



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON

194

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

X-9473

January 30, 1936.

Dear Sir:

For your information, and assistance in the event similar questions arise in your district, there are inclosed herewith copies of several letters and telegrams containing interpretations of various provisions of the agreement which accompanied the Board's letter of December 3, 1935, (X-9385), relating to the issuance of general voting permits.

Very truly yours,

*Chester Morrill*

Chester Morrill,  
Secretary.

Inclosures.

TO ALL FEDERAL RESERVE AGENTS

X-9473-a

December 17, 1935.

\_\_\_\_\_,  
\_\_\_\_\_.  
Gentlemen:

This refers to the letter of November 25, 1935, written to the Board on your behalf by Mr. \_\_\_\_\_, counsel for your corporation, with reference to the seven tentative standard conditions set out in the Board's letter of November 9, 1935, (X-9360), relating to the issuance of general voting permits. Certain comments contained in that letter will be discussed herein in order that there may be no misunderstanding concerning the meaning of the conditions as finally approved.

Referring to the opening clause of tentative conditions numbered 2, 3, 4, 5, and 6, to the effect "that the undersigned will take such action within its power as may be necessary to cause each of its subsidiary" corporations to perform certain actions, Mr. \_\_\_\_\_ states:

"These words therefore can mean nothing else legally except that under these tentative conditions \_\_\_\_\_ would agree to take such corporate action within its corporate power as may be necessary, etc. There is no other legal action which \_\_\_\_\_ can take, it being a body corporate. In other words under this phraseology it can take only such action as may be authorized by its own charter and by the charter, laws and regulations governing the corporate entity of its subsidiaries, for reasons well known to the Board. \_\_\_\_\_ could not take any corporate action to intervene into the operations of a

national bank to direct its executive officers or its Board to take corporate action as a national bank. \* \* \* \* \*

"With this clarification of the applicability of this clause to us we see no objection to the language in question since we would take it to be a legal obligation in so far as legally applicable and legally possible. Our management would voluntarily assume a moral obligation to make the conditions effective as far as may be practicable."

It is noted that, in referring to \_\_\_\_\_,

Mr. \_\_\_\_\_ states:

"Its management is naturally in contact with the management of its subsidiaries and the management is thus in a position to use moral suasion and to have informal conferences and conversations with respect to the formulation and execution of policies. In this manner the policies of \_\_\_\_\_ and those of its subsidiaries have been made harmonious."

As suggested elsewhere in Mr. \_\_\_\_\_' letter, there is an important element of good faith involved in compliance with the agreement containing the standard conditions, and the conditions in question contemplate that the holding company affiliate will use, in good faith, every power, corporate or otherwise, at its disposal to cause its subsidiaries to comply with such conditions. The Board feels that in this connection the holding company affiliate cannot be properly distinguished from its management and that the officers and directors of the holding company affiliate would be required to use their powers of moral suasion and to make use of informal conferences to influence the action of the subsidiaries.

In connection with tentative condition numbered 3, Mr.

\_\_\_\_\_ states that it is assumed that the Board intends that your corporation should use its judgment as to what constitutes adequacy of capital. In connection with tentative condition numbered 7 he infers that your corporation should be the judge as to whether a given policy is sound and whether its net capital and surplus is adequate. Such an interpretation would, of course, virtually nullify the conditions and the Board feels that it is obviously contrary to their intent. The Board must make the final determination concerning these matters and concerning all other questions relating to the compliance or noncompliance with the agreement containing the conditions. Any holding company affiliate will, of course, be given every opportunity to present its views in any instance in which a question arises and, under the law, any holding company affiliate is entitled to a hearing before its permit is revoked.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,  
Secretary.

X-9473-b

December 24, 1935.

CASE  
NEW YORK

Reference your letter of December 11 relating to voting permit application of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

Having authorized the issuance of the general voting permit to the applicant subject to standard conditions, Board does not feel that it should grant limited permit entitling applicant to vote to elect directors and to act upon routine matters at 1936 annual meetings of stockholders of its subsidiary member banks. The tentative conditions then under consideration by the Board in connection with the granting of general voting permits were submitted to, and received careful consideration by, the applicant some weeks ago and the Board feels that the applicant will have ample time to complete its consideration of the prescribed agreement containing the standard conditions. It is understood that the applicant has expressed certain objections to paragraph lettered (D) of the prescribed agreement. Such paragraph was added pursuant to the suggestions of certain applicants in order to make it entirely clear that in the event of disagreements between a holding company affiliate and any designated representative of the Board pertaining to certain matters, the holding company affiliate should have a right to appeal to the Board. While it was not considered essential, it was incorporated for the protection of the holding company affiliates and was not intended to limit their rights or to give the Board any rights which it would not otherwise have. The Board has no objection to the omission of such paragraph from the agreement and,

