C
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P
Y

June 11, 1952.

CONFIDENTIAL

Dr. Adolph C. Miller,
2230 S Street, N. W.,
Washington, D. C.

Dear Dr. Miller:

In accordance with your informal request to me, there are attached extracts from the minutes of the Board for the period just prior to the bank holiday which relate particularly to the discussions leading up to the declaration of the bank holiday. It is understood that you have received a request from former President Hoover for your recollections of what happened in this period and you desire these extracts for the purpose of refreshing your memory of what occurred so that the statement of your recollections which you give to President Hoover will be factually accurate.

As you know, the minutes of the Board are held in strict confidence. The attached extracts cover a period when you were a member of the Board and they are furnished to you as a former member of the Board. Because of the confidential character of the minutes, it will be appreciated if you will take such steps as may be necessary to assure that they will be restricted to the purpose for which you have requested them and that neither the extracts nor copies thereof will leave your possession.

Sincerely,

S. R. Carpenter,
Secretary.

Enclosures

June 11, 1952.

Confidential

Dr. Adolph C. Miller,
2230 S Street, N. W.,
Washington, D. C.

Dear Dr. Miller:

In accordance with your informal request to me, there are attached extracts from the minutes of the Board for the period just prior to the bank holiday which relate particularly to the discussions leading up to the declaration of the bank holiday. It is understood that you have received a request from former President Hoover for your recollections of what happened in this period and you desire these extracts for the purpose of refreshing your memory of what occurred so that the statement of your recollections which you give to President Hoover will be factually accurate.

As you know, the minutes of the Board are held in strict confidence. The attached extracts cover a period when you were a member of the Board and they are furnished to you as a former member of the Board. Because of the confidential character of the minutes, it will be appreciated if you will take such steps as may be necessary to assure that they will be restricted to the purpose for which you have requested them and that neither the extracts nor copies thereof will leave your possession.

Sincerely,

S. R. Carpenter,
Secretary.

Enclosures

SRC/mjs
6/10/52

See MINUTES ON JUN 9 1952 BAH

FEDERAL RESERVE BANK OF DALLAS

R. R. GILBERT
PRESIDENT

April 15, 1947

Board of Governors of the
Federal Reserve System
Washington 25, D. C.

Gentlemen:

This acknowledges the Board's letter of April 9, 1947 (S-968), transmitting a copy of the Proclamation issued by the President of the United States on April 8, 1947.

It is observed that as a result of this Proclamation it will no longer be necessary for State banks becoming members of the Federal Reserve System to be advised of the terms of the General License of December 31, 1945, or to be furnished with a copy thereof in the manner suggested in the Board's letter of January 29. 1946. We shall be governed accordingly.

Yours very truly,

R. R. Gilbert

R. R. Gilbert
President

FEDERAL RESERVE BANK
OF CLEVELAND

RAY M. GIDNEY, PRESIDENT

April 11, 1947

Mr. S. R. Carpenter, Secretary
Board of Governors of the
Federal Reserve System
Washington 25, D. C.

Dear Mr. Carpenter:

We are pleased to have the Board's letter of April 9, S-968 with copy of Proclamation issued by the President of the United States on April 8, 1947, effective as of March 15, 1947, excluding member banks from the scope of the Presidential Proclamations of March 6 and March 9, 1933, and the Executive Order of March 10, 1933.

We note that in view of this Proclamation, it will no longer be necessary for State banks becoming members of the Federal Reserve System to be advised of the terms of the General License of December 31, 1945. We also note that the President's Proclamation includes the proviso "that no banking institution shall pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary of the Treasury, or allow the withdrawal of any currency for hoarding."

Sincerely yours,

Ray M. Gidney
President

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

April 9, 1947.

Carded

Dear Sir:

For your information, there is enclosed a copy of a Proclamation issued by the President of the United States on April 8, 1947, effective as of March 15, 1947, excluding member banks from the scope of the Presidential Proclamations of March 6 and March 9, 1933, and the Executive Order of March 10, 1933.

This Proclamation has the effect of terminating the present authority of the Secretary of the Treasury to issue regulations requiring the licensing of member banks. It will be recalled that the necessity for licenses in the case of individual member banks was eliminated by a General License issued by the Secretary of the Treasury on December 31, 1945. The present Proclamation terminates the authority of the Secretary to impose any restrictions upon the operations of member banks other than those relating to payments in gold and withdrawals of currency for hoarding.

In view of this Proclamation, it will no longer be necessary for State banks becoming members of the Federal Reserve System to be advised of the terms of the General License of December 31, 1945, or to be furnished with a copy thereof in the manner suggested by the Board's letter of January 29, 1946 (F.R.L.S. #3533).

Very truly yours,

S. R. Carpenter,
Secretary.

Copies filed
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S Letters

Enclosure

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS

S-968-a
IMMEDIATE RELEASE APRIL 8, 1947.

AMENDING THE PROCLAMATIONS OF MARCH 6 AND MARCH 9, 1933,
AND THE EXECUTIVE ORDER OF MARCH 10, 1933, TO EXCLUDE
FROM THEIR SCOPE MEMBER BANKS OF THE FEDERAL RESERVE SYSTEM

- - - - - - - -

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS on March 10, 1933, the President of the United States, in pursuance of the program to permit resumption of banking operations following the Bank Holiday Proclamations No. 2039 of March 6 and No. 2040 of March 9, 1933, respectively, issued Executive Order No. 6073 which, among other things, authorized the Secretary of the Treasury to permit any member bank of the Federal Reserve System and any other banking institution organized under the laws of the United States to perform any or all of their usual banking functions except as otherwise prohibited; and

WHEREAS on December 30, 1933, the President of the United States issued Proclamation No. 2070 which excluded from the scope of the said proclamations of March 6 and March 9, 1933, and the Executive order of March 10, 1933, all banking institutions which were not members of the Federal Reserve System; and

WHEREAS by December 30, 1933, the Secretary of the Treasury had acted upon all requests for licensing of member banks of the Federal Reserve System;and

WHEREAS on December 31, 1945, the Secretary of the Treasury issued a General License to transact normal banking business to all banks thereafter authorized to begin business by the Comptroller of the Currency and to all State banks thereafter admitted to membership in the Federal Reserve System, and thereby dispensed with the requirement of an individual license for each new member bank of the Federal Reserve System; and

WHEREAS it is no longer necessary, or in the interest of government internal management, for the Secretary of the Treasury to license the transaction of normal banking business:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by section 5(b) of the Trading with the Enemy Act of October 6, 1917, 40 Stat. 415, as amended, and section 4 of the act of March 9, 1933, 48 Stat. 2, and by virtue of all other authority vested in me, do hereby, in the interest of the internal management of the Government, proclaim, order, direct, and declare that the said proclamations of March 6 and March 9, 1933, and Executive order of March 10, 1933, as amended, are further amended to exclude from their scope banking institutions which are members of the Federal Reserve System: Provided, however,

that no banking institution shall pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary of the Treasury, or allow the withdrawal of any currency for hoarding.

This proclamation shall become effective as of March 15, 1947.

IN WITNESSS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this seventh day of April in this year of our Lord nineteen hundred and forty-seven, and of the Independence of the United States of America the one hundred and seventy-first.

(SEAL)

HARRY S. TRUMAN

By the President:

DEAN ACHESON,

Acting Secretary of State

- - - - - - - - - - - - - - - -

S-968

APR - 9 1947

Dear Sir:

For your information, there is enclosed a copy of a Proclamation issued by the President of the United States on April 8, 1947, effective as of March 15, 1947, excluding member banks from the scope of the Presidential Proclamations of March 6 and March 9, 1933, and the Executive Order of March 10, 1933.

This Proclamation has the effect of terminating the present authority of the Secretary of the Treasury to issue regulations requiring the licensing of member banks. It will be recalled that the necessity for licenses in the case of individual member banks was eliminated by a General License issued by the Secretary of the Treasury on December 31, 1945. The present Proclamation terminates the authority of the Secretary to impose any restrictions upon the operations of member banks other than those relating to payments in gold and withdrawals of currency for hoarding.

In view of this Proclamation, it will no longer be necessary for State banks becoming members of the Federal Reserve System to be advised of the terms of the General License of December 31, 1945, or to be furnished with a copy thereof in the manner suggested by the Board's letter of January 29, 1946 (F.R.L.S. #3533).

Very truly yours,

(Signed) S. R. Carpenter
S. R. Carpenter,
Secretary.

Enclosure

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS

HHH:lim
4/9/47

FILE COPY

101

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date April 8, 1947

To Board of Governors

From Mr. Hackley

Subject: Proclamation of the President terminating procedure for licensing member banks.

The President of the United States today issued a Proclamation which has the effect of terminating the present authority of the Secretary of the Treasury to require licenses of member banks, effective as of March 15, 1947.

The authority of the Secretary of the Treasury to license member banks was based upon Proclamations of March 6 and March 9, 1933, an Executive Order of March 10, 1933, and provisions of section 4 of the Emergency Banking Act of March 9, 1933. Nonmember State banks were excluded from the scope of those Proclamations and that Executive Order by a further Proclamation of December 30, 1933. By a "general license" dated December 31, 1945, the Secretary of the Treasury made it unnecessary for member banks to obtain individual licenses. The Proclamation issued by the President today excludes member banks from the scope of the Proclamations and Executive Order issued in March 1933, except that all banking institutions are still made subject to the prohibition against paying out gold or allowing the withdrawal of currency for hoarding.

The new Proclamation is in substantial accordance with a recommendation made by the Federal Advisory Council in 1945, with which the Board expressed its concurrence in a letter to the Secretary of the Treasury dated October 31, 1945.

The Proclamation does not terminate the emergency declared by the 1933 Proclamations; and the Secretary of the Treasury continues to have technical authority to issue regulations restricting the transaction of a banking business by member banks. Such regulations, however, may be issued only with the approval of the President. Accordingly, today's Proclamation effectively terminates the authority of the Secretary of the Treasury to impose any restrictions upon the operations of member banks other than those relating to payments of gold and withdrawals of currency for hoarding purposes.

Howard H. Hackley

FOR CIRCULATION

First to Mr. Ransom

Mr. Ransom ✓
Mr. Szymczak ✓
Mr. Draper ✓
Mr. Evans ✓
Mr. Vardaman ✓
Mr. Clayton ✓
Mr. Thurston ✓
Mr. Morrill ✓
Mr. Carpenter ✓
~~Mr. Hammond~~
Mr. Sherman ✓
Mr. Leonard ✓
Mr.
Mr.

Please note, check and return to Mrs. Fitzgerald

file copy 007.

IMMEDIATE RELEASE APRIL 8, 1947.

AMENDING THE PROCLAMATIONS OF MARCH 6 AND MARCH 9, 1933, AND THE EXECUTIVE ORDER OF MARCH 10, 1933, TO EXCLUDE FROM THEIR SCOPE MEMBER BANKS OF THE FEDERAL RESERVE SYSTEM

- - - - -

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS on March 10, 1933, the President of the United States, in pursuance of the program to permit resumption of banking operations following the Bank Holiday Proclamations No. 2039 of March 6 and No. 2040 of March 9, 1933, respectively, issued Executive Order No. 6073 which, among other things, authorized the Secretary of the Treasury to permit any member bank of the Federal Reserve System and any other banking institution organized under the laws of the United States to perform any or all of their usual banking functions except as otherwise prohibited; and

WHEREAS on December 30, 1933, the President of the United States issued Proclamation No. 2070 which excluded from the scope of the said proclamations of March 6 and March 9, 1933, and the Executive order of March 10, 1933, all banking institutions which were not members of the Federal Reserve System; and

WHEREAS by December 30, 1933, the Secretary of the Treasury had acted upon all requests for licensing of member banks of the Federal Reserve System; and

WHEREAS on December 31, 1945, the Secretary of the Treasury issued a General License to transact normal banking business to all banks thereafter authorized to begin business by the Comptroller of the Currency and to all State banks thereafter admitted to membership in the Federal Reserve System, and thereby dispensed with the requirement of an individual license for each new member bank of the Federal Reserve System; and

WHEREAS it is no longer necessary, or in the interest of government internal management, for the Secretary of the Treasury to license the transaction of normal banking business:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by section 5(b) of the Trading with the Enemy Act of October 6, 1917, 40 Stat. 415, as amended, and section 4 of the act of March 9, 1933, 48 Stat. 2, and by virtue of all other authority vested in me, do hereby, in the interest of the internal management of the Government, proclaim, order, direct, and declare that the said proclamations of March 6 and March 9, 1933, and Executive order of March 10, 1933, as amended, are further amended to exclude from their scope banking institutions which are members of the Federal Reserve System: Provided, however, that no banking institution shall pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary of the Treasury, or allow the withdrawal of any currency for hoarding.

This proclamation shall become effective as of March 15, 1947.

rec S 969 4/9/47

(OVER)

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this seventh day of April in the year of our Lord nineteen hundred and forty-seven, and of the Independence of the United States of America the one hundred and seventy-first.

(SEAL)

HARRY S. TRUMAN

By the President:

DEAN ACHESON,

Acting Secretary of State

- - - - - - - -

Mr. Robert D. L'Heureux,
Legal Consultant,
Committee on Banking and Currency,
United States Senate,
Washington, D. C.

MAR - 3 1947

My dear Mr. L'Heureux:

This is in response to your letter of February 4, 1947, to Chairman Eccles requesting an opinion as to the advisability of retaining, amending or terminating certain laws which you specify in your letter. The statutes in question are those contained in section 5(b) of the Trading with the Enemy Act, as amended, in section 4 of the Act of March 9, 1933, and in the Act of April 13, 1943.

Section 5(b) of the Trading with the Enemy Act, as amended, in the opinion of the Board, should be retained in the law. Although this section is operative only during time of war or other period of national emergency, it has been on the statute books since 1917 and it cannot now properly be considered special war or emergency legislation. It is the basis for the foreign funds control exercised by the Treasury Department and for the authority of the Alien Property Custodian; and it vests the President with other broad authority for use in time of emergency. It is presently also the basis for regulations of the Board of Governors relating to consumer credit, since authority to prescribe those regulations is derived from Executive Order No. 8843 which was issued pursuant to this statute. The Board expects at a later date to ask the Banking and Currency Committees of Congress to consider whether legislation, independent of section 5(b), should be enacted to continue authority for consumer credit regulation on a permanent basis; and the possible permanency of such authority, therefore, does not depend on section 5(b). Nevertheless, it is the Board's view that, because of the other broad powers given by the section and the important operations carried on under it, it is important that the section be permitted to continue in effect.

