

X-7820

INTERPRETATION OF BANKING ACT OF 1933.

(Copies to be sent to all Federal reserve banks.)

March 12, 1934.

Mr. Frederic H. Curtiss,
Federal Reserve Agent,
Federal Reserve Bank of Boston,
Boston, Massachusetts.

Dear Mr. Curtiss:

Reference is made to your inquiries of November 14, 1933, December 11, 1933, December 14, 1933, and January 3, 1934, as to whether _____ Trust, _____ Company, _____ Corporation and _____ Corporation respectively are organizations "engaged primarily in the business of purchasing, selling, or negotiating securities" within the meaning of Section 32 of the Banking Act of 1933 with the result that no officer or director of a member bank may at the same time be an officer, director or manager of any of the named organizations unless in any such case there is a permit therefor issued by the Federal Reserve Board.

The information submitted indicates that each of the organizations is a so-called "investment trust" of the management type, engaged in the business of holding for income and for capital appreciation stocks, bonds and other securities, and that none of the first three organizations named has been or is a party to any agreement involving the issuance, underwriting, or

distribution of securities, excepting the sale of its own shares to the public.

It is noted that the last three organizations named are corporations and that the first is a so-called "business trust". However, this variance in organization is not believed to be a material factor in answering your question.

Careful consideration has been given to the question whether a ruling could be made that so-called investment trusts as a class were included, or not included, within the provisions of Section 32, but it appears that they vary so widely in their methods of doing business that such a general ruling would be impossible.

Some investment trusts have held their portfolios of investments virtually intact for a number of years and propose to continue to do so indefinitely. Such a trust may be regarded as engaged primarily in "holding" securities, and can obviously not be regarded as engaged primarily in the business of purchasing, selling, or negotiating securities.

It appears that even if such an investment trust should occasionally make changes in its portfolio of investments in order to keep its funds invested to the best possible advantage, its business should not be regarded as being "primarily" the purchasing, selling, or negotiating securities, but rather, the investment of funds.

There appear, however, to be other classes of so-called investment trusts which engage in underwriting issues of securities, participating on occasion in the underwriting of issues in which firms with which they have close relationships are interested, and which seek a profit by actively purchasing and selling securities and by participating in operations of a speculative nature on stock exchanges. It would seem that an investment trust which engages in operations of that sort might be regarded as engaged in the business of purchasing, selling or negotiating securities.

To obtain a ruling of the Board with respect to a particular investment trust, it may not be necessary to file an application on the Board's forms, pursuant to Regulation R, but the Board must have full and detailed information regarding the nature of the operations in which the organization is actually engaged, together with pertinent information as to the nature of the operations in which it has engaged in the past. However, information as to the nature of an organization's operations in the past may become irrelevant in a particular case, if, by an amendment to its charter or trust agreement or otherwise, an actual change in the nature of the operations in which it is to engage is effected, so as to remove any question regarding the applicability of Section 32.

It is suggested that, if you still desire a ruling of the

Board as to those cases, you submit the additional facts which are pertinent to a classification of each upon the principles herein outlined. It is believed that such information should include, for each of the past five years, the total purchase price of securities purchased and its relationship in percentage to total assets, the total sale price of securities sold and its relationship in percentage to total assets, the gross profit or loss realized from or incurred in the sale of securities and its relationship in percentage to total gross profit or loss, the total of fees paid to brokers in connection with the purchase and sale of securities and its relationship in percentage to total expenses, the proportion of the portfolio at the end of each such year represented by securities which have been held continuously for six months, twelve months, eighteen months and twenty-four months, and all facts relating to participations, if any, in transactions involving the issue, underwriting and distribution of securities, other than its own, and in operations of a speculative nature on stock exchanges. In addition to such information, the Board will be glad to have any further information or comments which you may feel should be furnished.

In reaching the conclusion that a ruling applicable generally to all so-called investment trusts cannot be made, the Board has given careful consideration to the opinion of October 25, 1933, of your counsel, forwarded by Deputy Governor W. W. Paddock, in

connection with a similar question relating to _____
Investors, but it is felt that the language of Section 32 does
not permit the exclusion of investment trusts generally from
its provisions.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,
Secretary.