X-9528

INTERPRETATION

BANKING ACT OF 1935

(Copies to be sent to all Federal reserve banks)

March 20, 1936.

Mr. Richard L. Austin,
Federal Reserve Agent,
Federal Reserve Bank of Philadelphia,
Philadelphia, Pennsylvania.

Dear Mr. Austin:

This refers to Mr. Hill's letter of January 7, 1936, inquiring (1) whether the restrictions contained in section 22(g) of the Federal Reserve Act and the Board's Regulation O include loans to executive officers of member banks from trust funds administered by such banks and (2) whether executive officers of member banks are required to report to the board of directors of such banks loans made to them from trust funds held by other banking institutions. The Board has noted Mr. Hill's statement that the answer to the first inquiry will only be of interest to member trust companies which are not subject to the condition of membership to the effect that a member bank shall not invest trust funds held by it as a fiduciary in obligations of the bank's directors, officers, or employees.

The primary purpose underlying the enactment of section 22(g) was to prevent executive officers of member banks from using their influence to obtain credit from the banks they serve. Congress also apparently felt that the board of directors of a member bank should be advised as to the indebtedness of the executive officers of such bank to other banks.

In the amendment to section 22(g) made by the Banking Act of 1935, Congress expressly conferred upon the Board the authority to prescribe such rules and regulations as it may deem necessary to effectuate the provisions of such subsection in accordance with its purposes and to prevent evasions thereof. The Board feels that an indebtedness of an executive officer of a member bank arising as the result of the lending of trust funds administered by a bank falls within the purposes of the law, since his opportunity to use his influence to obtain a loan of such funds is present, and it would seem that the board of directors of a member bank should be informed of an indebtedness of its executive officers arising out of the lending of funds of trusts administered by other banks. Moreover, there is no justification, under well recognized rules of statutory construction, to place a restricted meaning upon the provisions of such section so as to exclude an indebtedness arising out of the lending of trust funds by a bank.

Since section 22(g) includes an indebtedness arising out of the lending of trust funds, the question might be raised as to what effect the $2500 exception contained in such subsection might have on the provision in section 11(k) of the Federal Reserve Act which prohibits a national bank exercising trust powers from lending funds held in trust to any of its officers, directors, or employees. The provision in section 22(g) can be applied to loans of the bank's own funds and thus be given full effect even though it is not considered as repealing the provision in section 11(k) just above referred to. Under the usual rules of statutory construction, the repeal of statutes by implication is not favored

where the provisions of both statutes involved can be given full effect and, in the circumstances, it is the opinion of the Board that section 22(g) does not in any manner affect the provision in section 11(k) referred to herein.

As you know, it is contrary to the established principles regarding the handling of trust funds for a trustee to have any interest in the funds of a trust which he is administering and likewise such principles are applicable to executive officers of a corporate trustee. These principles are so well established that some States have enacted laws forbidding corporate fiduciaries from lending trust funds to their own officers, directors, or employees; as noted above Congress has prohibited national banks from lending trust funds to their own officers, directors, or employees; and the Board has prescribed a similar prohibition in the form of a condition of membership applicable to State member banks. While there may be some State member banks which are not subject to the condition and the laws of the State under which they operate may not prohibit such loans, the Board feels that such banks should not lend trust funds to their own executive officers.

In view of all the circumstances, the Board is of the opinion that the restrictions contained in section 22(g) of the Federal Reserve Act and the Board's Regulation O include loans to executive officers of member banks from trust funds administered by such banks and likewise an indebtedness of an executive officer of a member bank to another bank arising out of the lending of trust funds should be reported to the board of directors as provided in section 5 of the Board's Regulation O.

Very truly yours,
(Signed) Chester Morrill
Chester Morrill,
Secretary.