Section 4 of the Act of March 9, 1933, the so-called Emergency Banking Act, provides in effect that during such emergency period as the President may prescribe no member bank of the Federal Reserve System shall transact any banking business except to the extent permitted by regulations of the Secretary of the Treasury with the approval of the

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8

President. Although the emergency period proclaimed by the President on March 6, and March 9, 1933, at the time of the Bank Holiday, has never been terminated by specific action of the President, the Secretary of the Treasury about a year ago issued a general license authorizing the transaction of a normal banking business by all new member banks. Member banks existing prior to that time had been given individual licenses to carry on banking business. As a practical matter, therefore, section 4 of the Act of March 9, 1933, has fully served its purpose.

The Act of April 13, 1943, provided that, until six months after the cessation of hostilities as determined by proclamation of the President or concurrent resolution of Congress, so-called war loan deposit accounts arising from subscriptions to United States Government securities should not be subject to reserve requirements on the books of member banks or subject to assessments for Federal Deposit Insurance Corporation insurance on the books of insured banks. The President issued a Proclamation on December 31, 1946, declaring the cessation of hostilities, and as a result these provisions of the law will automatically terminate on June 30, 1947. The exemption of war loan deposits from reserve requirements was strictly a wartime measure designed to facilitate the Government's huge financing program during the war and the need for the exemption no longer exists. Accordingly, in the Board's opinion, no legislation on this subject is now needed.

There is one additional statute which we would like to mention in this connection. The existing authority for the purchase of Government securities by the Federal Reserve Banks directly from the United States, subject to the limitation that the amount of securities so purchased and held by the Federal Reserve Banks shall not exceed $5,000,000,000, is contained in a proviso which was added to section 14(b) of the Federal Reserve Act by Title IV of the Second War Powers Act. It will expire on March 31, 1947, or such earlier date as may be designated by the Congress or the President. Until 1935 there was no limitation upon the authority of the Federal Reserve Banks to make such direct purchases of Government securities. While it has been used only occasionally, the authority has proven to be a useful and convenient mechanism to facilitate Treasury operations and to effect temporary adjustments in the money market. Accordingly, the Board on February 12, 1947, recommended to the Chairmen of the Banking and Currency Committees of the Senate and House the enactment of legislation making permanent this authority for direct purchases from the United States.

Very truly yours,

S. R. Carpenter,
Secretary.

FOR APPROVAL
First of Mr. Thurston
for Chairman Eccles
Mr. Ransom
Mr. Szymczak
Mr. Draper
Mr. Evans
Mr. Vardaman
Mr. Clayton
Mr. Thurston

SEE ATTACHED MEMORANDUM
FROM Mrs. Vest
DATED Feb 20 1947

If you [illegible] initial [illegible] Mrs. [illegible]

GBV:lim
2/26/47

MINUTES ON FILE
MAR 3 1947

FILE COPY

President. Although the emergency period proclaimed by the President on March 6, and March 9, 1933, at the time of the Bank Holiday, has never been terminated by specific action of the President, the Secretary of the Treasury about a year ago issued a general license authorizing the transaction of a normal banking business by all new member banks. Member banks existing prior to that time had been given individual licenses to carry on banking business. As a practical matter, therefore, section 4 of the Act of March 9, 1933, ~~is of no importance today and in effect is an obsolete statute. Accordingly the section might well be terminated, but the Board does not feel that it is important whether or not it is repealed at this time.~~ has fully served its purpose.

The Act of April 13, 1943, provided that, until six months after the cessation of hostilities as determined by proclamation of the President or concurrent resolution of Congress, so-called war loan deposit accounts arising from subscriptions to United States Government securities should not be subject to reserve requirements on the books of member banks or subject to assessments for Federal Deposit Insurance Corporation insurance on the books of insured banks. The President issued a Proclamation on December 31, 1946, declaring the cessation of hostilities, and as a result these provisions of the law will automatically terminate on June 30, 1946. The exemption of war loan deposits from reserve requirements was strictly a wartime measure designed to facilitate the Government's huge financing program during the war and the need for the exemption no longer exists. Accordingly, in the Board's opinion, no legislation on this subject is now needed.

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FOR APPROVAL
First of Mr. Thurston, for Mr. Eccles
Mr. Ransom
Mr. Szymczak
Mr. Draper
Mr. Evans
Mr. Vardaman
Mr. Clayton
Mr. Thurston
If you approve please initial and send to Mrs. Ransom

SEE ATTACHED MEMORANDUM Very truly yours,

FROM: M. S. Eccles

DATED: March 20, 1947

M. S. Eccles,
Secretary.

GBV:lim
2/20/47

2/27/47

TO:

Mr. George B. Vest
General Counsel
Board of Governors
Federal Reserve System

In line with your recent conversation with Mr. O'Connell and my phone call to your office this morning during your absence at a meeting, I transmit herewith a copy of our proposed report to the Senate Banking and Currency Committee on certain emergency and wartime statutes of Treasury interest within the jurisdiction of that Committee. The Committee requested this report under S. Res. 35.

The Committee is pressing us for this report and we hope to get Budget clearance on it today. If I can be of any further help on this matter, please call me.

Stephen J. Spingarn
Stephen J. Spingarn
Assistant General Counsel
Treasury Department

See particularly last paragraph, page 4.

S.J.S.

FOR FILES
Gordon Grimwood

MR. SPINGARN

My dear Mr. Chairman:

Further reference is made to the letter of February 4, 1947, from Mr. Robert D. L'Heureux, Legal Consultant of your Committee, requesting the Department's views on certain emergency or wartime legislation.

The letter refers specifically to three acts: (1) the Act of March 9, 1933 (48 Stat. 1, secs. 2 and 4), (2) the Act of December 18, 1941 (55 Stat. 839, sec. 301) and (3) the Act of March 27, 1942 (56 Stat. 180, ch. 199, title IV, sec. 401).

Section 2 of the Act of March 9, 1933, and the Act of December 18, 1941, constituted amendments to section 5(b) of the Trading with the enemy Act of October 6, 1917 (40 Stat. 411). The Trading with the enemy Act, including section 5(b) thereof, is permanent legislation, which, during the past 30 years, has proved to be highly effective in combatting two major wartime emergencies and a major peace-time emergency experienced by the United States.

In the First World War, the powers contained in section 5(b) and other sections of the Trading with the enemy Act were used to prohibit trade and communications between this country and the enemy and to control the use of foreign assets in the United States. For several years following the end of actual fighting in the First World War the provisions of the Act were the basis for the vesting of enemy assets in the United States.

When Germany without warning occupied Denmark on April 8, 1940, and Norway on April 10, 1940, the existence of this section enabled the United States on the day of the invasion to freeze the assets in this country of these two invaded countries and their nationals. These assets were thereby conserved intact for their rightful owners and prevented from falling into the hands of the aggressors where they could have been used against the allied nations. Thereafter as the Netherlands, Belgium, France, and other countries were invaded their assets were successively blocked. In June and July, 1941, under the authority of section 5(b), the Treasury's controls were extended to Germany, Italy, and the rest of continental Europe, including the neutrals, and to Japan and China. Thus, at the very time that they were making final preparations for a world conflict, the Axis nations were completely deprived of the use of foreign exchange in this country, and trade and communications with such countries were effectively controlled. This had a profound effect on the ability of Germany and Japan to sustain an extended war effort.

In addition, the powers originally granted in section 5(b), as reaffirmed and enlarged by the Act of March 9, 1933, were used by the Government in dealing with the banking and financial crisis of 1933. Under its authority orders were issued to close the banks, to prohibit hoarding, and to call in all gold, gold coins and gold certificates.

It can be seen that over a considerable period of time this legislation has been demonstrated to be highly effective in meeting and dealing with serious financial problems associated with both internal and external crises. During this time section 5(b) has undergone amendments and refinements occasioned by the varying types of problems to which it has been applied, with the result that it now constitutes a highly flexible reserve measure available for immediate application in the financial field in the event of emergency conditions. The Department believes that it is essential that the Trading with the enemy Act, including section 5(b) thereof, be permanently retained to safeguard and protect the interests of the United States, particularly in view of the uncertainty of future world political and economic relationships.

Although the Trading with the enemy Act is permanent legislation, the powers granted to the President by section 5(b) may be exercised only "during the time of war or during any other period of national emergency declared by the President". The completion of the Treasury Department's program for the lifting of the freezing controls in a manner consistent with the policies of the Government will require the continued use of the section 5(b) powers for some time in the future.

It will be recalled that with the United States' entry into the war our freezing control program became, in addition to a protective device, one of our most important weapons of economic warfare designed to carry out, in conjunction with the vesting program of the Alien Property Custodian, the Government's policy of seeking out and liquidating German property holdings wherever they might be found. At the height of the war the Treasury Department through its freezing controls (1) regulated the use and disposition of some $8 billion of property held in the United States by the governments and nationals of thirty-six enemy, enemy-dominated, and neutral countries; (2) regulated the importation of securities, currency, art objects and other valuables to prevent the liquidation here of the Axis loot from invaded territories; (3) scrutinized international transactions flowing through United States banking channels to prevent transactions benefiting the Axis and to promote those aiding the Allied cause; and (4) participated in the Proclaimed List (the American black list) program thereby preventing transactions with enemy agents and other inimical interests throughout the world.

Since the defeat of Germany and Japan, the Treasury Department has removed practically all of the controls which in any way interfered with the resumption of normal business and trade relationships with foreign countries. For example, all controls over current transactions with all foreign countries except Sweden, Spain, Portugal, and Tangier have been removed. Import controls are being limited to specific items known to be looted by the enemy, such as securities.

Blocked property known to be German or Japanese either has been or is being vested by the Office of Alien Property. Blocked property belonging to persons in those parts of the world through which little cloaking of German or Japanese property took place has been automatically unblocked, except for property known to belong to certain German or Japanese individuals or organizations. Thus, for example, the entire Far East, except Japan, has been automatically unblocked.

Agreements have been negotiated with 14 foreign governments including France, the Netherlands, Belgium, and Switzerland, pursuant to which they have assumed the responsibility for conducting investigations as to the real ownership of assets in the United States in the names of their residents. Once these countries have certified that no enemy interest is involved, the assets are automatically released. Pursuant to such "defreezing" agreements the foreign countries undertake to inform the United States of blocked property which they discover to be beneficially owned by the enemy. As enemy property is discovered, it is subject to vesting by the Office of Alien Property, Justice Department, whose authority is also contained in section 5(b) of the Trading with the enemy Act. This type of unfreezing arrangement was adopted in view of the fact that German interests in the most important and valuable German properties in this country were, in accordance with Nazi war plans, cloaked through elaborate devices generally designed to make such property appear to belong to nationals of certain allied or neutral countries.

It must be realized, however, that a substantial period of time will be required for the investigation and certification of blocked assets, especially by those foreign governments who have only recently concluded defreezing agreements with the United States. Moreover, we have not yet been able to conclude defreezing arrangements with Sweden, Spain, and Portugal although negotiations with those countries are in progress. The delay in concluding agreements with these countries has been occasioned in part by the fact that the defreezing arrangements are but one part of this Government's program to liquidate existing German and Japanese assets throughout the world, particularly in the European neutrals, thereby supplementing this Government's security program and increasing the amounts available for reparations. Defreezing arrangements are only concluded with the neutral governments after they have undertaken to initiate satisfactory measures: (1) for the discovery and liquidation of German assets within their borders, (2) for the payment of the proceeds therefrom to the Allied Governments for use as reparations, and (3) for the restitution of gold looted by the

Germans and subsequently acquired by them. The Department does not feel that it can release the assets of these governments from control until they have agreed to uncover and liquidate property holdings which the Nazis in preparation for the war, cleverly concealed and cloaked in the names of dummies and agents of other nationalities, particularly since all the other governments have agreed to take such measures. In this connection, your attention is directed to the attached resolution concerning Foreign Funds Control adopted on November 16, 1945, by the Bankers' Association for Foreign Trade.

The termination of the state of war and of the emergencies proclaimed by the President with respect to section 5(b) at this time would mean the immediate unfreezing of all remaining blocked assets thereby rendering it more difficult to conclude satisfactory agreements with the remaining neutrals concerning German assets and looted gold. Such action would also operate to terminate immediately the defrosting agreements already entered into in good faith with foreign countries with the result that much property in this country beneficially owned by Germans could never be discovered and vested. Moreover, it would make it impossible to retain control over the assets of the four so-called "satellite" enemy countries, Bulgaria, Hungary, Rumania, and Italy, for ultimate disposition after the peace treaties recently executed are ratified. In addition, it would negate this Government's efforts in accordance with its international commitments to prevent the United States from becoming the dumping ground for all kinds of valuables looted by the Germans and Japanese.

It is my considered opinion, therefore, not only that the underlying statutes should be retained as permanent legislation, but also that the powers granted therein should remain operative until the program set forth above has been completed.

Section 4 of the Act of March 9, 1933, which is also permanent legislation, provides that "during such emergency period as the President of the United States may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President." In connection with this statute, I call your attention to the view recently expressed by the President in his message to the Congress on February 19, 1947, concerning certain emergency powers, when he stated with respect to this section and other laws enumerated in Appendix B, that "Nothing requires their removal from our body of permanent law at this time, and it is preferable that operations conducted under them by virtue of the 1939 and 1941 emergencies should lapse rather than that the statutes should be repealed."

The third act mentioned in your letter, the Act of March 27, 1942, as amended (56 Stat. 150, ch. 199, title IV, sec. 401), authorizes the Federal Reserve Banks to hold United States securities purchased directly from the Treasury in an amount not exceeding $5,000,000,000 at any one time. The authority expires on March 31, 1947. This power is one of the instruments in the possession of the Federal Reserve authorities for maintaining member bank reserve balances around income tax dates and is of assistance in the maintenance of smooth money market conditions. Hence, the Department believes that the authority should be made permanent. This recommendation is in accord with the statement appearing in the Appendix of a Message from the President of the United States, dated January 11, 1947 (H. Doc. No. 60, 80th Cong.) in which it is stated that the Federal Reserve Board and the Treasury Department will recommend permanent legislation covering this subject.

