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ADDRESS REPLY TO  
FEDERAL RESERVE BOARD

August 16, 1918.

X-1133

S i r :

For your information, there is inclosed  
herewith an opinion of Counsel with respect to the  
negotiability of a trade acceptance containing the  
provision: "If this acceptance is paid on or before  
\_\_\_\_\_, a discount of 5% will be allowed".

Very truly yours,

Governor.

Inclosure.

C O P YFEDERAL RESERVE BOARD  
WASHINGTON

K-1133-a

August 1<sup>st</sup>. 1918.

My dear Governor:

In the accompanying letter the Board is asked for a ruling on the negotiability of a trade acceptance containing the following provision:

"If this acceptance is paid on or before ..... a discount of 5% will be allowed".

In an opinion of this office, approved by the Board and published on page 200 of the March 1918 Federal Reserve Bulletin, the conclusion was reached that -

"A trade acceptance which consists of an order to pay a certain amount, which is the amount of the debt minus a discount for prompt payment at maturity, or, if not paid at maturity, to pay a greater amount, which is the amount of the debt without any discount, is an order to pay a sum certain and is negotiable."

The principle involved in the two cases is somewhat analogous - the only difference being that in one case the discount is allowed if payment is made at maturity while in the other the discount is allowed if maturity is anticipated. In both cases the test of negotiability, according to the text writers on the Negotiable Instruments Law, is whether or not the sum payable can be ascertained from the face of the instrument and both forms, in the opinion of this office, meet this condition.

As pointed out, however, by Counsel for the Federal Reserve Bank of Chicago, it has been held in Minnesota, Nebraska, Texas and Canada that a promise to pay a certain sum with a provision that a fixed discount is allowed if paid before maturity, or before a certain date is negotiable, although the contrary has been held in Michigan, Oklahoma, South Dakota and Tennessee.

The reasoning of the courts in the cases sustaining the negotiability of such instruments seems to be more consistent with the general principles incorporated in the Negotiable Instruments Law and I fully agree with Counsel for the Federal Reserve Bank of Chicago that such an instrument should be held by the courts to be negotiable. In view, however, of the lack of uniformity of the decisions of the courts on this point the Board should not approve for general use an acceptance containing this condition since its ruling would, of course, have no binding effect on the State courts.

Respectfully,

(Signed) M. C. ELLIOTT.

Counsel.

Hon. W. P. G. Harding,  
Governor, Federal Reserve Board.