X-7734

INTERPRETATION OF BANKING ACT OF 1933

(Copies to be sent to all Federal Reserve Banks)

December 22, 1933

Mr._____, President,
_____,
_____.

Dear Sir:

Your letter of December 6, 1933, addressed to Governor Black states that three directors of your bank are partners in a firm engaged in dealing in securities, and raises several questions regarding the applicability of Section 32 of the Banking Act of 1933 and Section 8A of the Clayton Act (Section 33 of the Banking Act of 1933) to the service of such directors.

You ask first whether any distinction is made between national banks and State member banks in connection with an application by a director for permission to be at the same time a partner of a firm dealing in securities. This question relates to the provisions of Section 32 of the Banking Act of 1933 which contains certain prohibitions which are applicable to an officer or director of "any member bank". The section therefore makes no distinction between national banks and State member banks.

Your second question is whether a director of a member bank who is a partner in a firm which carries margin accounts for its customers may obtain a permit pursuant to the provisions of Section 32. That section authorizes the Board to issue permits, and provides that

the prohobitions contained in that section shall not be applicable to any case in which such a permit has been issued.

However, as you indicate by your third question, the provisions of Section 8A of the Clayton Act must also be taken into consideration. Your letter does not describe the exact manner in which the margin accounts to which you refer are carried, but if they involve the making of "loans secured by stock or bond collateral", the service of these directors would come within the prohibitions of Section 8A also. Accordingly, a permit issued under Section 32 of the Banking Act of 1933, although it would take the service of these directors out of the prohibitions of Section 32, would serve no useful purpose in such a case unless Section 8A of the Clayton Act were likewise not applicable to them.

Section 8A of the Clayton Act is not applicable in any case in which a permit has been issued by the Federal Reserve Board. However, the Board's authority to issue permits covering relations within the prohibitions of the Clayton Act is limited, by Section 8 of that Act, to the issuance of permits covering relationships between banking organizations of certain types, with the result that, unless the partnership to which you refer is an organization of that kind, the Board is without authority to issue a permit exempting the service in question from the provisions of the Clayton Act.

The principal question in your letter therefore is whether a permit issued pursuant to the authority granted in Section 32 will also exempt the relationship which it covers from the provisions of the Clayton Act.

In considering this question, it should be noted that permits issued by the Board under the provisions of the Clayton Act clearly apply only to the prohibitions of that Act, since the provision in Section 8 authorizing the issuance of permits provides that "nothing in this Act shall prohibit" relationships of certain types "if in any case there is in force a permit therefor issued by the Federal Reserve Board; and the Federal Reserve Board is authorized to issue such permits" under certain circumstances.

Section 32 applies to certain specified relationships, which are not the same as those covered by Section 8A of the Clayton Act, and renders unlawful the relationships to which it applies "unless in any case there is a permit therefor issued by the Federal Reserve Board; and the Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest". There is no reason to assume that the Board is authorized by this provision in Section 32 to issue permits which will make the service in question lawful regardless of any other provision of law which might be applicable in a particular case. It is felt that an interpretation which would reach such a result would be an unwarranted extension of the authority contained in Section 32.

Accordingly, a permit issued under Section 32 would serve no useful purpose in a case where the relationship was prohibited by the Clayton Act and no permit had been issued pursuant to the provisions of that Act.

As you know, the phrase "organized or operating under the laws of the United States" in Section 8 and Section 8A of the Clayton Act is not applicable to State member banks of the Federal Reserve System.

Very truly yours,

(Signed) Chester Morrill,
Chester Morrill,
Secretary.