Two statutes not listed in your letter which probably are within the jurisdiction of your Committee should be mentioned. One is the Act of April 13, 1943 (57 Stat. 65, ch. 62), which provides that until 6 months after the cessation of hostilities in the present war as determined by proclamation of the President or concurrent resolution of the Congress, the so-called war loan accounts shall be excluded from the base used for the determination of Federal Deposit Insurance Corporation insurance assessments and shall be exempt from the reserve requirements provided by the Federal Reserve Act. The President by proclamation has terminated the period of hostilities of World War II as of December 31, 1946, so that this authority will expire automatically as of June 30, 1947, since the statute by its terms is limited in operation to the "present war." The statute should be allowed to run its course so that the banks may make the necessary adjustments in the meantime.

The other statute is the Act of December 23, 1944 (58 Stat. 921, ch. 716) which authorizes disbursing officers until 6 months after the present war to cash and negotiate checks and other instruments payable in United States and foreign currency and to conduct exchange transactions involving United States and foreign currency for the accommodation of military and civilian personnel of the United States. The Treasury Department believes that this legislation should be made permanent since substantial numbers of military and civilian personnel of the United States will be stationed abroad as a part of the occupation forces for an indefinite period of time.

Very truly yours,

Secretary of the Treasury

Honorable Charles W. Tobey
Chairman, Committee on Banking and Currency
United States Senate
Washington, D. C.

FRS:HAR:JSR:rs:fls 2/24/47

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date February 20, 1947.

To Board of Governors

From Mr. Vest

Subject: Letter regarding certain emergency legislation

2/4/47

The attached letter from the Legal Consultant of the Senate Banking and Currency Committee asks for the Board's opinion on certain temporary or emergency war legislation.

One of the provisions in question is section 4 of the Emergency Banking Act of March 1933, which provides in effect that during the period of emergency proclaimed by the President no member bank shall transact banking business except as permitted by the Secretary of the Treasury. Under this statute the Secretary until about a year ago granted individual licenses to do business to each new member bank, but on December 31, 1945, issued a general license authorizing the transaction of business by all banks thereafter becoming members. There appears to be no valid reason for the continuance of this statute and we recently suggested this viewpoint to the Treasury. Mr. O'Connell, General Counsel, was rather inclined to the contrary view but promised to send us a copy of a tentative draft of a proposed letter which the Treasury would write on the subject. This has not been received.

In the meantime the President has sent a message to Congress listing certain emergency statutes which should be repealed and certain statutes which should be retained and included section 4 of the March 1933 Act among those to be retained. Although it would appear to be desirable to repeal this statute because it is practically obsolete, the point does not appear to be sufficiently important to justify the Board in taking a firm position at variance with that of the President. Accordingly the attached draft of letter to the Legal Consultant of the Senate Committee states that whether the statute is repealed at this time is not very important.

The proposed letter also states the opinion of the Board that section 5(b) of the Trading with the Enemy Act should be retained because of operations under it by the Foreign Funds Control of the Treasury and by the Alien Property Custodian. The letter states that this statute is presently the basis for our consumer credit regulations, but it does not make the possible permanency of these regulations a reason for the continuance of section 5(b), since permanent authority if obtained would be contained in a special statute.

GDV

Attachment

GBV:lim

United States Senate
COMMITTEE ON BANKING AND CURRENCY

February 4, 1947

Mr. Marriner S. Eccles, Chairman
Federal Reserve Board
Washington 25, D. C.

My dear Mr. Eccles:

The Senate Committee on Banking and Currency is making a study of all existing temporary and permanent emergency and war time legislation (including legislation which terminates on or after a proclamation of the cessation of hostilities) which falls within the jurisdiction of the said committee.

The committee would appreciate an early opinion on the merits of the following laws at this time, including a discussion of the advisability of retaining, amending, or ending the special war or emergency powers concerned. Kindly discuss the same in the light of other legislation if any, now pending before Congress. Also please add to your recommendation a discussion of any other war or emergency power affecting your agency and within the scope of this committee's work, if that power is not included below.

Direct Purchases

"During time of war or during any other period of national emergency declared by the President," he may regulate transactions in foreign exchange and the export, hoarding, melting, etc., of gold or silver coin, bullion, or currency, by any person subject to the jurisdiction of the United States; and during such emergency period as the President of the United States by proclamation may prescribe, member banks of the Federal Reserve System are not to transact any banking business, except in accordance with regulations of the Secretary of the Treasury approved by the President, amended by the First War Powers Act, which extends the provision for regulation, etc., by the President to payments to banking institutions, and to transfers, withdrawals, or exports of or dealings in, evidences of indebtedness or ownership of property in which any foreign state, etc., has any interest; and vests flexible powers in the President to deal with the problems that surround alien property or its ownership or control.

Mr. Marriner S. Eccles

March 9, 1933 (48 Stat. 1, sec. 2, ch. 2, sec.4), amended December 18, 1941 (55 Stat. 839, sec. 301).

Provision that subscriptions to certain United States securities be excluded from bank deposits for certain purposes until 6 months after cessation of hostilities (adding proviso to Federal Reserve A ct 12B (h), par. 1, second sentence and last sentence of sec. 19).

April 13, 1943 (57 Stat. 65, ch. 62).

Kindly send your reply in triplicate.

By direction of the Chairman.

Very sincerely yours,

Robert D. L'Heureux

Robert D. L'Heureux
Legal Consultant

RDL:pb

FEDERAL RESERVE BANK
OF CLEVELAND
CLEVELAND 1, OHIO

March 8, 1946

Mr. Bray Hammond, Assistant Secretary
Board of Governors of the
Federal Reserve System
Washington, D. C.

Dear Mr. Hammond:

Acknowledgment is made of your letter of March 5 with enclosure (S-901 and S-901-a) addressed to Mr. R. M. Gidney. We will be governed by the opinion of the Board that it is not necessary to advise the Secretary of the Treasury by wire or letter as to the effective date of admission of a State bank to membership in the Federal Reserve System.

Very truly yours,

W. D. Fulton
Vice President

S-Sec'y-a

MAR 5 1946

Mr. D. W. Woolley, Vice President and Cashier,
Federal Reserve Bank of Kansas City,
Kansas City 18, Missouri.

Dear Mr. Woolley:

We understand from your letter of February 18, 1946, that it was your practice, when authorized by the Secretary of the Treasury to issue a license to a bank approved for membership, to advise the Secretary by wire when the license was issued and the bank admitted to membership. You assume that the Secretary of the Treasury still wishes wire advice when a bank is admitted to membership and licensed under the general license issued by the Secretary of the Treasury on December 31, 1945, applying to "all State banks hereafter admitted to membership in the Federal Reserve System".

It is understood that the wire advice to the Secretary of the Treasury, to which you refer, was never required by the Secretary but was furnished by most, if not all, of the Federal Reserve Banks to indicate the action taken under the specific authorization in each instance. In the Board's opinion, the issuance of the general license removes the necessity for advising the Secretary of the Treasury by wire or letter as to the effective date of admission of a State bank to membership.

Very truly yours,

Approved
MINUTES ON
MAR 5 - 1946

Bray Hammond,
Assistant Secretary.

Mr McKee

GSS:fs

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

S-901

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

March 5, 1946.

Dear Sir:

The Board of Governors recently received 2/18/46 the following letter from one of the Reserve Banks:

> "When a State bank is admitted to membership in the Federal Reserve System we expect to send it a copy of the general license issued by the Secretary of the Treasury, furnished with the Board's letter S-888, dated January 3, 1946, as suggested in Board's letter S-894, dated January 29, 1946, which was enclosed with your letter of January 30, 1946. We have formerly wired the Secretary of the Treasury upon admittance of a State bank to membership in the System, advising that a license was being issued in accordance with the telegraphic authorization of the Secretary of the Treasury, and informing them of the effective date of the bank's admission to membership. It is assumed that the Secretary of the Treasury still desires us to wire him when a State bank is admitted to membership in the System."

A copy of the Board's reply is enclosed for your information.

Very truly yours,

Bray Hammond

Bray Hammond,
Assistant Secretary.

Copies filed
412.1
S - Letters

Enclosure

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS.

S-901-a

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

March 5, 1946.

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

Dear Mr. _____:

We understand from your letter of February 18, 1946, that it was your practice, when authorized by the Secretary of the Treasury to issue a license to a bank approved for membership, to advise the Secretary by wire when the license was issued and the bank admitted to membership. You assume that the Secretary of the Treasury still wishes wire advice when a bank is admitted to membership and licensed under the general license issued by the Secretary of the Treasury on December 31, 1945, applying to "all State banks hereafter admitted to membership in the Federal Reserve System".

It is understood that the wire advice to the Secretary of the Treasury, to which you refer, was never required by the Secretary but was furnished by most, if not all, of the Federal Reserve Banks to indicate the action taken under the specific authorization in each instance. In the Board's opinion, the issuance of the general license removes the necessity for advising the Secretary of the Treasury by wire or letter as to the effective date of admission of a State bank to membership.

Very truly yours,

(Signed) Bray Hammond

Bray Hammond,
Assistant Secretary.

S-901

MAR 5 1946

Dear Sir:

The Board of Governors recently received the following letter from one of the Reserve Banks:

> "When a State bank is admitted to membership in the Federal Reserve System we expect to send it a copy of the general license issued by the Secretary of the Treasury, furnished with the Board's letter S-888, dated January 3, 1946, as suggested in Board's letter S-894, dated January 29, 1946, which was enclosed with your letter of January 30, 1946. We have formerly wired the Secretary of the Treasury upon admittance of a State bank to membership in the System, advising that a license was being issued in accordance with the telegraphic authorization of the Secretary of the Treasury, and informing them of the effective date of the bank's admission to membership. It is assumed that the Secretary of the Treasury still desires us to wire him when a State bank is admitted to membership in the System."

A copy of the Board's reply is enclosed for your information.

Very truly yours,

Bray Hammond,
Assistant Secretary.

Enclosure

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS

GSS:fs

The Riggs National Bank
of
Washington, D. C.
POSTAL ZONE 13

ROBERT V. FLEMING
PRESIDENT AND CHAIRMAN OF THE BOARD

CHARLES C. GLOVER, JR.
VICE CHAIRMAN OF THE BOARD

February 25, 1946

IN REPLYING PLEASE QUOTE INITIALS

Mr. Chester Morrill, Special Adviser,
Board of Governors of the
Federal Reserve System,
Washington 25, D. C.

Dear Chester:

Thank you so much for your courtesy in sending to me Chairman Eccles' letter of October 31, addressed to the Honorable Fred M. Vinson, Secretary of the Treasury, relative to the elimination of the licensing of national and member banks. I am particularly desirous of having this for my files.

Sincerely yours,

President

Files
Cm

February 20, 1946.

Mr. Robert V. Fleming, President,
Riggs National Bank,
Washington, D. C.

Dear Bob:

Following our talk over the telephone I had a copy made of our letter of October 31, 1945 to Secretary Vinson regarding the licensing requirement applicable to national and state member banks, and I am sending it to you herewith.

If we can be of any further service you know that we will be glad to respond.

Sincerely yours,

Chester Morrill,
Special Adviser.

CMc:ar
Enclosure.

CM FILE COPY

Files
CM

February 20, 1946

Mr. Thomas

Seymour Harris' Prospectus

Chandler Morse

I have referred Seymour Harris' prospectus to Sue Burr, Roland Robinson and Dick Musgrave, the three persons who it seemed to me were most likely to have material and possibly time for this sort of thing. Their independent reactions were in unanimous agreement. They found the project confusing, they were doubtful as to its value, they felt that we had little to contribute that had not already been published in readily available form and they felt that neither they or any member of the staff had the time to put on such an enterprise.

In the light of these reactions I have drafted the attached letter for your signature.

w/r. orig.

CM:fe
Attachment

FEDERAL RESERVE BANK
OF
KANSAS CITY

February 18, 1946

Mr. Leo H. Paulger, Director,
Division of Examinations,
Board of Governors of the
Federal Reserve System,
Washington, D. C.

Dear Mr. Paulger:

When a State bank is admitted to membership in the Federal Reserve System we expect to send it a copy of the general license issued by the Secretary of the Treasury, furnished with the Board's letter S-888, dated January 3, 1946, as suggested in Board's letter S-894, dated January 29, 1946, which was enclosed with your letter of January 30, 1946. We have formerly wired the Secretary of the Treasury upon admittance of a State bank to membership in the System, advising that a license was being issued in accordance with the telegraphic authorization of the Secretary of the Treasury, and informing them of the effective date of the bank's admission to membership. It is assumed that the Secretary of the Treasury still desires us to wire him when a State bank is admitted to membership in the System.

Very truly yours,

D. W. Woolley,
Vice President and Cashier.

MR.
MR.
MR.
MR.

FEDERAL RESERVE BANK
OF CLEVELAND
CLEVELAND 1, OHIO

February 1, 1946

Mr. Bray Hammond, Assistant Secretary
Board of Governors of the
Federal Reserve System
Washington 25, D. C.

Dear Mr. Hammond:

Receipt is acknowledged of the Board's letter of January 29, S-894. We have had in mind the desirability of calling to the attention of banks becoming members, their status relative to Treasury license, and are pleased to note that the Board approves of this.

Sincerely yours,

Ray M. Gidney,
President.

January 30, 1946.

Mr. D. W. Woolley, Vice President
and Cashier,
Federal Reserve Bank of Kansas City,
Kansas City 18, Missouri.

Dear Mr. Woolley:

Acknowledgement of your letter of January 14, 1946, has been delayed pending issuance of the Board's letter of January 29, 1946, S-[illegible]4, which was under consideration when your letter was received. That letter appears to answer your inquiry.

Very truly yours,

(Signed) Leo H. Paulger

Leo H. Paulger, Director,
Division of Examinations.

GSS:fs

FILE COPY

JAN 29 1946

Mr. C. E. Earhart, First Vice President,
Federal Reserve Bank of San Francisco,
San Francisco 20, California.

Dear Mr. Earhart:

This refers to your letter of January 10, 1946, with respect to the issuance of a general license by the Treasury Department authorizing the transaction of normal banking business by national banks hereafter authorized to begin business by the Comptroller of the Currency and by State banks hereafter admitted to membership in the Federal Reserve System.

