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Reg. T-94

INTERPRETATION OF LAW OR REGULATION

(Copies To Be Sent To All Federal Reserve Banks)

November 20, 1940

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

Dear Mr. _____:

Reference is made to your letter of November 9, 1940, regarding the inquiry of _____, Inc., _____, _____, with respect to Regulation T.

It is understood that the inquiry is an example of questions that have come to you from several sources. The questions relate to certain transactions in which a broker subject to the regulation, acting on behalf of the Federal Deposit Insurance Corporation, sells certain unregistered securities under terms providing for the payment of the purchase price in installments over a substantial period of time. In some cases the broker may actually effect the sale on behalf of the Federal Deposit Insurance Corporation, whose name is disclosed to the purchaser at the time of the transaction. In other cases the broker may do no more than negotiate the sale with the purchaser and bring the purchaser and the Federal Deposit Insurance Corporation together, the actual transaction being effected directly between the Federal Deposit Insurance Corporation and the purchaser. In all cases, however, the broker does not at any time have any interest in the securities and does not in any way finance their purchase by the ultimate purchaser.

As you suggest, the Securities Exchange Act of 1934 and Regulation T, as a general proposition, do not permit a broker subject to the regulation to effect or "arrange" such an installment sale of unregistered securities. The situation, however, seems to be altered in the present case by the fact that the Federal Deposit Insurance Corporation is the real seller of the securities and also finances the sale.

The Federal Deposit Insurance Corporation is a Government corporation. It is not merely an "instrumentality" of the Government in the very broad sense that, for example, a national bank is such an "instrumentality". It is much more. Its directors are appointed by the President with the advice and consent of the Senate, it is granted the free use of the United States mails, its capital stock is in effect supplied by the Government, and it operates as an integral part of the Government.

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It is a settled principle that a statute, no matter how broad or general its terms, does not apply to the sovereign, or to one acting for the sovereign, unless the sovereign is brought under the statute by specific language. This principle is, in effect, set forth in section 3(c) of the Securities Exchange Act of 1934 which provides that:

"(c) No provision of this title shall apply to, or be deemed to include, any executive department or independent establishment of the United States, or any lending agency which is wholly owned, directly or indirectly, by the United States, or any officer, agent, or employee of any such department, establishment, or agency, acting in the course of his official duty as such, unless such provision makes specific reference to such department, establishment, or agency."

In view of the governmental character of the Federal Deposit Insurance Corporation and the absence of any indication that Congress intended to bring the Federal Deposit Insurance Corporation under the present requirements, the Board is of the opinion that, without regard to the particular language of section 3(c), the present question is controlled by the fundamental principle that general language of a statute does not apply to the sovereign. Furthermore, since the sovereign necessarily must act through agents, it seems that the principle must apply to the broker's activities in the present case. The Board concludes, therefore, that in circumstances such as those described in which the Federal Deposit Insurance Corporation as a disclosed principal sells securities through a broker, and the broker acts purely as an agent for the Federal Deposit Insurance Corporation without acquiring any interest in the securities or doing any financing, this principle exempts the transaction from the requirements of Regulation T and the provisions under which the Regulation is issued.

Very truly yours,

(Signed) L. P. Bethea

L. P. Bethea,
Assistant Secretary.