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ADDRESS REPLY TO
FEDERAL RESERVE BOARD

X-1748

Dear

Receipt is acknowledged of your letter of the in which you protest against the policy which has been adopted by the Federal Reserve Banks with the approval of the Federal Reserve Board in the matter of the collection of checks which are received by Federal Reserve Banks from their member banks or from non-member banks which maintain clearing or collection accounts with them.

The Board's action is based upon its conception of the very evident purposes of the Federal Reserve Act. Section 13 of the Act begins, as follows: "Any Federal Reserve Bank may receive from any of its member banks, and from the United States, deposits of current funds in lawful money, national bank notes, Federal Reserve notes, or checks, and drafts, payable upon presentation, and also, for collection, maturing notes and bills." Even though the Federal Reserve Board has heretofore ruled that the permissive "may" as used in the foregoing paragraph should not be construed to mean the mandatory "shall" nevertheless it is clear that a Federal Reserve Bank in order to do any business whatever must exercise some of the permissive powers authorized by law. It would be impossible otherwise for a Federal Reserve Bank to afford to its member banks many of the privileges which the law clearly contemplates and to which the member banks are clearly entitled. But independently of a discussion of this phase of the situation, it seems to the Board that doubts upon this question are resolved upon a consideration of the provisions of Section 16. "Every Federal Reserve Bank shall receive on deposit at par from member banks or from Federal Reserve Banks checks and drafts drawn upon any of its depositors." In this case, the obligatory "shall" is used so that there is no option in the Federal Reserve Bank so far as checks and drafts upon its depositors are concerned. From this it may be argued that as the depositors of a Federal Reserve Bank are member banks there is no obligation upon the Federal Reserve Bank to receive on deposit at par checks on non-member banks, but even if the language of Section 13 be construed as permissive there seems to be no question that the Federal Reserve Bank has the right to receive on deposit from any of its member banks any checks or drafts upon whomsoever drawn, provided they are payable upon presentation. The whole purpose of the Act demands that in justice to member banks, they should exercise that right.

Section 16 further provides that the Federal Reserve Board "may at its discretion exercise the functions of a clearing house for such Federal Reserve Banks *** and may also require each such bank to exercise

the functions of a clearing house for its member banks." In accordance with the purpose of this paragraph, the Federal Reserve Board, with the view ultimately of establishing a universal or national system of clearing intersectional balances as well as bank checks and drafts, has established a gold settlement fund through which daily clearings between all Federal Reserve Banks are consummated and has also required each Federal Reserve Bank to exercise the functions of a clearing house for its member banks. In order, however, to make fully effective its facilities as a clearing house in accordance with the terms of this section, there does not seem to be any doubt that the Federal Reserve Bank should not only exercise its obligatory power to receive from member banks checks and drafts drawn upon other member banks, but that it should also exercise its permissive power to receive from member banks any other checks and drafts upon whomsoever drawn, provided that they are payable upon presentation.

There are no doubt many non-member banks without sufficient capitalization to make them eligible for membership in the Federal Reserve System, but provision is made for such banks in Section 13 by authorizing the Federal Reserve Banks, for purposes of exchange or of collection, to receive deposits from any non-member bank or trust company. But for the fact that the small country banks are able to have their out of town items credited at par by some city correspondent, there is no doubt that many more of them would avail themselves of the non-member collection privilege than have done so.

There is a proviso in Section 13 which allows member and non-member banks to make reasonable charges "to be determined and regulated by the Federal Reserve Board, but in no case to exceed 10 cents per \$100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal Reserve Banks." This has been construed by the Attorney General of the United States as meaning that a Federal Reserve Bank cannot legally pay any fee to a member or non-member bank for the collection and remittance of a check. It follows, therefore, that if the Federal Reserve Banks are to give the service required of them under the provisions of Section 13 they must in cases where banks refuse to remit for their checks at par use some other means of collection no matter how expensive.

The action of the various Federal Reserve Banks in extending their par lists has met with the cordial approval of the Federal Reserve Board, which holds the view that under the terms of existing law, the Federal Reserve Banks must use every effort to collect all bank checks received from member banks at par. Several of the Federal Reserve Banks are now able to collect on all points in their respective districts at par and new additions to the other par lists are being made every day. The Board sees no objection to one bank charging another bank or a firm or individual the full amount provided in Section 13 of the Federal Reserve Act (10 cents per \$100) and has not undertaken to modify these charges, but the Act expressly provides that no such charge shall be made against the Federal Reserve Banks.

It is the Board's duty to see that the law is administered fairly and without discrimination and that it applies to all banks alike, and it is making an earnest endeavor to carry out the laws as construed by the highest legal authority of the administrative branch of the Government.