The Board agrees with your suggestion that each State bank hereafter admitted to membership should be notified that it is operating under this general license and, accordingly, a letter is being addressed to all Federal Reserve Banks recommending that this procedure be followed. S-894 1/29/46

We have been informally advised by the Comptroller of the Currency that no determination has as yet been made as to notifying newly organized national banks of the general license but we understand that whatever steps are desirable in this connection will be taken by that office at the time of the authorization of such banks to begin business so that it will not be necessary for the Federal Reserve Banks to call the matter to their attention.

Very truly yours,

Approved
MINUTES ON
JAN 29 1946

Bray Hammond,
Assistant Secretary.

Approval
Mr. McKee
of the Board

WLH:AKC:jc
1-24-46

FILE COPY

FOR FILES
Louise F. Thomason

Mr. C. E. Earhart, First Vice President,
Federal Reserve Bank of San Francisco,
San Francisco 20, California.

Dear Mr. Earhart:

This refers to your letter of January 10, 1946, with respect to the issuance of a general license by the Treasury Department authorising the transaction of normal banking business by national banks hereafter authorised to begin business by the Comptroller of the Currency and by State banks hereafter admitted to membership in the Federal Reserve System.

The Board agrees with your suggestion that each State bank hereafter admitted to membership should be notified that it is operating under this general license and, accordingly, a letter is being addressed to all Federal Reserve Banks recommending that this procedure be followed. Since the Comptroller of the Currency authorises national banks to begin business, it is believed desirable to leave to that office the matter of notifying such newly organised banks. We have been informally advised by the Comptroller's office that no determination has been made as to notifying each newly organised national bank.

Very truly yours,

S. R. Carpenter,
Secretary.

WLH:jc
1-21-46

JAN 29 1946

Mr. R. R. Gilbert, President,
Federal Reserve Bank of Dalla.,
Dallas 13, Texas.

Dear Mr. Gilbert:

This refers to your letter of January 9, 1946, suggesting that a copy of the general license issued by the Treasury Department authorising State banks hereafter admitted to membership in the Federal Reserve System to transact normal banking business, be furnished each such bank upon being admitted to membership.

The Board agrees with this suggestion and, accordingly, a letter is today being addressed to all Federal Reserve Banks recommending that this procedure be followed or the bank be advised of the terms of the general license.

Very truly yours,

(Signed) Bray Hammond

Bray Hammond,
Assistant Secretary.

Mr. McKee

WLH:jc
1-16-46

This letter ..... approved in minutes of the Board

FILE COPY

S-894

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

January 29, 1946.

Carded

x S-894

Dear Sir:

As you were advised in the Board's letter of January 3, 1946 (S-888), the Treasury Department has issued a general license which grants all member banks authority to transact normal banking business.

Following receipt of the Board's letter, two Federal Reserve Banks suggested that it might be well to bring to the attention of each State bank which in the future becomes a member of the Federal Reserve System that it is operating under this general license. The Board is agreeable to this proposal and, accordingly, it is suggested that State banks becoming members of the Federal Reserve System be advised of the terms of this general license or be furnished with a copy thereof.

Very truly yours,

Bray Hammond

Bray Hammond,
Assistant Secretary.

Copy filed

412.1
& Letters

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS

S-894

JAN 29 1946

Dear Sir:

As you were advised in the Board's letter of January 3, 1946 (S-888), the Treasury Department has issued a general license which grants all member banks authority to transact normal banking business.

Following receipt of the Board's letter, two Federal Reserve Banks suggested that it might be well to bring to the attention of each State bank which in the future becomes a member of the Federal Reserve System that it is operating under this general license. The Board is agreeable to this proposal and, accordingly, it is suggested that State banks becoming members of the Federal Reserve System be advised of the terms of this general license or be furnished with a copy thereof.

Very truly yours,

(Signed) Bray Hammond

Bray Hammond,
Assistant Secretary.

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS

Approved MINUTES ON JAN 29 1946

FOR APPROVAL OF Mr. McKee ON BEHALF OF THE BOARD

Approved

WLH:AKC:jc
1-24-46

Dear Sir:

As you were advised in the Board's letter of January 3, 1946 (S-888), the Treasury Department has issued a general license which, among other things, grants all State banks hereafter admitted to membership in the Federal Reserve System authority to transact normal banking business.

It is suggested that State banks becoming members of the Federal Reserve System be advised of the terms of this general license or be furnished a copy thereof, since such banks may not be aware of its provisions.

Very truly yours,

S. R. Carpenter,
Secretary.

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS

WLH:jc
1-16-46

FEDERAL RESERVE BANK
OF CLEVELAND

RAY M. GIDNEY, PRESIDENT

January 18, 1946

Mr. S. R. Carpenter, Secretary
Board of Governors
of the Federal Reserve System
Washington 25, D. C.

Dear Mr. Carpenter:

Receipt is acknowledged of the Board's letter of January 3, 1946, S-888, advising that the Treasury has issued a general license authorizing the transaction of normal banking business by national banks hereafter authorized to begin business by the Comptroller of the Currency and by State banks hereafter admitted to membership in the Federal Reserve System. We are interested in having the general license and the letter from Mr. Bell, Acting Secretary of the Treasury, both dated December 31, 1945.

We think this is very helpful, but we would like to see efforts continued to remove the necessity for any Treasury license.

Very truly yours,

Ray M. Gidney,
President.

FEDERAL RESERVE BANK
OF
KANSAS CITY

January 14, 1946

Mr. Leo H. Paulger, Director,
Division of Examinations,
Board of Governors of the
Federal Reserve System,
Washington, D. C.

Dear Mr. Paulger:

The Board's letter S-888, dated January 3, 1946, relates to the general license which was issued December 31, 1945, to all banks thereafter authorized to begin business by the Comptroller of the Currency and all State banks thereafter admitted to membership in the Federal Reserve System. It is not just clear what information should be given to a State bank when it becomes a member of the Federal Reserve System, and we shall be interested to learn the procedure that should be followed.

Very truly yours,

D. W. Woolley,
Vice President and Cashier.

FEDERAL RESERVE BANK OF SAN FRANCISCO

SAN FRANCISCO 20, CALIFORNIA

January 10, 1946

Board of Governors of the
Federal Reserve System,
Washington 25, D. C.

Dear Sirs:

1/3/46

The Board's letter S-888, referring to the issuance of a general license by the Treasury authorizing the transaction of normal banking business by national banks hereafter authorized to begin business by the Comptroller of the Currency and by State banks hereafter admitted to membership in the Federal Reserve System, has been received.

We should be interested in knowing whether the Comptroller of the Currency contemplates informing newly organized national banks that they are operating under the above license. If not, it appears to us that we should notify each such bank that it is operating under this license, so that it will be familiar with its terms.

Yours very truly,

C. E. Earhart

First Vice President.

Deputy Comptroller Roberts informed me his office has not considered this matter, that he sees no necessity for notifying new Nat'l Bks, but he does not know how his office will handle matter.
1/21/46 WHH

R. R. GILBERT
PRESIDENT

FEDERAL RESERVE BANK OF DALLAS

January 9, 1946

Board of Governors of the
Federal Reserve System
Washington 25, D. C.

Attention: Mr. S. R. Carpenter, Secretary

Gentlemen:

This acknowledges the Board's letter of January 3, 1946, S-888, transmitting a copy of a letter from Mr. D. W. Bell, Acting Secretary of the Treasury, dated December 31, 1945, and copy of the general license issued by the Secretary of the Treasury authorizing the transaction of normal banking business by national banks hereafter authorized to begin business by the Comptroller of the Currency and by State banks hereafter admitted to membership in the Federal Reserve System.

It occurs to us that it would be advisable to transmit copies of the general license to banks which, in the future, become subject to its terms. It is felt that these new licensees would be interested in the precise text of this instrument. We shall appreciate the benefit of the Board's views regarding this suggestion.

Yours very truly,

R. R. Gilbert

R. R. Gilbert
President

Air Mail

Mr. Paulger:

What do you think should be done about this suggestion from Mr. Gilbert?

1/14/46

Mr. Vest:

I agree with Mr. Gilbert that banks admitted to membership should be furnished a copy of the license. Otherwise some banks, and particularly a newly organized bank, may not be aware of the terms of the license or that it is revocable. I would suggest, further, that all the Reserve Banks be instructed to furnish a copy of the license to such banks.

L.H.P.
1-15-46

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

x S-888

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

January 3, 1946.

Dear Sir:

Under date of October 31, 1945, the Board transmitted to the Secretary of the Treasury a copy of a letter from Mr. Robert V. Fleming of the Federal Advisory Council, recommending the termination of the present procedure for the licensing of member banks; and the Board endorsed the recommendation.

After consideration of this matter, the Treasury has issued a general license authorizing the transaction of normal banking business by national banks hereafter authorized to begin business by the Comptroller of the Currency and by State banks hereafter admitted to membership in the Federal Reserve System. For your information, there are enclosed a copy of the general license and of a letter from Mr. D. W. Bell, Acting Secretary of the Treasury, both dated December 31, 1945, which were received by the Board today.

If there should be any further developments in connection with this matter, we shall advise you.

Very truly yours,

S. R. Carpenter,
Secretary.

Enclosures 2

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS.

Copies filed

112.1
S - Letters

S-888-a

THE SECRETARY OF THE TREASURY

WASHINGTON

December 31, 1945

My dear Mr. Eccles:

Reference is made to your letter of October 31, 1945, transmitting a copy of a letter received from Mr. Robert V. Fleming of the Federal Advisory Council recommending the termination of the present procedure for the licensing of national banks and State member banks of the Federal Reserve System, pursuant to the Presidential Proclamations of March 6, and March 9, 1933, and the Executive Order of March 10, 1933.

This is to advise you that a General License, a copy of which is enclosed, has been issued under Executive Order No. 6073 of March 10, 1933, licensing all banks hereafter authorized to begin business by the Comptroller of the Currency or admitted to membership in the Federal Reserve System, to transact normal banking business except as otherwise prohibited.

I trust that this license which eliminates the requirement that each new member bank of the Federal System obtain a license from the Secretary of the Treasury accomplishes the result you desired.

Sincerely yours,

(Signed) D. W. Bell

Acting Secretary of the Treasury

Mr. M. S. Eccles
Chairman, Board of Governors of the
Federal Reserve System
Washington, D. C.

S-888-b

December 31, 1945

GENERAL LICENSE ISSUED UNDER EXECUTIVE ORDER NO. 6073, AS AMENDED, SECTION 5(b) OF THE ACT OF OCTOBER 6, 1917, AS AMENDED, AND SECTION 4 OF THE ACT OF MARCH 9, 1933.

A general license to transact normal banking business is hereby granted to all banks hereafter authorized to begin business by the Comptroller of the Currency, effective upon the date of such authorization, and to all state banks hereafter admitted to membership in the Federal Reserve System, effective upon the date of such admission, except:

(1) to the extent prohibited in the Executive Order of the President of the United States issued on March 10, 1933, as amended by the Proclamation of December 30, 1933, and by the Executive Order of January 15, 1934 (see extract printed on the reverse of this license);

(2) to the extent limited or prohibited by any executive order of the President or by regulations of the Secretary of the Treasury.

This license may be revoked in whole or in part by the Secretary of the Treasury at any time.

(Signed) Fred M. Vinson
Secretary of the Treasury

S-888

JAN 3 1946

Dear Sir;

Under date of October 31, 1945, the Board transmitted to the Secretary of the Treasury a copy of a letter from Mr. Robert V. Fleming of the Federal Advisory Council, recommending the termination of the present procedure for the licensing of member banks; and the Board endorsed the recommendation.

After consideration of this matter, the Treasury has issued a general license authorising the transaction of normal banking business by national banks hereafter authorised to begin business by the Comptroller of the Currency and by State banks hereafter admitted to membership in the Federal Reserve System. For your information, there are enclosed a copy of the general license and of a letter from Mr. D. W. Bell, Acting Secretary of the Treasury, both dated December 31, 1945, which were received by the Board today.

If there should be any further developments in connection with this matter, we shall, [redacted], advise you.

MINUTES ON JAN 3 1946

Very truly yours,

(Signed) S. R. Carpenter

S. R. Carpenter,
Secretary.

Enclosures 2

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS

FOR APPROVAL OF [illegible]
ON BEHALF OF THE BOARD
Approved: ..... (Initials)

HHH:jc
1-3-46

FILE COPY

FOR FILES
Louise F. Thomason

EXTRACT FROM EXECUTIVE ORDER NO. 6073, AS AMENDED

Until further order, no individual, partnership, association, or corporation, including any banking institution, shall export or otherwise remove or permit to be withdrawn from the United States or any place subject to the jurisdiction thereof any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury.

No permission to any banking institution to perform any banking functions shall authorize such institution to pay out any gold coin, gold bullion or gold certificates except as authorized by the Secretary of the Treasury, nor to allow withdrawal of any currency for hoarding.

THE SECRETARY OF THE TREASURY
WASHINGTON
25

DEC 31 1945

Treasury Dept.
Fed. Advisory Council
Board
Letters

My dear Mr. Eccles:

Reference is made to your letter of October 31, 1945, transmitting a copy of a letter received from Mr. Robert V. Fleming of the Federal Advisory Council recommending the termination of the present procedure for the licensing of national banks and State member banks of the Federal Reserve System, pursuant to the Presidential Proclamations of March 6, and March 9, 1933, and the Executive Order of March 10, 1933.

This is to advise you that a General License, a copy of which is enclosed, has been issued under Executive Order No. 6073 of March 10, 1933, licensing all banks hereafter authorized to begin business by the Comptroller of the Currency or admitted to membership in the Federal Reserve System, to transact normal banking business except as otherwise prohibited.

I trust that this license which eliminates the requirement that each new member bank of the Federal System obtain a license from the Secretary of the Treasury accomplishes the result you desired.

Sincerely yours,

D. W. Bell
Acting Secretary of the Treasury

Mr. M. S. Eccles
Chairman, Board of Governors of the
Federal Reserve System
Washington, D. C.

Rec S-888 1/3/46

GENERAL LICENSE ISSUED UNDER EXECUTIVE ORDER NO. 6073, AS AMENDED, SECTION 5(b) OF THE ACT OF OCTOBER 6, 1917, AS AMENDED, AND SECTION 4 OF THE ACT OF MARCH 9, 1933.

