John P. Amershadian, Esq.
Hodgson, Russ, Andrews, Woods & Goodyear
1800 One M&T Plaza
Buffalo, New York 14203

MAY 23 1980

Dear Mr. Amershadian:

This is in response to your letters of July 26, 1979, and February 12, 1980, requesting advice as to whether an extension of credit by a member bank to an estate or trust is subject to the prior approval and preferential lending restrictions of Regulation O (to be codified at 12 C.F.R. Part 215), where a director of the member bank serves as an executor or trustee for the estate or trust or is a beneficiary of the estate or trust.

Under Regulation O, a member bank may not extend credit to a director of the bank, or to a related interest of the director, on preferential terms. If the extension of credit, when aggregated with all other extensions of credit by the bank to the director and to the related interests of the director, would exceed $25,000, the extension of credit must be approved in advance by a majority of the entire board of directors of the bank.[1/] Section 215.2(k) of Regulation O defines related interest as any company that is controlled by a person or a political or campaign committee that is controlled by, or the funds or services of which will benefit, a person. Company means "any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of business entity not specifically listed herein." See section 215.2(a) of Regulation O.

An extension of credit by a member bank to an estate or trust for which a director of the member bank is executor or trustee (but is not beneficiary) is not considered made directly to the director under Subpart A of Regulation O solely by reason of the director's status as executor of the estate or trustee of the trust. This is consistent with the Board's longstanding ruling that a loan to a company

---

1/ The aggregate lending limit of section 215.4(c) of Regulation O does not apply to a member bank's extensions of credit to its directors or to their related interests. The overdraft prohibition of section 215.4(d) of Regulation O does not apply directly to related interests.

in which an executive officer of the bank is interested will not be considered made to the officer provided the loan is made in good faith and the proceeds of the loan are used for company purposes. 22 Federal Reserve Bulletin 249 (1936). Of course, if the director was personally liable for the extension of credit or if the proceeds of the extension of credit are transferred to the director or used for the director's personal benefit, the extension of credit would, under section 215.3(f) of Regulation O, be considered made to the director.

The extension of credit referred to in your letter may, however, be subject to the provisions of Regulation O if the estate or trust qualifies as a "related interest" of the director. The term "estate" is not among the entities listed in the definition of "company" under Subpart A of Regulation O, and the characteristics of an estate in most instances resemble more closely an individual than a company.2/ Since an individual does not qualify as a company under Subpart A of Regulation O and therefore is not a related interest, it follows logically that an estate would not qualify as a related interest under Subpart A of Regulation O. Accordingly, in the Legal Division's view, a member bank may extend credit to an estate of which one of its directors is the executor (but not a beneficiary) without regard to the restrictions of Subpart A of Regulation O.3/

If, however, a member bank proposes to extend credit to a company which is controlled by the estate, the director might be considered to control the company through the director's control of the shares of the company held by the estate. In addition, if the estate itself controls more than 10 per cent of any class of voting shares of the member bank, the estate would qualify as a principal shareholder of the bank since an individual as well as a company may qualify as a principal shareholder under Regulation O. If, in such a case, the executor or co-executor controls the estate and thereby the voting of the bank shares held by the estate, the executor or co-executor would also be considered a principal shareholder of the bank.

2/ Where the estate is long lived or takes on other characteristics of a company, the estate might qualify as a "company" under Regulation O.

3/ Under Subpart B of Regulation O, relating to correspondent bank lending, the term "company" includes an estate. See 12 U.S.C. § 1971(a). However, since directors are not required to report under Subpart B of Regulation O and since the prohibitions of 12 U.S.C. § 1972(2) against preferential lending based on a correspondent account do not apply directly to related interests, the difference in the definition of company between Subparts A and B of Regulation O is not relevant in the context of your questions.