- 2 -

X-9473-b

accordingly, the condition stated following the letter "C" in the Board's telegram of December 9, 1935, authorizing the issuance of a general voting permit to \_\_\_\_\_, is hereby modified by adding thereto the words "except that paragraph lettered (D) of such agreement may be omitted upon the request of the applicant". Please advise the applicant accordingly.

(Signed) Chester Morrill

MORRILL

X-9473-c

January 2, 1936.

SARGENT  
SAN FRANCISCO

Retel December 28 requesting expression of Board's views regarding following inquiry from \_\_\_\_\_ with reference to agreement to be executed in connection with issuance of general voting permit: "Is it the intention of the Federal Reserve Board that such agreement applies to the present investment in stock of affiliates and also to any future investments in stock of affiliates?" Generally speaking, it is Board's view that such agreement applies to subsidiary and affiliated organizations, stock of which is acquired after date of execution of such agreement, as well as to subsidiary and affiliated organizations, stock of which is owned at the date of execution of such agreement. If applicant desires expression of Board's views as to applicability of particular provision to particular set of facts it should submit inquiry as to such provision together with full statement of facts.

(Signed) Chester Morrill

MORRILL

X-9473-d

January 10, 1936.

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_.

Dear Sir:

This refers to your letter dated December 30, 1935, containing comments on the Board's letter of December 17, 1935, relating to the agreement to be executed as a condition to the issuance of a general voting permit to \_\_\_\_\_.

You state that the management of \_\_\_\_\_ and its subsidiary banks is not identical and that no agreement executed by such corporation would relieve the directors of the subsidiary banks of any of the responsibilities placed upon them by law. The Board is aware of the fact that differences of opinion upon matters of policy may arise between a holding company affiliate and the directors of a subsidiary bank and that the holding company affiliate may not be able immediately to bring the policies of the subsidiary bank into conformity with its own policies. Nevertheless, it is the view of the Board that the ultimate responsibility for the policies of a subsidiary bank rests upon the stockholders thereof and that they are able to discharge this responsibility through their power to elect directors who will carry out policies which meet with the approval of the stockholders.

You call attention to the fact that paragraph 4 of the



prescribed agreement provides that the holding company affiliate will take such action within its power as may be necessary to cause each of its subsidiary national banks to comply with the recommendations or suggestions of the Comptroller of the Currency based upon any report of examination of such bank made to him pursuant to authority conferred by law. You point out that such paragraph does not limit the recommendations or suggestions of the Comptroller to those made pursuant to authority conferred by law and you state that this would appear to confer on the Comptroller extra-legal powers.

It is the view of the Board that paragraph 4 of the agreement requires a holding company affiliate to comply with recommendations or suggestions of the Comptroller which are within the scope of his general supervisory jurisdiction even though such recommendations or suggestions are not based upon any specific statutory provision. Such paragraph does not, of course, require a holding company affiliate to comply with recommendations or suggestions which are outside the supervisory jurisdiction of the Comptroller.

This provision of the agreement was patterned after the second paragraph of section 21 of the Federal Reserve Act which provides that the Comptroller is authorized "to publish the report of his examination of any national banking association or affiliate which shall not within one hundred and twenty days after notification of the recommendations or suggestions of the Comptroller, based on said examination, have complied with the same to his satisfaction."

-3-

X-9473-d

Neither the provisions of the second paragraph of section 21 nor the provisions of paragraph 4 of the voting permit agreement are limited to recommendations or suggestions of the Comptroller based upon specific statutory provisions.

You indicate in your letter that you have confidence in the Board and have every reason to assume that it will give a reasonable interpretation to the agreement. If this is your belief, it would appear that the paragraph in question should cause you no apprehension, since control over the enforcement of the provisions of such paragraph would be vested exclusively in the Board. The penalty for violation of the agreement is revocation of the voting permit, but before invoking such penalty the Board would be required by the law to afford the holding company affiliate an opportunity for a hearing.