A general license to transact normal banking business is hereby granted to all banks hereafter authorized to begin business by the Comptroller of the Currency, effective upon the date of such authorization, and to all state banks hereafter admitted to membership in the Federal Reserve System, effective upon the date of such admission, except:

(1) to the extent prohibited in the Executive Order of the President of the United States issued on March 10, 1933, as amended by the Proclamation of December 30, 1933, and by the Executive Order of January 15, 1934 (see extract printed on the reverse of this license);

(2) to the extent limited or prohibited by any executive order of the President or by regulations of the Secretary of the Treasury.

This license may be revoked in whole or in part by the Secretary of the Treasury at any time.

Fred M. Vinson
Secretary of the Treasury

EXTRACT FROM EXECUTIVE ORDER NO. 6073, AS AMENDED

Until further order, no individual, partnership, association, or corporation, including any banking institution, shall export or otherwise remove or permit to be withdrawn from the United States or any place subject to the jurisdiction thereof any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury.

No permission to any banking institution to perform any banking functions shall authorize such institution to pay out any gold coin, gold bullion or gold certificates except as authorized by the Secretary of the Treasury, nor to allow withdrawal of any currency for hoarding.

Mr Paperwork

Mr Piser
Mr Kennedy
Mr Chapin
Miss Coffey
Mrs Hodson

TREASURY DEPARTMENT
Washington

FOR RELEASE MORNING NEWSPAPERS,
Monday, December 31, 1945.

Press Service
No. V-184

12/31/45

Secretary Vinson today announced that steps have been taken to permit all banks hereafter authorized to begin business by the Comptroller of the Currency, or admitted to membership in the Federal Reserve System, to transact normal banking business without obtaining a special license from the Treasury.

Since the bank holiday of March 6, 1933, all member banks of the Federal Reserve System have been required to be licensed by the Secretary of the Treasury. Inasmuch as the requirements for organization as a national bank or for membership in the Federal Reserve System adequately safeguard the public interest at the present time, independent consideration of each proposed member bank by the Treasury is no longer necessary.

Accordingly, today's action constitutes an authorization of the Secretary of the Treasury to new members of the Federal Reserve System to transact normal banking business without further license from the Treasury Department.

-oOo-

(Draft of ugr ted Proclamation to termir • procedure . r licensing member banks)

12/6/45

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas, by Proclamations issued by the President of the United States on March 6, 1933 and March 9, 1933, a period of emergency was proclaimed and a national bank holiday was declared; and by Executive Order of the President issued on March 10, 1933, pursuant to the Act of October 6, 1917 (40 Stat. 411), as amended, and section 4 of the Emergency Banking Act of March 9, 1933, the Secretary of the Treasury was authorized by regulation to permit any member bank of the Federal Reserve System to perform any or all of its usual banking functions and such banks were required to obtain licenses from the Secretary of the Treasury in order to perform all usual and normal banking functions; and

Whereas, it is now desirable that the procedure for the licensing of banking institutions to transact a banking business as members of the Federal Reserve System be discontinued;

Now, therefore, I, Harry S. Truman, President of the United States, do hereby proclaim, order, direct and declare that the Proclamations of March 6, 1933, March 9, 1933 and December 30, 1933, and the Executive Order of March 10, 1933, and all orders and regulations issued pursuant thereto, are amended, effective the first day of January 1946, to exclude from their scope and application the necessity on the part of any banking institution of obtaining, or holding, a license from the Secretary of the Treasury for the transaction of a banking business as a member of the Federal Reserve System as heretofore required by the Executive Order of March 10, 1933: Provided, however, That nothing in this proclamation shall be interpreted as permitting any such banking institution to pay out gold coin, gold bullion or gold certificates except as authorized by the Secretary of the Treasury, or to allow the withdrawal of any currency for hoarding, or as relieving any such banking institution from compliance with any provisions of law, executive orders of the President, or any rules, regulations and licenses issued thereunder, which relate to transactions or dealing with respect to gold, gold coin, gold bullion or gold certificates, or which relate to any transactions in foreign exchange.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the City of Washingto this _____ day of December in the year of our Lord one thousand nine hundred and forty-five, and of the Independence of the United States the one hundred and seventieth.

By the President:

_____

_____

_____

12-5-45

12/5/45

TERMINATION OF PROCEDURE FOR LICENSING OF

MEMBER BANKS BY SECRETARY OF TREASURY

The authority of the Secretary of the Treasury to license member banks was originally derived from the Proclamations of the President of March 6 and March 9, 1933, issued under section 5(b) of the Trading with the Enemy Act. These Proclamations, after declaring a national emergency and closing all banks, authorized the Secretary of the Treasury to permit banking institutions to perform any or all of the usual banking functions.

On March 9, 1933, the authority of the Secretary of the Treasury was confirmed by law in the Emergency Banking Act. Section 4 of that Act provided that "during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President."

On March 10, 1933, the President issued an Executive Order based partly upon the Trading with the Enemy Act and partly upon section 4 of the Emergency Banking Act of March 9, 1933. Under that Order, the Secretary of the Treasury was again authorized to permit member banks "to perform any or all of their usual banking functions, except as otherwise prohibited"; but the Order further provided that any member bank desiring to reopen for business "shall apply" for a license therefor to the Secretary of the Treasury, such licenses to be issued through the Federal Reserve Banks as agents of the Secretary of the Treasury. This Executive Order gave to the State banking authorities power to prescribe regulations permitting State nonmember banks to perform their usual banking functions.

On December 30, 1933, the President issued a further Proclamation which amended the Proclamations of March 6 and March 9, 1933, and the Executive Order of March 10, 1933, to exclude from their scope all banking institutions which are not members of the Federal Reserve System, so that the banking authority in each State should thereafter have sole responsibility for such banks. This Proclamation included a proviso, however, stating that no bank should pay out any gold except as authorized by the Secretary of the Treasury, nor allow the withdrawal of any currency for hoarding, nor engage in foreign exchange transactions except such as may be for legitimate and normal business requirements and for the fulfillment of contracts entered into prior to March 6, 1933.

Accordingly, member banks are the only banking institutions which are now required to obtain licenses from the Secretary of the Treasury in order to transact a banking business.

The procedure for requiring member banks to obtain such licenses could be terminated by a new Proclamation of the President amending the Proclamations of March 6 and March 9, 1933, and the Executive Order of March 10, 1933, to exclude from their scope and application the necessity on the part of any banking institution of obtaining, or holding, a license from the Secretary of the Treasury in order to transact a banking business as a member of the Federal Reserve System. Such action would not terminate the "emergency" declared by the Proclamations of March 6 and March 9, 1933, but would limit the scope of that emergency by providing that hereafter the emergency declared by those Proclamations shall have no application to the obtaining of licenses by member banks from the Secretary of the Treasury.

The termination of the licensing procedure in the manner suggested would have no effect upon the authority of the Secretary of the Treasury to regulate, by licenses or otherwise, the extent to which member banks (as well as other banks) may deal in gold or engage in foreign exchange transactions. While these matters were specifically mentioned in the Executive Order of March 10, 1933, they have since been fully covered by subsequent Executive Orders of the President.

On January 15, 1934, the President issued an Executive Order amending the Proclamations of March 10 and December 30, 1933, to eliminate from both Proclamations those provisions which prohibited banks from engaging in foreign exchange transactions; and on the same day, the President issued another Executive Order completely covering this matter and authorizing the Secretary of the Treasury to grant licenses and otherwise regulate transactions in foreign exchange, transfers of credit, and export of coin and currency. The latter Executive Order was amended on April 10, 1940, and again on June 14, 1941, in order to effectuate the "freezing" of funds of belligerent countries and to establish complete control of foreign funds in this country.

As for the regulation of dealings in gold, the Gold Reserve Act of January 30, 1934, specifically authorized the Secretary of the Treasury to issue regulations covering the acquisition, holding, transportation, importation, exportation, and earmarking of gold; and under that authority the Secretary of the Treasury has issued detailed regulations, including provisions for the licensing of such transactions.

If, however, it is deemed desirable to make it clear that any Proclamation of the President terminating the licensing procedure shall not affect the Treasury's authority to regulate and issue licenses with respect to dealings in gold and foreign exchange transactions, a provision to that effect might be included in any such Proclamation as was done in the Proclamation of December 30, 1933.

HHH:jc
12-5-45

For Hackley
for Hist

December 5, 1945.

Mr. Robert V. Fleming,
c/o Riggs National Bank,
Washington, D. C.

Dear Bob:

12/5/45

Confirming our telephone conversation, I am sending you herewith a plain memorandum and a draft of a proclamation in relation to terminating the procedure for licensing member banks. Please feel free to deal with these as having been drafted simply for your assistance and to do as you think best with them.

It is a pleasure to have you call upon us in this or any other matter at any time that you wish.

Sincerely yours,

CM

Chester Morrill,
Special Adviser.

Enclosures.
CM/vg

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Honorable Fred M. Vinson,
Secretary of the Treasury,
Washington 25, D. C.

Dear Mr. Secretary:

There is transmitted herewith a copy of a letter dated October 22, 1945, addressed to the Board by Mr. Robert V. Fleming, a member of the Federal Advisory Council, recommending on behalf of the Council the termination of the present procedure for the licensing of national banks and State member banks of the Federal Reserve System pursuant to Presidential Proclamations of March 6 and March 9, 1933, and Executive Order of March 10, 1933.

The Board of Governors feels that the licensing requirement no longer serves any useful purpose and concurs in the recommendation made by the Federal Advisory Council.

One method by which the recommendation could be effectuated would be the issuance of a proclamation by the President expressly excluding member banks from the scope of the Proclamations of March 6 and March 9, 1933, and the Executive Order of March 10, 1933, and also expressly proclaiming, solely for the purposes of the provisions of section 4 of the Emergency Banking Act of March 9, 1933, a termination of the "emergency period" therein mentioned. Such proclamation could include, if desired, a proviso similar to that in the proclamation of December 30, 1933, with respect to nonmember banks, restricting the payment of gold, the withdrawal of currency for hoarding, and engaging in foreign exchange transactions.

The Board hopes that you will concur in this recommendation and that appropriate steps may be taken for the early termination of the licensing procedure.

Very truly yours,

M. S. Eccles,
Chairman.

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Enclosure
HHH/mg
10/24/45

Ransom

October 29, 1945.

Mr. D. J. Needham,
c/o The American Bankers Association,
719 Fifteenth Street, N. W.,
Washington 5, D. C.

Dear Sam:

I was away from the office during the past week and have just returned this morning. In the meantime George Vest looked over your letter and the only suggestions that he and I have to make are in the second and third paragraphs. In those two paragraphs where the words "an annulment" are used we would suggest that you substitute "the termination." 10/20/45

Where the phrase "only insofar as" occurs in the second paragraph and the phrase "only in regard to" occurs in the third paragraph we would suggest the substitution of "insofar as they relate to."

Neither of these suggestions is particularly important, as you will observe, but we thought they might be an improvement.

With best regards, I am

Sincerely yours,

Special Adviser.

CM/vl

FILE COPY

10/24/45

MR. MORRILL:

I have no further suggestions about this letter. In one or two places I think the phraseology could be improved but I do not know that it is in order for us to mention these.

The letter from Mr. Fleming 10/23/45 has come in but will not be sent over to the Treasury before October 29 at the earliest as it is being circulated to the Board members.

Regarding Sam Needham's letter, we could of course reply by letter or simply by telephoning him. Sam Carpenter and I thought it best to hold it until you got back as Sam Needham indicated that he would not be back much before you would anyhow.

G.B.V. GBV

Attachment
10/24/45

FEDERAL ADVISORY COUNCIL

(FEDERAL RESERVE SYSTEM)

OFFICE OF THE SECRETARY

c/o THE FIRST NATIONAL BANK OF CHICAGO
P. O. Box A
CHICAGO 90, ILLINOIS

Washington, D. C.

October 23, 1945.

Honorable Chester Morrill,
Special Advisor to
The Board of Governors
of the Federal Reserve System,
Washington, D. C.

My dear Chester:

Referring to the action of the Federal Advisory Council in requesting the Board of Governors to use its good offices to have rescinded the license provions which formed a part of the machinery for the closing and reopening of the banks as covered by the proclamations of the President March 6 and March 9, 1933, based upon the Trading with the Enemy Act, and the Executive Order of March 10, 1933, based upon both the Trading with the Enemy Act and section 4 of the Emergency Banking Act of March 9, 1933, I am transmitting herewith at the request of Mr. Edward E. Brown, Chairman, First National Bank of Chicago, and President of the Federal Advisory Council, a resolution adopted by the Federal Advisory Council.

Thanking you for your fine cooperation, I remain

Yours very sincerely,

Member, Federal Advisory Council

Copy filed 180.1

FOR FILES
Louise F. Thomas

FEDERAL ADVISORY COUNCIL
(FEDERAL RESERVE SYSTEM)
OFFICE OF THE SECRETARY
c/o THE FIRST NATIONAL BANK OF CHICAGO
P. O. Box A
CHICAGO 90, ILLINOIS

Washington, D. C.
October 22, 1945

The Board of Governors
of the Federal Reserve System,
Washington, D. C.

Gentlemen:

At the meetings of the Federal Advisory Council held on September 16-17, 1945, there was under discussion the question of the licensing of national banks and state member banks of the Federal Reserve System, which licensing formed a part of the machinery for the closing and reopening of the banks as covered by the proclamations of the President of March 6 and 9, 1933, under the Trading with the Enemy Act, and from the Executive Order of March 10, 1933, based upon both the Trading with the Enemy Act and section 4 of the Emergency Banking Act of March 9, 1933.

Since these proclamations were issued, on December 30, 1933 the President amended the proclamations above stated to exclude from their scope such banking institutions as were not members of the Federal Reserve System. All other banking institutions have, during the long period of years, remained under the license provision.

The Federal Advisory Council has unanimously adopted the following resolution:

> RESOLVED, that the Board of Governors of the Federal Reserve System be requested to use their good offices in having the license provision rescinded, preferably by proclamation of the President in the form that released the nonmember state banks from the license provision, or by such other appropriate measures that will satisfactorily eliminate the license provision.

The Federal Advisory Council bases this request on the fact that this license provision was part of the machinery for closing and reopening banks during the emergency created at the time of the "bank holiday" in 1933. It will soon be thirteen years since the licensing provision was placed into force. The national banks and state member banks of the Federal Reserve System are all, according to the reports of the various supervising agencies, now in excellent condition.

