

X-7686

(INTERPRETATION OF BANKING ACT OF 1933)

Copies to be sent to all Federal reserve banks.

November 16, 1933.

Mr. Eugene M. Stevens,
Federal Reserve Agent,
Federal Reserve Bank of Chicago,
Chicago, Illinois.

Dear Mr. Stevens:

Reference is made to your telegram of November 1, 1933, regarding the applicability of Section 8A of the Clayton Antitrust Act to a director of a national bank serving as an officer or director of a corporation which is not a bank, banking association, or trust company and which occasionally makes loans secured by its own stock or which occasionally makes loans secured by stock or bond collateral through the call loan market or otherwise.

Section 8A applies to any corporation (other than a mutual savings bank) "which shall make loans secured by stock or bond collateral to any individual, association, partnership, or corporation other than its own subsidiaries". The wording of the provision would seem to leave no room for a construction which would make it inapplicable to a corporation making loans secured by its own stock; and, for the same reason, the section is applicable to a corporation making loans through the call loan market or otherwise on stock or bond collateral.

Under the provisions of Section 8 of the Clayton Antitrust Act, the Federal Reserve Board is authorized, under certain circumstances, to issue permits covering services of the kinds referred to in Sections 8

and 8A. However, the provision of Section 8 which authorizes the Board to issue permits refers only to banking institutions of certain classes, and the Board is, accordingly, without authority to issue permits involving relationships between national banks and non-banking organizations which come within the provisions of Section 8A.

Reference has been made to the possible broad effect of a statute forbidding the directors of a national bank to serve as directors of other corporations making such loans, but as you are of course aware, the Federal Reserve Board is not at liberty to construe a statute in a way which would conflict with the plain meaning of the words used by Congress.

It should be noted, however, that Section 8A refers to any corporation which "shall make" loans of the kind described, and, in this connection, your attention is directed to paragraph (3) of Section IV(b) of the Board's Regulation L dealing with interlocking directorates and other relationships under the Clayton Antitrust Act. The statute does not refer to the business which may have been transacted by a corporation in the past, but refers only to the business currently and presently transacted after the effective date of the section; and, therefore, the prohibitions of Section 8A are inapplicable to a director of a national bank who shall serve as a director, officer or employee of a corporation, or as a member of a partnership, which in the past has made loans secured by stock or bond collateral, if such corporation or partnership shall make no loans of that character after January 1, 1934.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,
Secretary.