You state that your letter is prompted by the desire that the regulation of holding company affiliates may be conducted on a sound and equitable basis and by the desire to avoid all possibility of future controversy and misunderstanding. The Board appreciates the spirit in which your letter is written and trusts that the questions raised therein have been satisfactorily answered.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,  
Secretary.

X-9473-e

January 10, 1936.

FLETCHER

CLEVELAND

This refers to the voting permit applications of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and to your letter of December 30, 1935, relating to the interpretation of paragraph numbered 1 of the form of agreement to be executed as a condition to the issuance of general voting permits to such applicants and inclosing copy of letter of December 28, 1935, from \_\_\_\_\_ submitting an alternative form of agreement. The Board interprets paragraph numbered 1 of the prescribed agreement to require the holding company affiliate to make the specified eliminations on the basis of the latest reports of examination available on the date the holding company affiliate elects to comply with the provisions of such paragraph and advises the Federal Reserve agent of such compliance. It is to be noted that such paragraph requires the holding company affiliate to make such eliminations as soon as practicable and not merely to do so at any time within two years. Paragraph numbered 2 should be interpreted in accordance with the same principles as paragraph numbered 1. Paragraph numbered 4 requires the holding company affiliate to cause its subsidiary national banks and their affiliates to comply with the recommendations and suggestions of the Comptroller of the Currency based upon any

- 2 -

X-9473-e

report of examination which may be made at any time during the life of the voting permit and not merely to comply with those based on the latest report of examination available on the date the agreement is signed. Paragraph numbered 5 should be interpreted in accordance with the same principles as paragraph numbered 4. Paragraph lettered (D) was incorporated in the agreement pursuant to suggestions made by certain holding company affiliates and was designed for their protection. If, however, such paragraph is objectionable to any holding company affiliate the Board has no objection to it being eliminated from the agreement executed by such holding company affiliate. The Board does not feel that it can approve any of the modifications of the prescribed agreement suggested by \_\_\_\_\_ except that, of course, it has no objection to the words "two years" in paragraphs numbered 1 and 2 being changed to "one year" as suggested by \_\_\_\_\_. Please advise the interested organizations in accordance with this telegram.

(Signed) Chester Morrill

MORRILL

X-9473-f

January 11, 1936.

CASE  
NEW YORK

Representatives of \_\_\_\_\_, \_\_\_\_\_, met with representatives of the Board on January 3, 1936, and suggested certain changes in the standard agreement prescribed by Board in connection with granting general voting permits. Such standard agreement having already been executed by many holding companies, Board does not feel that it should modify the agreement as suggested by representatives of \_\_\_\_\_ but the discussion contained in this telegram may be helpful to \_\_\_\_\_. Therefore, please promptly deliver a copy of this telegram to that corporation for its information.

Board does not feel that paragraphs numbered 1 and 2 in standard agreement should be omitted in case of \_\_\_\_\_ since Board is not in a position to determine definitely at this time that requirements of such paragraphs have been complied with. However, when such paragraphs have actually been complied with by \_\_\_\_\_ those paragraphs, of course, will no longer be effective.

In connection with applicant's suggestion relating to paragraph numbered 3 of standard agreement, attention is called to fact that such paragraph requires holding company to take such action within its power as may be necessary to cause "each" of its subsidiary banks to maintain a sound financial condition, and the Board contemplates that consideration will be given to the needs of all of the subsidiary banks.

-2-

X-9473-f

Paragraph numbered 4 of standard agreement requires compliance with recommendations or suggestions of Comptroller which are within scope of his general supervisory jurisdiction even though such recommendations or suggestions are not based upon any specific statutory provision. This portion of the agreement would not require compliance with recommendations or suggestions beyond supervisory jurisdiction of Comptroller. The language here used is based upon the second paragraph of section 21 of Federal Reserve Act which provides for compliance with the "recommendations or suggestions of the Comptroller, based on said examination". Neither provisions of section 21 just quoted nor provisions of paragraph 4 of standard agreement are limited to recommendations or suggestions of Comptroller based upon specific statutory provisions. Attention is called to fact that enforcement of provisions of paragraph 4 is vested exclusively in Board. Penalty for violation of agreement is revocation of voting permit and, before invoking such penalty, Board would be required by law to afford holding company affiliate an opportunity for a hearing. Therefore, it would appear that holding company affiliate is adequately protected against any unreasonable requirements. Detailed comments relating to paragraph 5 of standard agreement do not appear necessary.