We do not see that there is any useful purpose in continuing this emergency provision and as a member of the Federal Advisory Council, representing the Fifth Federal Reserve District, I have been requested by Mr. Edward E. Brown, Chairman of the First National Bank of Chicago and President of the Federal Advisory Council, to present this resolution to you, with the request that you give this request your favorable consideration and endorsement.

Yours very sincerely,

Member Federal Advisory Council

THE AMERICAN BANKERS ASSOCIATION
719 FIFTEENTH STREET, N. W.
WASHINGTON 5, D. C.

DELOS J. NEEDHAM
GENERAL COUNSEL

October 20, 1945

Mr. Chester Morrill, Secretary
Board of Governors of the
Federal Reserve System
Washington, D. C.

Dear Chester:

Am enclosing copy of the letter which I read to you on the telephone yesterday. I made one or two slight changes after I read it to you.

If you and George Vest will read this letter and make any suggestions you have I will appreciate it.

I don't expect to be in the office until late next week as I am going out of town.

Yours sincerely,

Sam

DJN:TB
Enc.

October 19, 1945

Honorable Fred M. Vinson
Secretary of the Treasury
Washington, D. C.

Dear Mr. Vinson:

During the year 1933 President Roosevelt issued certain Proclamations dated March 6 and 9, which Proclamations were under authority of the Trading with the Enemy Act, and in addition the President issued an Executive Order dated March 10, 1933, which was based on both the Trading with the Enemy Act, and Section 4 of the Emergency Banking Act of March 9, 1933. The net effect of these Proclamations and Executive Order under the authority vested in the President was to set up machinery for licensing of banks under such regulations as the Secretary of the Treasury might promulgate.

The officers of the American Bankers Association were advised in September that the Federal Advisory Council of the Federal Reserve System had taken favorable action recommending to the Board of Governors of the Federal Reserve System that the Board give favorable consideration to obtaining, through proper channels, an annulment of the aforementioned Proclamations and the Executive Order of the President only insofar as the licensing of member banks may be concerned.

The Association at a meeting in New York on September 28, 1945, discussed this problem and appropriate action was taken authorizing the Chairman of the Committee on Federal Legislation and the General Counsel of the Association to communicate with you and request that action be taken by the Treasury in effectuating an annulment of the Proclamations and Executive Order heretofore issued in 1933 only in regard to the licensing of banks, members of the Federal Reserve System.

In view of the favorable banking conditions now existing throughout the nation, the Association is of the opinion that this requirement might well be rescinded. The banking structure of the country is known to be in a very sound position and the requirement for a license is just an additional step which does not seem to be necessary at this time. It is our understanding that the issuance of licenses to member banks is a routine procedure.

Your favorable consideration to this request will be deeply appreciated.

Yours sincerely,

F. G. Addison, Jr.
Chairman of the A.B.A.
Committee on Federal Legislation

FGA:A:TB

Mr Just
Please call
me J.P.

AUTHORITY OF SECRETARY OF TREASURY TO LICENSE MEMBER BANKS

9/18/45

1c

By Proclamation of March 6, 1933, the President declared the period from March 6 to March 9, inclusive, to be a "bank holiday", and authorized the Secretary of the Treasury, "during such holiday", with the approval of the President to permit any or all banking institutions to perform the usual banking functions. The Proclamation was based on the authority of the President under section 5(b) of the Trading with the Enemy Act of October 6, 1917, to "regulate, or prohibit * * * by means of licenses or otherwise, any transactions in foreign exchange and the export, hoarding, melting, or earmarkings of gold or silver coin or bullion or currency".

On March 9, 1933, the President issued a further Proclamation continuing in effect the provisions of the Proclamation of March 6 "until further proclamation by the President".

On the same date, the Emergency Banking Act of March 9, 1933, confirmed all actions taken by the President under the Trading with the Enemy Act and further provided, in section 4, that:

> "* * * during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President."

On March 10, 1933, the President issued an Executive Order, based both upon the Trading with the Enemy Act and the Emergency Banking Act. This Executive Order authorized the State banking authorities by regulation to permit nonmember State banks to perform usual banking functions except as otherwise prohibited and authorized the Secretary of the Treasury "under such regulations as he may prescribe" to permit member banks and national banks to perform any or all of their usual banking functions. The Order further provided that member banks of the Federal Reserve System "desiring to reopen for the performance of all usual and normal banking functions" should apply for a license. It was stipulated that such licenses would be issued by the Federal Reserve Banks, as agents of the Secretary of the Treasury, upon the approval and instructions of the Secretary.

Pursuant to this Executive Order, the President on March 12 announced a plan for the gradual reopening of member banks on March 13, 14 and 15, through the issuance of licenses by the Secretary of the Treasury.

Copy filed 470.

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By a Proclamation dated December 30, 1933, the President amended the Proclamations of March 6 and March 9, 1933, and the Executive Order of March 10, 1933, to exclude from their scope banking institutions which are not members of the Federal Reserve System. However, the Secretary of the Treasury continued to issue licenses, not only for the reopening of member banks which had been closed during the bank holiday, but also for the organization of any new member bank or the admission of any State bank to membership in the Federal Reserve System.

The Secretary's authority to require licenses for the opening of new member banks appears to be based upon his authority "to permit" member banks to perform their usual banking functions. That authority is derived from the President's Proclamations of March 6 and March 9, 1933, which were based solely on the Trading with the Enemy Act, and from the Executive Order of March 10, 1933, which was based on both the Trading with the Enemy Act and section 4 of the Emergency Banking Act.

The Proclamation of March 9, 1933, continued in effect the authority conferred upon the Secretary by the Proclamation of March 6 "to permit" member banks to perform banking functions, "until further proclamation by the President". The authority conferred by these Proclamations could be terminated simply by a new Proclamation amending those Proclamations by excluding member banks from their scope.

However, such a new Proclamation merely amending the Proclamations of March 6 and March 9, 1933, and the Executive Order of March 10, 1933, would not affect the authority of the Secretary of the Treasury to issue regulations permitting member banks to perform banking functions. This is because section 4 of the Emergency Banking Act expressly confers that power upon the Secretary of the Treasury, provided any regulations issued by him are approved by the President.

The Secretary of the Treasury, with the approval of the President, could of course rescind all regulations issued by him under the Emergency Banking Act which require member banks to obtain licenses in order to do business.

However, the authority of the Secretary of the Treasury under section 4 of the Emergency Banking Act continues only "during such emergency period as the President of the United States by proclamation may prescribe", and, accordingly, his authority would cease if the President should issue a Proclamation expressly terminating the "emergency period" referred to in this section of the law. This could be done in such a way as to terminate the emergency period solely for the purpose of this section, and not generally.

If the necessity for member banks obtaining licenses from the Secretary of the Treasury in order to do business is to be eliminated, it could be done by a proclamation of the President terminating the effect of his Proclamations of March 6 and March 9, 1933, and his Executive Order of March 10, 1933, and also terminating the "emergency period" mentioned in section 4 of the Emergency Banking Act. However, it is not necessary to make such a sweeping termination of these proclamations and all of their provisions in order to accomplish this purpose. The purpose could be accomplished by a proclamation of the President expressly excluding member banks from the scope of the Proclamations of March 6 and March 9, 1933, and the Executive Order of March 10, 1933, and also expressly proclaiming, solely for the purposes of the provisions of section 4 of the Emergency Banking Act, a termination of the "emergency period" therein mentioned. Such a proclamation could retain the restrictions on the paying out of gold, on the withdrawal of currency for hoarding, and on foreign exchange transactions, to the extent desired, as was done by the Proclamation of December 30, 1933, excluding nonmember banks from the various Proclamations of March 1933.

9/18/45

FILE COPY

August 12, 1942

The Files

John R. Farrell

Last night Mr. Donald Thompson, Chief of the Division of Research and Statistics of the Federal Deposit Insurance Corporation, called Mr. Conkling and asked him if we had any information as to whether any banks in Kentucky remained open during the national banking holiday in defiance of the Presidential Order.

I could find nothing in the files to indicate that there was any such occurrence. I talked with Mr. Kennedy, who was in active charge of the bank suspension records during 1933, and with Mr. Sloan of the Examinations Division, who in 1933 was in the Reorganization Division of the Comptroller's office, and neither of them had ever heard of such an occurrence. Mr. Sloan did mention a story which, he said, had been widely circulated and which may have given rise to the subject inquiry. He does not know whether the story is fact or fiction, but it goes to the effect that a national bank in the mountain district of Virginia did not even know that a national banking holiday had been proclaimed, and upon being advised by the Comptroller's office that it might reopen for business replied that it had never been closed.

Mr. Thompson's information apparently was not very specific and his inquiry may have arisen from an instance connected with something other than the national banking holiday. For example--

1. There was the case of a bank in Mississippi, the Bank of Tupelo, which was being subjected to a run in the latter part of 1930. This bank refused to close and at the same time announced that it could not permit the withdrawal of deposits except at the bank's discretion and upon its own judgment. Mr. Hammond, in a memorandum of November 29, 1938 (see file 413.) in commenting on this case, states "the action of the bank was illegal but it seems to have succeeded in avoiding a suspension and the consequent loss both to the community and the bank stockholders".

2. There were many different practices under the holidays proclaimed by the various States. For instance, in Michigan during the State moratorium banks were permitted to reopen and take new deposits payable on demand provided such deposits were held as trust deposits solely for repayment of depositors. It was discretionary, however, with the individual banks whether they would reopen under these provisions or continue closed under the moratorium.

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413.

I advised Mr. Thompson that we had no information as to any banks in Kentucky remaining open during the national banking holiday, and also mentioned to him the other possibilities cited above. He stated that his question resulted from an inquiry the Corporation had received, and that while he had never heard of such an instance the nature of the inquiry was such that he wondered if the inquirer had knowledge of a specific case. In the circumstances, he thought it best to check with us.

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JRF:ab

4700

August 15, 1941.

Mr. Wyatt

Mr. [redacted]

Court decisions re section 5(b), Trading with Enemy Act, and proclamations, orders, etc., thereunder.

Carded

There are set forth below those court decisions upholding the constitutionality of section 5(b) of the Trading with the Enemy Act (Federal Reserve Act pp. 165-166) and the "bank holiday" proclamations, orders and regulations issued thereunder. Some of the decisions noted merely involve litigation in which such Act, proclamations, etc., were pertinant, containing no express judicial utterance on the question of constitutionality or validity. Also, some of the decisions involve such Act, proclamations, orders, etc., as they relate to gold control, etc. However, it is believed that all the decisions noted herein are of interest as indicating the general acceptance by the courts of such regulatory measures.

Constitutionality of "bank holiday" proclamations, orders, etc., upheld.

In Hanley v. Carmin, 15 F. Supp. 996 (D.C., N.Y., 1936), affirmed 89 F. (2d) 1008 (C.C.A., 2d, 1937), the receiver of a national bank sued to recover an assessment on the bank's shares levied by the Comptroller of the Currency, and the case came up on the receiver's motion to dismiss three separate defenses contained in defendant's answer. The first defense alleged "that the orders and statutes by virtue of which the" bank "was closed * * * on March 4, 1933, and the subsequent acts and proceedings taken thereunder, were unconstitutional" as depriving defendant of property without due process of law. Considering the provisions of the National Bank Act under which this suit was instituted, the court said that nothing contained in such first defense can mitigate plaintiff's right, the "defense is clearly insufficient in law."

As to the second defense it was claimed that if the bank became insolvent, "such insolvency was due to the illegal and unwarranted acts * * * of the Comptroller of the Currency * * *, and not by reason of any acts * * * on the part of the" bank, its officers, etc. Said the court: "No allegations are set forth which can support the general conclusion that insolvency was" so caused. In overruling such second defense the court, inter alia, said:

FILE COPY

For Files
O. M. Croghan

Copy 112.2-93

"* * * The acts referred to are those which were taken by the comptroller pursuant to the federal emergency legislation and orders issued thereunder early in 1933. [Citing section 5(b), Trading with the Enemy Act; "Bank holiday" proclamations of March 6 and 9, 1933; and Executive Orders 6073 and 6080, relating to (1) regulations of the Secretary of the Treasury under which banks might reopen, and (2) the appointment of conservators for banks not reopened.] * * * If it be assumed, arguendo, that insolvency of the bank caused by alleged illegal acts of the comptroller would constitute a defense to a cause of action as herein set forth, it is answer enough that the acts of the comptroller referred to in the second defense were not illegal. They were such only if, as defendant contends, the foregoing legislation was not constitutional. Upon this point I am in complete accord with the holding in City of East Cleveland v. Fidelity & Deposit Co. of Maryland (D.C.) 5 F. Supp. 212, that there can be no doubt as to the validity of that legislation. * * *". (Underscoring supplied)

The third defense rested merely upon the fact that insolvency was due to matters beyond control of the bank, its officers, etc. This, the court likewise overruled as being insufficient.

Smith et al. v. Witherow, 102 F. (2d) 638, (C.C.A., 3rd, 1939), was also a suit by the receiver of a national bank to recover an assessment levied by the Comptroller of the Currency on the shares of such bank. It appears that as a result of a run on the bank, the directors passed a resolution on February 20, 1933, restricting withdrawals of old deposits and segregating new deposits. Thereafter, the bank never "reopened for the payment of deposits in ordinary course." No license to resume business under the Executive Order of March 10, 1933 was granted the bank by the Secretary of the Treasury; and on March 25, 1933, a conservator was appointed pursuant to the Bank Conservation Act of March 9, 1933, and on January 23, 1934, the receiver was appointed. The assessment in question was levied March 27, 1934.

In defense it was averred that at the time the conservator was appointed the bank was solvent and such appointment and the refusal of the Secretary of the Treasury to permit reopening were disastrous to its business and assets "and in large measure were responsible for the conditions" leading to the receivership, all of which operated to deprive the defendants "of their property without due process of law and consequently released them from their liability." A further and similar defense was made to impinge upon "the action of the President in closing the bank and its subsequent operation by * * * a conservator * * * since that operation resulted in further loss."

