S-155
Reg. L-7

INTERPRETATION OF LAW OR REGULATION

(Copies to be sent to all Federal Reserve banks)

March 28, 1939.

Mr. _____, Vice President,
Federal Reserve Bank of _____,
_____, _____.

Dear Mr. _____:

Careful consideration has been given to your letter of March 7, 1939, and enclosures, regarding the Clayton Act status of Mr. _____ who is a partner in the firm of _____ _____ Co. and a director of _____ Trust Company, _____, _____.

The question is whether the trust company is "engaged in a class or classes of business" in which the firm is engaged, within the meaning of section 3(d)(4) of Regulation L, and in this connection it appears that there are only three items in the statement of the trust company to which this phrase might be applicable: the deposit of one corporation, against which no checks are drawn; 44 deposits of individuals which "are handled for the Trust Company by The National _____ Bank _____"; and certain loans on stock or bond collateral, all but one of which are loans to protective committees for which the trust company is acting as depositary, the loans being secured by the securities so deposited.

The question presented is similar to that which has been considered by the Board in a number of cases where an individual was serving a trust company engaged almost entirely in trust business, and a commercial bank. In each of those cases it appeared that both institutions were engaged to a certain extent in the same classes of business, and the Board found that the corresponding provision of the statute (paragraph (6)) was not applicable.

You are familiar with the experience of the Board in applying the indefinite standards which were contained in this statute before it was rewritten by the Banking Act of 1935. Those standards were found to be unworkable and extremely unsatisfactory not only from the standpoint of the Board but more particularly from the standpoint of the directors, officers and banks affected, since no one could know whether his services were legal until he had furnished full information and submitted the matter to the discretion of the Board in Washington. It was for this reason that the statute was completely revised in 1935 so as to prescribe a set of definite rules.

If the Board should decide that the small amount of business which exists in the present case did not render the statute inapplicable, it would be necessary in other cases to decide whether a slightly larger amount should produce a different result. The issue then would not be whether the two institutions were engaged in any of the same classes of business, but whether they were engaged in the same classes of business to such an extent that the interlocking relationships would, in the opinion of the Board, produce a situation which would be in conflict with one or more of the objectives of the statute. These objectives, moreover, are themselves indefinite, since section 8, as revised in 1935, does not even contain the references to "substantial competition" and the "public interest" which it formerly contained. Such a decision, therefore, by reintroducing an indefinite standard, would carry with it all the disadvantages of the former procedure.

The standard prescribed in paragraph (6) is definite, and the Board's experience in administering this statute has shown beyond any doubt that a set of definite rules produce far fewer unsatisfactory results than one which requires a long-range appraisal of the facts in each case. No rules of general application can produce uniformly perfect results, and the Board believes that the directors and officers of member banks will fare much better under rules which obviate the inconvenience and uncertainty which were inherent in the former procedure.

For these reasons the Board believes, consistently with its previous rulings in similar cases, that Mr. _____'s relationships are not excepted from the prohibitions of the statute.

Very truly yours,

(Signed) L. P. Bethea

L. P. Bethea,
Assistant Secretary.