

X-8057

October 6, 1934

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

Dear Mr. Curtiss:

This refers to your letter of July 19, 1934 respecting the status of mutual savings banks in view of certain provisions of section 8 of the Securities Exchange Act of 1934. Section 8 prohibits members of national securities exchanges and certain brokers and dealers to borrow from non-member banks unless such banks have filed with the Federal Reserve Board an agreement to comply with those provisions of the Securities Exchange Act of 1934, the Federal Reserve Act, as amended, and the Banking Act of 1933 which are applicable to member banks and which relate to the use of credit to finance transactions in securities. As certain of these provisions relate to the capital and surplus of banking institutions you indicate that there is a question as to their applicability to mutual savings banks which have no capital and ordinarily do not have what is called a surplus, although you state that they may have a guaranty fund similar to surplus.

As suggested in the concluding sentence of your letter, the Board has borne these facts in mind during the preparation of its regulations under the Securities Exchange Act of 1934, but the question which you raise is one which it is impossible to answer either in the regulations or by a letter at this time. As the answer to the inquiry

will depend in each case upon the interpretation of a provision of law in view of the applicable facts of a specific case, it is suggested that any interested mutual savings bank deliver to you for submission to the Board a full statement of facts and specific reference to the provisions of law with respect to which the question is raised. The propriety of treating a guaranty fund as surplus within the meaning of the Federal statutes will depend in part upon the law of the state under which the mutual savings bank is incorporated and it would be helpful to the Board if the presentation of facts could be accompanied by an opinion of your counsel or of counsel for the inquiring bank, which would deal particularly with this aspect of the question.

Very truly yours,

(Signed) L. P. Bethea

L. P. Bethea,
Assistant Secretary.