

X-7835

INTERPRETATION OF BANKING ACT OF 1933

(Copies to be sent to all Federal reserve banks)

March 27, 1934.

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Dear Sir:

This refers to your letter of January 19, 1934 addressed to Mr. DuBois, an Assistant Counsel to the Federal Reserve Board. You request an interpretation of the provision of sub-paragraph (e) of Section 5144 of the Revised Statutes which in substance requires each holding company affiliate to agree that it will divest itself of its control of and interest in any corporation, business trust, association, or other similar organization formed for the purpose of, or engaged principally in, the issue, flotation, underwriting, public sale, or distribution of stocks, bonds, debentures, notes, or other securities. Specifically, you raise the issue whether a corporation engaged in a "general mortgage loan business, including the loaning of money on mortgages for its own account and for the account of customers, 'servicing' of mortgage loans and hand(1)ing of real estate acquired through foreclosure and otherwise" is a "securities company" within the meaning of the provision aforesaid. It is assumed that the company is not engaged in issuing or selling bonds, debentures, or certificates of participation based on mortgages.

One of the principal purposes of the Banking Act of 1933 was

to effect a separation of commercial and investment banking, and it appears that subparagraph (e) of Section 5144 of the Revised Statutes, as amended by Section 19 of the Banking Act of 1933, was designed to aid in the accomplishment of that purpose. The Federal Reserve Board is of the opinion that ordinary mortgage notes are not "* * * notes or other securities" within the intendment of that subparagraph and that neither such notes nor the mortgages securing the same should be classified as "stocks, bonds, debentures, notes, or other securities" in determining whether an organization dealing in such obligations is a "securities company" within the meaning of subparagraph (e) of Section 5144. Accordingly, the Board is of the opinion that a company engaged merely in making loans secured by mortgages in servicing such loans, and in handling real estate acquired through foreclosure or otherwise cannot be considered as being engaged "principally in, the issue, flotation, underwriting, public sale, or distribution * * * of stocks, bonds, debentures, notes, or other securities", and that a company which was not formed for such a purpose and which confines its activities to dealing in mortgages and ordinary mortgage notes does not come within the purview of subparagraph (e) of said Section 5144.

It may be noted that similar principles are applicable in determining whether an organization comes within the scope of Section 20 of the Banking Act of 1933, which provides in part that after one year from June 16, 1933, no member bank shall be affiliated in any

manner described in Section 2(b) thereof with any "corporation * * * engaged principally in the issue, flotation, underwriting, public sale, or distribution * * * of stocks, bonds, debentures, notes, or other securities".

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,
Secretary.