In affirming the judgment below in favor of the receiver, the court said that the evidence clearly disclosed a state of insolvency from and after the date of the aforementioned resolution by the bank's directors. Continuing, the court said:

> "* * * It is not necessary for us to consider whether invalid governmental action with respect to the Bank in which its creditors had no part would discharge the obligation of the stockholders to those creditors, since the governmental action which was taken was unquestionably valid in view of the insolvency of the Bank. But regardless of the technical insolvency of the Bank we are of opinion that the action taken by the President and the Comptroller of the Currency with respect to it did not violate the constitutional rights of the defendants.
>
> "As we have seen, the Bank was a governmental instrumentality performing a vital public function subject to governmental control. Its closing by Presidential proclamations was a reasonable step to be taken in the financial emergency which then confronted the country and was authorized by Section 5(b) of the Trading with the Enemy Act as amended by Section 2 of the Act of March 9, 1933, * * * and by Sections 1 and 4 of the latter act, [affirming prior action under the Trading with the Enemy Act, and prohibiting member banks from doing business except as the Secretary of the Treasury may permit, with the approval of the President] * * *. This legislation was constitutional. City of East Cleveland v. Fidelity & Deposit Co., D.C., 5 F. Supp. 212; Hanley v. Corwin, D.C., 15 F. Supp. 596; affirmed 2 Cir., 89 F. 2d 1008." (Underscoring supplied)

In addition, the court held that the appointment of a conservator was "likewise a reasonable step to protect the assets of the bank for both creditors and stockholders" and that the legislation providing therefor was not unconstitutional.

In City of East Cleveland v. Fidelity & Deposit Co. of Maryland, 5 F. Supp. 212 (D.C., Ohio, 1933), the City sought recovery on the depositary bond of a State bank because of the bank's refusal to repay deposits. Such refusal was stated to be "based wholly upon

Federal and State emergency legislation and orders issued thereunder" namely, section 5(b) of the Trading with the Enemy Act; section 4 of the Act of March 9, 1933 (operation of member banks under restrictions of the Secretary of the Treasury, etc.); Presidential "bank holiday" proclamations; Executive Orders relating to (1) the reopening of banks on authorization of proper authority, and (2) the conservatorship of banks not authorized to reopen; and Ohio General Code sections 710-107a and 710-86a authorizing the superintendent of banks to order suspension of payment and appoint bank conservators. It appears that the superintendent of banks had ordered the bank to suspend payment and had appointed a conservator therefor. The surety on the bank's bond contended that the inability of the bank to make repayment operated to suspend, in similar manner, the surety's liability. This contention the court sustained, saying that "if the defense here will release the bank from present liability, it has the same effect on the surety."

After referring to the statutes, orders, etc., set forth above, the court said: "I think there can be no doubt as to the validity of this legislation", citing State ex. rel. Zimmerman v. Gibbs, 172 S.E. 150, in which the court "considered and sustained the validity of [State] emergency banking legislation * * * attacked as unconstitutional." In referring to the nature of the defense set up by the surety, the court said:

> "* * * It is in no sense personal to the bank, although directed against the bank and not against the surety. The bank is forbidden to pay its depositors and creditors. It cannot say that it will or will not avail itself of this defense, in other words, that it will or will not, as it chooses, obey the law, for the law being constitutional and valid, it must obey."

Only one decision was found which questions the validity of the "bank holiday" proclaimed by the President on March 6, 1933. However, an examination of the decision minimizes its effect in this connection. Thus, in Anthony et al. v. Bank of Higgins, 184 So. 626 (Miss., 1938), the bank sought cancellation of defendant's claim to realty and confirmation of title or for foreclosure of security against realty. It appears that defendant gave the bank a note for $700 secured by deed of trust of certain realty. Upon default in payment, such realty was duly advertised for sale on March 6, 1933, and on said date purchased by the bank for $75. The bank alleged that it was the legal and equitable owner of the land and entitled to a decree for the aforementioned relief, such second foreclosure being asked "in the event the sale of March 6, 1933 should be held invalid."

In affirming the judgment for the bank, the court overruled defendant's contention that the foreclosure of March 6, 1933, was void since made while the first Presidential "bank holiday" proclamation was in effect, saying:

> "The Proclamation of the President was issued under what he conceived to be an authority vested in him by virtue of the provisions of Sec. 5(b) of the Act of Congress of October 6, 1917, 40 Stat. 411. This was done under Sec. 5(b) of the Act known as the 'Trading With The Enemy Act', limited in its application to the period of the World War, Section 95 U.S.C.A., Title 12, pp. 552, 555. The first proclamation, No. 2039, issued on March 6, 1933, was followed by his second proclamation, No. 2040, issued on March 9, 1933, after the Congress had passed an act on that date, being Chap. 1, §2, 48 Stat. 1, Sec. 95a, Title 12, U.S.C.A., p. 561, granting such authority, and approving what had been done by the President in the premises.
>
> "An historical note is found on page 561, Title 12, U.S.C.A., as follows: 'As originally enacted by Act of Oct. 16, 1917, c. 106, § 5(b), 40 Stat. 415, this section formed a part of the Trading With The Enemy Act, which was limited in its application to the World War and therefore was omitted from the Code, but printed as an appendix to Title 50 U.S.C.A. By Act of Mar. 9, 1933, c. 1, § 2, 48 Stat. 1, the section was made applicable to any war "or any other period of national emergency declared by the President," thus making it general and permanent legislation.'
>
> "Thus it will be seen that although the banking institutions of the United States, out of a commendable spirit of co-operation in a time of economic crisis, generally obeyed the Presidential Proclamation of March 6, 1933, there was no authority in law for the issuance of such a proclamation until March 9, 1933. We are of the opinion that even though a sale by a trustee on March 6, 1933, under foreclosure proceedings theretofore legally advertised should be considered as transacting banking business, the approval by the Congress on March 9, 1933, of the President's action in closing the banks would not have the retroactive effect of rendering illegal that which had been legally done on March 6, 1933." (Underscoring supplied)

In addition, however, and in overruling the defense based upon the inadequacy of the price previously paid by the bank at the March 6, 1933 sale, the court said that from all the facts "it will be seen that the * * * bank has in a manner paid all that the land was worth." Continuing, the court said that mere inadequacy of price, fraud or unfair advantage being absent, will not be sufficient to warrant the setting aside of the sale.

Decisions in which "bank holiday" proclamations, orders, etc., were pertinent.

As indicated above, the following decisions are those in which the "bank holiday" proclamations, orders, etc., were pertinent but in which the court did not expressly pass upon their constitutionality or validity. However, such decisions may be considered as involving implied judicial approval of such regulatory matters.

In Daugherty v. Canal Bank & Trust Company, 158 So. 566 (La., 1935), the beneficiary of a trust administered by the bank sought to recover income derived from said trust. Funds of the trust had been commingled with other funds of the bank, now in the hands of a liquidating agent, and the plaintiff was unable to trace or identify the funds claimed. This fact, together with the "bank holiday" proclamations of the Governor and the President and the regulations of the United States Treasury Department restricting payment of funds were set up in defense. Such commingling had occurred prior to the "bank holiday" and the court held that, under the situation and laws of the State, this changed the relationship to debtor and creditor. It was also pointed out that the plaintiff had been tendered 5 per cent of her claim but that such was refused. At this point the court briefly set out the "bank holiday" events and indicated that the bank was a member of the Federal Reserve System but was not licensed to reopen by the Secretary of the Treasury for normal banking functions. The court then quoted United States Treasury Department Regulation 27 which permitted member banks not so licensed to pay, under certain conditions, 5 per cent of depositors' claims. Said the court:

> "Having been placed in the category of a depositor or creditor of the bank, the officers of the institution were prohibited under the specific provisions of Regulation 27 from paying her [plaintiff] in full. * * *
>
> "It is our opinion that the bank officials properly refused to honor plaintiff's demand for payment in full * * *."

In Shannon County, etc. v. Shannon County Bank, 86 S.W. (2d) 1070 (Mo., 1935), a suit on the depositary bond of the bank, it appeared that said bond was executed on May 5, 1931, for a period of two years, to secure county funds. However, it did not appear that the bank actually made default in payment of county funds until April 9, 1934. Plaintiff contended that in March 1933, while said bond was in full force and effect, the bank announced publicly that it would not pay checks, etc. To this the defendant countered with the statement that the court would take judicial notice of the Presidential "bank holiday" proclamations and the Executive Order returning non-member banks to the control of the State banking authority, also the similar acts of the Governor of Missouri. The court affirmed this view and said that "it is apparent that [the aforementioned announcement of the bank] * * * was made" pursuant to such "bank holiday". In addition, the court said:

> "In fact, such announcement of the bank could have no bearing on the situation * * * in view of the binding character of the proclamations of the President and Governor."

The court pointed out that such moratorium ended on March 11, 1933, and that plaintiff had until May 5, 1933, on which to draw on the bank. Defaults after that date would not result in liability to the surety on the aforementioned bond.

In Hardee v. Washington Loan & Trust Co., 91 F. (2d) 514 (Ct. of App., D.C., 1937), the receiver of a national bank sued the Trust Company to recover a sum alleged to have been paid in violation of the "laws and regulations governing the bank holiday in March 1933". It appears that on March 3, 1933, one A obtained a cashier's check for a sum on deposit with the national bank and on the same day deposited said check with the defendant. Due to Inauguration Day and the next day which was Sunday, and the Presidential "bank holiday" proclamations starting Monday, March 6, 1933, the national bank was never actually reopened for business since the Secretary of the Treasury did not issue it a license. Along with other sound District of Columbia banks, the defendant was authorized to reopen on March 14, 1933. However, pursuant to a general agreement among banks resulting from a meeting of the Washington Clearing House Association on March 13, 1933, the defendant on the same day presented the cashier's check to the national bank which paid same. The claim of plaintiff in this suit that payment of the check during the "bank holiday" period was illegal, was sustained by the court and recovery allowed.

In reaching its decision the court traced the events prior to March 6, 1933, concluding that "It had plainly become imperative for the President and the Congress to invoke measures for the protection of * * * banks and their depositors." From this point the court traced the "bank holiday" proclamations, etc., and the enactment of the Emergency Banking Act of March 9, 1933. In conclusion the court said that whether or not the national bank was insolvent at the time of payment is immaterial "for in any event the payment was an infraction of the rule prescribed by the Presidential Proclamation."

In Downey v. City of Yonkers, 28 F. Supp. 1018 (D.C., N.Y., 1938), affirmed 106 F. (2d) 69 (C.C.A., 2d, 1939), affirmed 60 S. Ct. 796 (1940), the receiver of a national bank sought to recover the difference between the amount which defendant city would receive as a 50 per cent dividend on deposits (paid to all general creditors) and the amount actually paid to the defendant as indicated below. On March 4, 1933, the defendant had on deposit with the bank certain of its funds. On such date the Governor of New York, and on March 6, 1933, the President, proclaimed a "bank holiday". The bank was not permitted to resume normal business by the Secretary of the Treasury, and on March 20, 1933, the Comptroller of the Currency appointed a conservator followed by the plaintiff, receiver, on January 25, 1934. The bank had pledged assets to secure the deposits in question; and after so closing but before the appointment of the receiver, the bank honored checks (in amounts exceeding 50 per cent of the deposits) drawn by the city against such deposits to meet pay-rolls. The court held that under the facts, the New York and Federal laws, the bank was without authority to pledge assets for the deposits in question and that such action was "illegal and ultra vires." The court also found that the bank was insolvent on March 6, 1933; such being the case, the payments by the bank were prohibited by both the National Bank Act and Regulation 9 of the Secretary of the Treasury issued pursuant to Executive Order of March 10, 1933. In this connection, and in granting recovery as prayed, the court said:

> "The President's Proclamation of March 6, 1933, No. 2039, * * * provided that the Secretary of the Treasury, with the approval of the President, under an adopted regulation, had power 'to permit any or all of such banking institutions to perform any or all of the usual banking functions.' An Executive Order of the President of March 10, 1933, No. 6073, [issued pursuant to section 5(b), Trading with the Enemy Act, as amended, and section 4 of the Act of March 9, 1933, permitting member banks to transact business under regulations of the Secretary of the Treasury, with the approval of the

President, etc.] * * *, continued the status of banks as in the Proclamation aforesaid, with certain modifications here immaterial. Under the authority of the Proclamation and Executive Order aforesaid, the Secretary of the Treasury adopted Regulation No. 9, which, among other things, provided that 'Any National or State banking institution may exercise its usual banking functions to such extent as its situation shall permit and as shall be absolutely necessary to meet the needs of its community for food, medicine, other necessities of life, * * * for the payment of usual salaries and wages; for necessary current expenses and for the purpose of maintaining employment, and for other similar essential purposes, * * * provided (5) no national banking association shall engage in any transaction under this Section which is in violation of any Federal law * * *. Each banking institution and its directors and officers will be held strictly accountable for the faithful performance, with the spirit and purpose, as well as the letter of this regulation.' If the bank was insolvent when these pay roll checks were paid, payment was in violation of the statute, (Title 12, sec. 91, U.S.C., * * * Rev. Stat. § 5242) and payment of such checks was prohibited; otherwise they were permitted payments."

In Anfderhaide v. Mine Safety Appliance Co., 9 F. Supp. 918 (D.C., Pa., 1934), the receiver of a national bank sought to recover preferential payments alleged to have resulted from payment by the bank of pay roll checks drawn by defendant during the "bank holiday" proclaimed by the President as of March 6, 1933. The admitted facts disclosed that it was pursuant to regulation of the Secretary of the Treasury (permitting exercise of banking functions during "bank holiday" where necessary) that the bank honored the checks in question. The bank never reopened after the "bank holiday" and on March 25, 1933, a conservator was appointed, followed by plaintiff, receiver, on December 5, 1933. The plaintiff subsequently declared a 50 per cent dividend to depositors and in this suit seeks to recover 50 per cent of the amount of the aforementioned checks. The defendant contended that the date of insolvency was fixed as of March 6, 1933, date of the "bank holiday" proclamation. However, the court, in denying plaintiff's motion for judgment, said that "the Presidential Proclamation * * * was not a declaration of insolvency of all banks * * * and it cannot so be held determinative of the insolvency of this bank. * * * It would seem * * * that in a permitted payment of this character, the appointment of the conservator * * * would be more clearly indicative of * * * insolvency, * * *[but] that is a fact which must be proved."

