X-7519

(INTERPRETATION OF BANKING ACT OF 1933)

Copies to be sent to all Federal Reserve Banks.

July 21, 1933.

Mr. J. F. T. O'Connor,
Comptroller of the Currency,
Washington, D. C.

Dear Mr. Comptroller:

The Federal Reserve Board has been advised by Mr. F. G. Awalt, Deputy Comptroller of the Currency, in a memorandum under date of July 6, 1933, that it is proposed to consolidate the _____ Bank, a territorial banking institution on the Island of Maui, and the (a national bank in Honolulu, T. H.,) under the Act of November 7, 1918, as amended. Both banking institutions are located in the Territory of Hawaii, and neither bank is a member of the Federal Reserve System. Although the (national bank) is a national banking association, it is located in a territory of the United States and is not required by law to become, and has not become, a member of the Federal Reserve System.

From the memorandum submitted by Mr. Awalt, the Board understands that _____ Company, Ltd., owns substantially all the stock of both of these banks, and that Mr. _____ executive vice president of the national bank, desires to know what steps _____ Company, Ltd., must take in order to obtain from the Board a permit to vote the stock of the national bank in connection with the proposed consolidation. Since the (national bank) is not a member of the Federal Reserve System, there is presented the question whether the provisions of Section 5144

of the Revised Statutes, as amended, are applicable to a company that owns a national bank which is not a member bank of the Federal Reserve System.

It is the opinion of the Board that the provisions of the said Section 5144 are not applicable to such a company, and, accordingly, that ___ _____ Company, Ltd., is not required by the said Section 5144 to obtain a permit from the Board as a prerequisite to its voting the shares of stock of the national bank which it owns.

Section 5144 of the Revised Statutes, as amended by Section 19 of the Banking Act of 1933, provides that shares of stock of a national bank which are controlled by a "holding company affiliate" may not be voted unless such "holding company affiliate" first obtains a voting permit from the Board and such voting permit is in force at the time such shares are voted. The provisions of Section 5144 are applicable to every "holding company affiliate" of a national bank and, accordingly, are applicable to ___ _____ Company, Ltd., if that company is a "holding company affiliate" of the national bank within the meaning of the statute.

The definition of the term "holding company affiliate" is found in Section 2 of the Banking Act of 1933, which reads as follows:

> "Sec. 2. As used in this Act and in any provision of law amended by this Act--
> *****
> "(c) The term 'holding company affiliate' shall include any corporation, business trust, association, or other similar organization --
> "(1) Which owns or controls, directly or indirectly, either a majority of the shares of

> capital stock of a member bank or more than 50 per centum of the number of shares voted for the election of directors of any one bank at the preceding election, or controls in any manner the election of a majority of the directors of any one bank; or
>
> "(2) For the benefit of whose shareholders or members all or substantially all the capital stock of a member bank is held by trustees." (Italics supplied.)

After considering the above definition, it is the opinion of the Board that the term "holding company affiliate", as used in the Banking Act of 1933, means a corporation, business trust, association, or other similar organization which is affiliated with a member bank in any manner set forth in the definition above quoted, and that it does not have reference to, or include, an organization which is not affiliated with a member bank. Although it appears that the word "bank" is twice used in subdivision (1), sub-paragraph (c) of Section 2, without the qualifying word "member", the first reference to a banking institution in this subdivision is to a "member bank", and the reference in the subdivision following is likewise to a "member bank". In view of such references and of the context of the Act, the Board is of the opinion that the word "bank", as used in said subdivision (1), connotes a "member bank"; and that the term "holding company affiliate" is limited in its meaning to an organization which is affiliated with a member bank in the manner set forth in Section 2, sub-paragraph (c) of the Act. Accordingly, although _____ Company, Ltd., owns substantially all the stock of the national bank, and is affiliated with such bank in the manner set forth in Section 2 (c) of the Act, it is not a "holding company affiliate" of such bank by reason of the fact that the national

bank with which it is affiliated is not a member bank of the Federal Reserve System. Therefore, since _____ Company, Ltd., is not a "holding company affiliate" of the national bank, it does not appear to be necessary for the company to obtain a permit from the Board before voting the stock of the national bank which it owns.

The _____ Bank is neither a national banking association nor a member bank of the Federal Reserve System; the law does not require the holding company of any such institution to obtain a permit to vote the stock owned by the holding company in such institution; and, accordingly, it will not be necessary for _____ Company Ltd., to obtain a permit to vote the stock of this bank.

Very truly yours,

(s) CHESTER MORRILL

Chester Morrill,
Secretary.