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ADDRESS REPLY TO
FEDERAL RESERVE BOARD

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October 9, 1915.

S I R :

In the matter of open market operations provided for by Section 14 of the Federal Reserve Act, as I understand the question submitted for consideration, you desire to know whether there is any duty or obligation on the part of the Federal Reserve Board to prescribe rules and regulations governing conditions under which Federal reserve banks may purchase and sell in the open market cable transfers, bankers' acceptances and bills of exchange, or whether the Board, by failure to prescribe such regulations, may withhold from such banks the right to exercise these powers.

To answer this question it is necessary to determine the legal effect of the provision in question. The language of the Act is -

" 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."

The legal effect of this provision seems clearly to be to vest in the Federal reserve bank the right to exercise this power and to vest in the Federal Reserve Board only the power to regulate its exercise. In other words, Congress did not intend to vest a discretion in the Board to determine whether Federal reserve banks should purchase and sell cable transfers, acceptances and bills of exchange, but merely to regulate their purchase and sale.

While there are a great many cases dealing with the question of how far Congress, or any legislative body, may delegate to an administrative body the power to regulate, it is not necessary to consider these cases at length since we are dealing

not with the question of what the regulation shall contain but merely with the Board's duty in the premises. Generally speaking "while Congress can not delegate the power to make laws it can delegate the power to determine some fact or state of things upon which the statute makes or intends to make its own action depend". For collection of cases see Encyclopedia of Law and Procedure, Volume 8, page 830.

Congress might, therefore, have vested in the Federal Reserve Board, the power to determine whether Federal reserve banks should purchase in the open market cable transfers, acceptances and bills of exchange. Had it intended to do so, however, it would have incorporated this power in Section 11 in defining the powers of the Federal Reserve Board instead of in Section 14 which deals with the powers of the Federal reserve banks. For example, Section 11 authorizes the Federal Reserve Board -

"(b) To permit, or, on the affirmative vote of at least five members of the Reserve Board to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Federal Reserve Board.

(c) To suspend for a period of not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirement specified in this Act.

(k) To grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds under such rules and regulations as the said Board may prescribe.

Inasmuch, therefore, as the power to purchase and sell cable transfers, acceptances and bills of exchange in the open market is vested in the Federal reserve banks subject only to rules and regulations of the Federal Reserve Board, it would seem to be the function of the Board either to prescribe the rules and regulations referred to, or should the Board determine

not to make such rules and regulations at this time, to inform the Federal reserve banks that these powers may be exercised within the limitations of Section 14, until further restricted by such rules and regulations as the Board may adopt.

Respectfully,

M. C. ELLIOTT

Counsel

Hon. William G. McAdoo,
Secretary of the Treasury.