

INTERPRETATION OF BANKING ACT OF 1933

(Copies to be sent to all Federal Reserve Banks)

February 6, 1934.

Mr. John N. Peyton,
Federal Reserve Agent,
Federal Reserve Bank of Minneapolis,
Minneapolis, Minnesota.

Dear Mr. Peyton:

This refers to your letter of December 19, 1933, requesting the advice of the Federal Reserve Board on the question whether a director of a national bank may lawfully obtain a permit from the Board to serve at the same time as a director of the _____ Morris Plan Company, operating under the laws of the State of Minnesota. The Federal Reserve Board has given careful consideration to the opinion of your counsel and the other documents inclosed with your letter with regard to this question.

Under the provisions of Section 8 of the Clayton Antitrust Act, as you know, the Federal Reserve Board is authorized to issue permits under certain conditions covering relationships between "banks, banking associations or trust companies" which are otherwise prohibited by any of the provisions of that Act but has no such authority with respect to other institutions; and the question is therefore presented whether the _____ Morris Plan Company is a bank, banking association or trust company within the meaning of the Clayton Act.

It appears that the _____ Morris Plan Company is subject to the provisions of Chapter 246 of the Minnesota laws of 1933, relating

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to "industrial loan and thrift companies" and that under that act such company is prohibited from carrying commercial or demand banking accounts, from using the word "bank" or "banking" in its corporate name, and from receiving savings accounts or other deposits. It appears, however, that the _____ Morris Plan Company is authorized to discount or purchase notes, bills of exchange, acceptances or other choses in action and that it issues interest-bearing certificates of indebtedness which may be issued "under any descriptive name" and which are redeemable by the owners thereof on thirty days' notice in writing. While termed "investment certificates" such certificates nevertheless actually represent deposits and serve the same purpose as certificates of deposit. Notwithstanding the provisions of the State law, therefore, it appears that the company does receive deposits as a matter of fact. It appears also that the company is authorized to lend money upon the security of co-makers, personal chattels or other property, exclusive of real estate, and to require that the borrower purchase and pledge with the company as security a certificate of indebtedness of the company in the same amount as the loan secured thereby, providing for payments in periodic installments extending over substantially the period of the loan. It further appears that the _____ Morris Plan Company is subject to the same supervision and control by the State Banking Department as State banks engaged in other forms of banking business. In the circumstances, it is the opinion of the Federal Reserve Board that the _____ Morris Plan Company exercises the functions of a bank and is therefore properly to be regarded as a bank or

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banking institution within the meaning of the provisions of the Clayton Antitrust Act.

It is understood, however, that the _____ Morris Plan Company is an institution which does no commercial banking business and the further question is therefore presented whether the Board is authorized under Section 8 of the Clayton Act to grant permits covering relationships between national banks and other banking institutions which do no commercial banking business. In this connection it is to be noted that the first proviso of Section 8 of the Clayton Act as amended by the Act of March 2, 1929, is as follows: "Provided, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares, to joint-stock land banks organized under the provisions of the Federal Farm Loan Act, or to other banking institutions which do no commercial banking business:" and the last proviso of the section as amended by the Act of March 9, 1928, reads as follows: "And provided further, That nothing in this Act shall prohibit any private banker from being an officer, director, or employee of not more than two banks, banking associations, or trust companies, or prohibit any officer, director, or employee of any bank, banking association, or trust company, or any class A director of a Federal reserve bank, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if in any such case there is in force a permit therefor issued by the Federal Reserve Board; and the Federal Reserve Board is authorized to issue

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such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds, after reasonable notice and opportunity to be heard, that the public interest requires its revocation."

Notwithstanding the literal import of the first proviso mentioned, it appears that the purpose of the amendment of March 2, 1929 was to restrict the scope of the prohibitions of Section 8 of the Clayton Act and that to interpret the statute in such a way as to broaden the prohibitory effect of the provisions of the now existing law would be inconsistent with the intention of Congress in this respect. After a careful consideration of the provisions of the statute as a whole, the Board is of the opinion that the authority conferred by the last proviso clause in Section 8 should be considered as controlling with respect to this question and, accordingly, that the Board may lawfully grant a permit covering relationships between national banks and other banking institutions which do no commercial banking business.

The Board will therefore give consideration to applications, if and when submitted, covering interlocking directorates between a national bank and the _____ Morris Plan Company.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,
Secretary.