter of bookkeeping, but that would seem to be a difficulty for the solution not of the Board but of the banks themselves.

Respectfully,

G. L. HARRISON,

Assistant Counsel.

Honorable W. G. McAdoo,

North Haven, Maine.

8/16/15.