S-211
Reg. L-12

INTERPRETATION OF LAW OR REGULATION

(Copies to Be Sent to All Federal Reserve Banks)

April 18, 1940

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

Dear Mr. _____:

Reference is made to your letters of March 15 and April 1, 1940, transmitting a copy of a letter from Mr. (A), President of The _____ National Bank of _____, and a petition by Mr. (B), President of The _____ Bank, relating to the applicability of the Clayton Act to Mr. (C) and Mr. (D) who are directors of both banks.

Both Mr. (A) and Mr. (B) contend that the two banks are not engaged in the same class or classes of business within the meaning of paragraph (6) of section 8 of the statute, and Mr. (B) also petitions the Board to amend its Regulation L so as to except these relationships.

Virtually all of the deposits of The _____ Bank are classified as "savings deposits, including time accounts," although a portion of such deposits are subject to withdrawal by check. The time deposits of the national bank are about equal to its individual demand deposits. Both banks maintain trust departments, although Mr. (B) states that the trust department of The _____ Bank as well as the checking privileges accorded to its customers are merely incidental to the savings business which it conducts as its principal function.

In view of the fact that both banks receive savings and other time deposits, hold accounts which are subject to withdrawal by check, maintain trust departments, and make real estate loans, the Board is of the opinion that the exception contained in paragraph (6) of the statute, relating to banks not engaged in the "same class or classes of business" is not applicable since they are both engaged in several of the classes of business enumerated in footnote 9 in Regulation L.

However, Mr. (B's) petition requests an amendment to Regulation L which would make an additional exception similar to that now contained in paragraph (7) of the statute relating to mutual savings banks, and similar to the exception in section 3(a) of Regulation L relating to

Morris Plan banks. Mr. (B's) arguments are based on the points of similarity which he finds between his bank and these two types of institutions. He relies principally on its similarity to mutual savings banks; and the similarity to Morris Plan banks need not be discussed further in view of the fact that the Board has eliminated, effective June 1, 1940, the exception which it had previously made in its regulation with respect to such banks (the reason for this action being, as you know, the fact that many of such banks are now conducting a business similar to that conducted by commercial banks).

Mr. (B) suggests that mutual savings banks and savings banks having capital stock should not be treated differently under the Clayton Act, because both conduct substantially the same kinds of business, and the details of their internal organization do not affect the matters contemplated by the Clayton Act. Mr. (B) discusses this point in detail and makes an argument which deserves very careful consideration. However, the Board has consistently taken the position that its authority to make additional exceptions by regulation should be used only to fill out the pattern established by Congress in the statute, and not to alter it. In the statute Congress specifically excepted mutual savings banks, and made the prohibition of the statute specifically applicable to other savings banks. Therefore, an exception applicable to other savings banks would be clearly inconsistent with the pattern laid down by Congress, and the Board for this reason believes that it should not amend its regulation as suggested.

Furthermore, in the present case where the savings bank also conducts a trust business and permits withdrawals by check, even though these two functions are merely adjuncts to its principal business, an exception which would permit directors of this bank to serve a national bank with a trust department would be an even greater departure from the pattern established by Congress than an exception of the kind discussed in the preceding paragraph. The Board has on numerous occasions considered cases where the principal business conducted by two institutions was different, but where both, as incidents to their principal businesses, conducted other types of business which were the same. Under the statute as it existed prior to the Banking Act of 1935 the Board in many cases had great difficulty in determining whether the degree in which two institutions were engaged in the same classes of business was sufficiently small as to justify a finding that they were not in substantial competition. However, the Clayton Act was amended in 1935 so as to prohibit interlocking directorships if a member bank was engaged "in a class or classes of business" in which the other bank was engaged, thus eliminating the question of degree. If the Board should make an exception, by regulation, which would again make the applicability of the statute depend upon this question, its action would be a direct reversal of the change made by the Banking Act of 1935.

The Board appreciates Mr. (A's) desire to retain these two directors whose services he regards as being of great value and as necessary to his bank under the existing circumstances. However, if the Board should make an exception which would permit these directors to serve both banks, the exception, being of general applicability, would permit a large number of other relationships which are now prohibited and would thus materially alter the effect of the statute, which, as stated above, the Board believes would not be a proper exercise of its authority.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,
Secretary.