In connection with argument of applicant that the prescribed agreement may result in discrimination between banks which are subsidiaries of holding company affiliates and other banks, attention is directed to the fact that the execution of such agreement and the

-3-

X-9473-f

terms thereof have been prescribed by the Board in the discharge of responsibilities placed upon it by law and that any differences between the situation of banks which are subsidiaries of holding companies and other banks necessarily arise from the enactment of the legislation by Congress relating specifically to holding company affiliates and their banking subsidiaries.

In connection with suggestion of \_\_\_\_\_ that words "take such action within its power as may be necessary to" be inserted in two clauses of paragraph numbered 7 of standard agreement, attention is called to the fact that throughout standard agreement that phrase has been used only in those provisions which affect other corporations and which require holding company affiliate to cause certain action by such other corporations to be taken. Clauses of paragraph numbered 7 which are in question relate solely to holding company affiliate itself and suggested amendment of paragraph numbered 7 therefore does not seem necessary or appropriate.

The standard agreement contemplates that a holding company affiliate will use in good faith every power, corporate or otherwise, at its disposal to cause its subsidiaries to take the prescribed action. The Board feels that in this connection a holding company affiliate cannot be properly distinguished from its management and that officers and directors of a holding company affiliate would be expected to use their powers of moral suasion and to make use of informal conferences where necessary to influence the action of subsidiaries. This is merely

-4-

X-9374-f

making use of the means and methods commonly employed by any holding company in furthering the execution of policies adopted by it.

Consideration has been given to suggestion that execution of agreement might possibly subject \_\_\_\_\_ to certain State taxation. However, Board feels that in determining the conditions upon which it will grant general voting permits in the discharge of the responsibilities placed upon it by law, it cannot undertake to consider or determine the effect of local tax laws in particular situations.

Having adopted standard agreement for execution by holding companies in connection with the granting of general voting permits, and having authorized issuance of general voting permit to \_\_\_\_\_, Board does not feel that it should comply with request of that corporation for a permit which might be surrendered at any time after the end of a period of two years at the election of that corporation.

If the \_\_\_\_\_ executes the agreement, a letter confirming the above statements will be addressed directly to that corporation for its records.

The Board extends to January 31, 1936, the time within which you may issue to \_\_\_\_\_ the general voting permit authorized in the Board's telegram to you of December 9, 1935.

(Signed) Chester Morrill

MORRILL



X-9473-g

January 11, 1936.

SARGENT

SAN FRANCISCO

This refers to your letter of December 28, 1935, recommending that the Board authorize the issuance of a limited permit to \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, entitling it to vote to elect directors and act on routine matters at the 1936 annual meetings of its subsidiary member banks. In connection with requests made by other holding company affiliates, the Board has taken the position that it should not authorize the issuance of such limited voting permits after it has authorized the issuance of general voting permits subject to the standard conditions and it does not feel that it can depart from that position in connection with \_\_\_\_\_. In his letter of December 26, 1935, a copy of which accompanied your letter, Mr. \_\_\_\_\_, President of the applicant, raised certain questions concerning paragraphs numbered 1, 3 and 7 of the agreement to be executed as a condition to the issuance of a general voting permit to the applicant. The use of valuation reserves in the manner outlined by Mr. \_\_\_\_\_ is an acceptable manner in which to make the eliminations required by paragraph numbered 1. However, on the basis of the latest information submitted to the Board, it appears that compliance with the provisions of that paragraph at this time would require eliminations amounting to substantially more than \_\_\_\_\_, the amount mentioned

- 2 -

X-9473-g

by Mr. \_\_\_\_\_. In connection with Mr. \_\_\_\_\_'s suggestions relating to paragraph numbered 7, it should be noted that the clause of that paragraph which deals with net capital and surplus funds relates solely to the holding company affiliate and not to its subsidiary banks. With reference to his suggestions relating to paragraph numbered 3, the Board feels that, in view of the responsibilities placed upon it in granting general voting permits, it must consider questions as to compliance with the terms of this paragraph by applying principles of sound banking practice to the concrete facts and circumstances of the particular cases and, according, it can not approve the suggested modification of this paragraph. It should also be noted that this paragraph relates to all subsidiary banks and not merely to subsidiary national banks. Please advise the applicant in accordance with this telegram.

(Signed) Chester Morrill

MORRILL