Under section 215.2(k) of Regulation O and section 22(h)(6)(B) of the Federal Reserve Act (to be codified at 12 U.S.C. § 375b(6)(B)), a trust would apparently qualify as a company and, therefore, as a related interest. If a trust were controlled by a director of a member bank as trustee for the trust, any extension of credit by the member bank to the trust would be subject to the preferential and prior approval requirements of Regulation O since the trust would be a related interest of the director-trustee. Control of a company (including a trust) is defined in section 215.2(b) of Regulation O and exists generally whereta person, directly or indirectly, or acting through or in concert with others, owns, controls or holds with power to vote 25 per cent or more of the voting securities of the company. Where the company does not have voting shares, a person will be considered to control the company if the person owns or controls a 25 per cent or more interest in the company. Regulation O also presumes control in certain cases where less than 25 per cent but more than 10 per cent ownership or control exists. See section 215.2(b)(2) of Regulation O. Control of a trust by a bank director-trustee would, therefore, depend upon whether the director is in a position to control the requisite share of the trust. In our view, a sole trustee or a co-trustee would control the trust and the trust would qualify as a related interest of the director under Regulation O.

The final question posed in your letter is whether an extension of credit by a member bank to an estate or trust of which a director of the member bank is a beneficiary (but not a trustee or executor) is covered by Regulation O. Under section 215.3(f) of Regulation O, an extension of credit may be considered made to the director-beneficiary to the extent "the proceeds of the extension of credit are used for the tangible economic benefit of, or are transferred," to the director. An extension of credit by a member bank to an estate or trust of whichta member bank director is a beneficiary would, in our view, inure to the benefit of the director as a beneficiary of the trust or estate. Whether or not the extenaion of credit to the estate or trust would be considered made to the director-beneficiary under section 215.3(f) would depend upon the size of the director-beneficiary's interest in the estate or trust. In our view, and consistent with the definition of control in the statute,[4/] an extension of credit by a member bank to the estate or trust would be considered made to the director-beneficiary if the director-beneficiary has a 25 per cent or more present or contingent interest in the estate or trust. This position is consistent with a 1974 Board staff interpretation that a loan by a member

4/ As indicated, under Regulation O, control is defined as ownership or control of a 25 per cent or more interest inta company.

bank to a trust in which an executive officer of the bank was a beneficiary would be considered a loan to the executive officer under section 22(g) of the Federal Reserve Act and then existing Regulation O. The staff reasoned that a personal interest in the income or assets of the trust, even a future interest, inevitably creates the danger of a conflict of interest between the officer's duty to the bank and his/her personal enrichment.

Of course, if a director of a member bank who is a beneficiary of a trust (but not a trustee) possessed the right to sell or dispose of the trust assets, exercise dominion or control over or use the trust assets, terminate the trust or replace the trustee, the director-beneficiary may also be considered to control the trust. In such a case, the trust would be covered under Regulation O as a related interest of the director-beneficiary.

If you have any further questions concerning this matter, please feel free to contact me or Mr. Mattingly of my office (202/452-3430).

Sincerely,

(signed) Neal L. Petersen

Neal L. Petersen
General Counsel

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR
ATTORNEYS AT LAW
1800 ONE M & T PLAZA
BUFFALO, N. Y. 14203
716-856-4000

2010 ONE FINANCIAL PLAZA
FT. LAUDERDALE, FLA 33394
305-764-2440

February 12, 1980

Neal L. Peterson, Esq.
General Counsel
Board of Governors of the
Federal Reserve System
Washington, D. C. 20551

re: Regulation O

Dear Mr. Peterson:

On July 26, 1979 we wrote a letter to you, a copy of which is enclosed, requesting certain advice concerning the interpretation of Regulation O. To date, we have not received a response. We would greatly appreciate your reviewing this matter and contacting the undersigned. Thank you.

Very truly yours,

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR

by

John P. Amershadian

JPA:wms
copies to: Mr. Edward L. Schaefer
George W. Myers, Jr., Esq.