Dehne v. Mine Safety Appliance Co., 94 F. (2d) 956 (C.C.A., 3rd, 1938) is apparently a subsequent decision in the original case of Aufderheide v. Mine Safety Appliance Co., 9 F. Supp. 918 (D.C., Pa., 1934), noted above, in which plaintiff, receiver, was denied motion for judgment. In allowing recovery of the alleged preferential payments, the court said:

> "The President's Proclamation closed all banks, solvent as well as insolvent. For such banks as were solvent and capable of carrying on normal banking operations, were it not for the bank holiday, Treasury Regulation No. 10 permitted some activity; namely, payment for necessities and for pay roll purposes. The exception was made for the purpose of easing the restrictions on banks which could carry on except for the bank holiday. There was no intention through the promulgation of Treasury Regulation No. 10 to allow a bank which was insolvent or in contemplation of insolvency to make payments in contravention of the provisions of the National Bank Act, 12 U.S.C.A. § 91. The trial court has found upon the evidence that the bank was in contemplation of insolvency on March 6, 1933. The bank was therefore prohibited from making the payments to the appellant, not by reason of the President's Proclamation, but because of its financial status at the time."

In In re Canal Bank & Trust Co., 152 So. 578 (La., 1934), one W sought to have his deposit in the bank applied by setoff against his indebtedness to the bank on his note. The bank, a member of the Federal Reserve System, closed pursuant to the "bank holiday" proclamations and was not licensed to reopen by the Secretary of the Treasury. It is pointed out that on March 18, 1933, the Secretary, by regulation pursuant to "the President's proclamations declaring and continuing the national bank holiday", authorized member banks not so reopened to make 5 per cent payments to depositors and creditors. Pursuant thereto, W received 5 per cent of his deposit; but upon the due date of his note, March 27, 1933, the bank refused to allow the setoff requested, contending that such was prohibited by the President's "bank holiday" proclamations and the aforementioned Treasury regulation. Under the State law the court held that normally the desired setoff would have occurred; and in holding that W was entitled to the relief desired, his deposit being in excess of the amount of his note, the court said that:

> "It is clear, therefore, that 'the paying out of deposits' prohibited by federal action is leveled solely at the paying out of actual money, and not at such fictitious payments as arise from settlement of accounts between banker and depositor by the universal law of compensation, or set-off, which takes place by mere operation of law, and not by the withdrawal of actual funds from the banks."

W also contended that to consider the aforementioned Treasury regulation as prohibiting the desired setoff "would deprive him of his property * * * in violation of the * * * Federal Constitution." On this score the court said that such contention was without merit since "we are not of the opinion that the regulation of the Secretary of the Treasury has, or was intended to have, such effect, for reasons already assigned."

Bailey v. Orange National Bank, 26 F. Supp. 949 (D.C., N.J., 1939), involved a suit against the receiver of the national bank to recover the cost of certain advertising. The bank was closed pursuant to Presidential "bank holiday" proclamations, a conservator was appointed on March 25, 1933, followed by the receiver on December 1, 1933. On certain days between March 18 and March 28, 1933, these advertisements were published and, in substance, "they were all directed toward the conservation of the assets of the bank and the welfare of all parties in interest * * * and disclose an earnest endeavor * * * to prevent a condition of chaos and as well to reinforce any weakness which might be disclosed in the bank's financial structure."

The receiver urged that upon the bank's closing under the aforementioned proclamations "the officers of the bank were stripped of all power to obligate the bank or cause its assets to be liable on their contractual commitments." In granting recovery the court, inter alia, said:

> "The specific issue with which we are here concerned bears upon the interpretation to be given the terms 'banking transactions' and 'banking business.' It would seem that these terms should be given their usual and generally accepted meaning and should not be liberally construed except insofar as applicable to the specific purposes of the proclamation in preventing the evils therein sought to be avoided. Obviously, these proclamations did not intend that officers and agents of banks should desert their respective institutions, thus abandoning them in the midst of the financial storm. Nothing in the proclamation relieved the officers of banks from doing all in their power to protect their institutions from needless loss."

Decisions relating to gold transactions, payments, etc.

These decisions all involve, inter alia, section 5(b) of the Trading with the Enemy Act and orders, etc., issued thereunder, as such matters relate to restrictions on the possession or holding of gold coins, etc., payments in gold, and dealings with nationals of foreign countries.

In Uebersee Finanz-Korporation, etc. v. Rosan, 85 F. (2d) 225 (C.C.A., 2nd, 1936), cert. den. 56 S. Ct. 946 (1936), the Korporation sued to compel the defendant, its bailee of United States gold coin, for the return of said gold. An injunction pendente lite to enjoin defendant from turning said gold over to the United States, or its agent, was denied, and plaintiff appealed. After the passage of the Emergency Banking Act of March 9, 1933, plaintiff desired to transfer the gold held for it by defendant to plaintiff's domicile in Switzerland; but the Treasury Department denied defendant an export license under the authority of Executive Order of April 20, 1933, issued pursuant to section 5(b) of the Trading with the Enemy Act, as amended. Thereafter, application for a license under the Gold Reserve Act of 1934 and Treasury Regulations thereunder, to have the gold transferred to the Federal Reserve Bank of New York in custody for the Banque Nationale Suisse, was also denied; and defendant was ordered to transfer said gold to the Federal Reserve Bank for the account of the United States. Subsequent requests of plaintiff of a similar nature were also refused, resulting in this suit.

Inter alia, plaintiff contended that "Neither the Act of March 9, 1933, nor any regulation validly made thereunder affected the complainant's right to hold or export the gold" and that "If the Gold Reserve Act of 1934 be applicable * * *, the relevant provisions are unconstitutional, because (a) * * * improper delegation of legislative power; and (b) they take * * * complainant's property without due process of law * * *."

In affirming the judgment below adverse to plaintiff, the court, inter alia, quoted from section 5(b) of the Trading with the Enemy Act, as amended by the Act of March 9, 1933, and also from section 11(n) of the Federal Reserve Act (section 3 of the Act of March 9, 1933), and concluded with the statement that "The above act was held constitutional by the Supreme Court in" Norman v. B. & O. R. Co., 294 U.S. 240, and Nortz v. U.S., 294 U.S. 317, (actually involving the Joint Resolution of June 5, 1933 and section 11(n) of the Federal Reserve Act). The court also held that even if section 11(n) of the Federal Reserve Act "were limited to acquiring gold from an owner within

the United States," clearly section 5(b) of the Trading with the Enemy Act, as amended, and the aforementioned Executive Order of April 20, 1933, issued thereunder, were not so limited "and thus justified the denial of an export license to a foreign owner who would be obliged to come here in order to obtain delivery * * * or to act through an agent 'within'" the United States. In any event, the court said that the Gold Reserve Act of 1934 precluded plaintiff in the premises. Such Act, said the court, was not unconstitutional as an unlawful delegation of authority to the Secretary of the Treasury; and, under the authority of Nortz v. United States, 294 U.S. 317, payment to plaintiff "for the gold coin at 'the dollar face amount' * * * would be lawful compensation * * *. Accordingly, we think that there was no ground for bringing a suit in equity. Nor do we see that there can be recovery at law * * *."

Norman v. Baltimore & Ohio R. Co., 294 U.S. 240 (1935), actually holds that the Joint Resolution of June 5, 1933, declaring gold clauses in obligations to be against public policy, and providing for discharge of such obligations on payment, dollar for dollar, of legal tender coin or currency at the time of payment, is valid and constitutional as applied to pre-existing nonfederal obligations.

In arriving at such holding, however, the court said that such Resolution "was one of a series of measures relating to the currency. These measures disclosed not only the purpose of the Congress but also the situation which existed at the time the * * * Resolution was adopted * * *." In this connection, the court pointed out that under section 5(b) of the Trading with the Enemy Act of October 6, 1917, the President declared a "bank holiday" beginning March 6, 1933, and that at the same time the Secretary of the Treasury, with the President's approval, issued instructions to the United States Treasurer "to make payments in gold * * * only under license issued by the Secretary." Subsequently, Congress passed the Emergency Banking Act of March 9, 1933, affirming prior Executive action and broadening, by amendment, powers under the Trading with the Enemy Act and by section 11(n) of the Federal Reserve Act, gave the Secretary of the Treasury power to require delivery of gold coins, etc. It is then pointed out that the President, by order, authorized the reopening of banks and by this and other orders further regulated transactions, etc. in gold. The Act of May 12, 1933, authorized the President to fix the weight of the gold dollar. "Then," said the court, "followed the Joint Resolution of June 5, 1933," and subsequent Executive Orders, some issued under the authority of the Trading with the Enemy Act, as amended, relating to gold transactions, etc. "On January 30, 1934, the Congress passed the 'Gold Reserve Act of 1934 * * * which * * *

ratified and confirmed all the actions, regulations and orders taken or made by the President and the Secretary of the Treasury under the Act of March 9, 1933, or under * * * the Act of May 12, 1933 [etc.] * * *. On January 31, 1934, the President issued his proclamation" fixing the weight of the gold dollar. At this point, the court said:

> "We have not attempted to summarize all the provisions of these measures. We are not concerned with their wisdom. The question before the Court is one of power, not of policy. And that question touches the validity of these measures at but a single point; that is, in relation to the Joint Resolution denying effect to 'gold clauses' in existing contracts. The resolution must, however, be considered in its legislative setting and in the light of other measures in pari materia."

In Perry v. United States, 294 U.S. 330 (1935), the plaintiff, owner of a United States bond (face amount $10,000) providing for payment of principal and interest "in United States gold coin of the present standard value" sued to recover for an alleged loss resulting from defendant's refusal to redeem said bond "'except by payment of 10,000 dollars in legal tender currency'." Such refusal was "based on the Joint Resolution of * * * June 5, 1933" providing, in part, that every obligation, including those of the United States, heretofore or hereafter incurred, shall be discharged "'upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts.'" The court sustained plaintiff's contention that, as applied to these facts, such Resolution was unconstitutional, saying:

> "We conclude that the Joint Resolution * * *, in so far as it attempted to override the obligation created by the bond in suit, went beyond the congressional power."

However, in holding that defendant had not suffered any damage for which he was entitled to recover, the court made the following observation:

> "* * * Before the change in the weight of the gold dollar in 1934, gold coin had been withdrawn from circulation. The Congress had authorized the prohibition of the exportation of gold coin and the placing of restrictions upon transactions in foreign exchange. Acts of March 9, 1933, 48 Stat. 1 [Emergency Banking Relief Act, § 2, amending Trading with the Enemy Act, § 5(b), 12 U.S.C.A.

§ 95a]; January 30, 1934, 48 Stat. 337 [Gold Reserve Act of 1934, § 12, 31 U.S.C.A. § 824]. Such dealings could be had only for limited purposes and under license. Executive Orders of April 20, 1933 (No. 6111), August 28, 1933 (No. 6260), and January 15, 1934 (No. 6560), 12 U.S.C.A. § 95 note; Regulations of the Secretary of the Treasury, January 30 and 31, 1934. That action the Congress was entitled to take by virtue of its authority to deal with gold coin as a medium of exchange. And the restraint thus imposed upon holders of gold coin was incident to the limitations which inhered in their ownership of that coin and gave them no right of action."

Continuing, the court said:

"* * * We cannot say, in view of the conditions that existed, that the Congress having this power exercised it arbitrarily or capriciously. And the holder of an obligation, or bond, of the United States, payable in gold coin of the former standard, so far as the restraint upon the right to export gold coin or to engage in transactions in foreign exchange is concerned, was in no better case than the holder of gold coin itself.

"In considering what damages, if any, the plaintiff has sustained by the alleged breach of his bond, it is hence inadmissible to assume that he was entitled to obtain gold coin for recourse to foreign markets or for dealings in foreign exchange or for other purposes contrary to the control over gold coin which the Congress had the power to exert, and had exerted, in its monetary regulation. Plaintiff's damages could not be assessed without regard to the internal economy of the country at the time the alleged breach occurred."

The court concluded by saying that "the payment to the plaintiff of the amount which he demands [$1.69 "in the present currency for every dollar provided by the bond"] would appear to constitute, not a recoupment of loss in any proper sense, but an unjustified enrichment."

In Argonaut Mining Co. v. McPike, 78 F. (2d) 584 (C.C.A., 9th, 1935), the company sought to enjoin defendant, United States Attorney, from prosecuting plaintiff for violating an Executive Order under sec. 5(b) of the Trading with the Enemy Act, as amended, and an order of

the United States Treasury Department under section 11(n) of the Federal Reserve Act, both relating to the possession, etc. of gold. It appears that the plaintiff owned certain gold and that pursuant to the Executive Order mentioned above, a return thereof was made to the Secretary of the Treasury who refused to grant plaintiff a license to hold or dispose of said gold. It also appears that, pursuant to the aforementioned order of the Treasury Department, plaintiff tendered said gold to the Secretary of the Treasury who refused to pay "the then prevailing market price of $54.06 per ounce * * *, but * * * offered the arbitrary price of $20.67 per ounce * * *", alleged to be a denial of "just compensation." Plaintiff specifically alleged that the foregoing statutes and orders "are unconstitutional and void", and sought relief under the rule "that a criminal prosecution under an unconstitutional statute will be enjoined when that is essential to the safeguarding of property rights."

The court held that plaintiff's allegations did not bring it within the aforementioned rule. Said the court:

> "* * * Aside from the statement of general and unsupported conclusions, the case presented by the bill was the ordinary one of a criminal prosecution which would afford appropriate opportunity for the assertion of appellant's rights. So far as the bill disclosed, nothing more than a single prosecution was in contemplation, a point which the district attorney emphasized by his disclaimer, on the hearing below, of any intention to institute any further prosecution against appellant until his rights, constitutional or otherwise, had been adjudicated in the pending criminal proceeding."

In Farber v. United States, 114 F. (2d) 5 (C.C.A., 9th, 1940), cert. den. 61 S. Ct. 175 (1940), the defendant was indicted and convicted of willfully, etc. acquiring United States gold coins without procuring a license in accordance with the Executive Order issued under section 5(b) of the Trading with the Enemy Act, as amended. Such Order forbade the acquisition of United States gold coins except under license; provided, that collectors of rare and unusual coins may acquire, without a license, gold coins having recognized special value to collectors of rare and unusual coins. Such Order also adopted the penal provision of the aforementioned Act. Defendant contended that under the United States Treasury Department regulation issued pursuant to section 4 of the Gold Reserve Act of 1954, he had a right to acquire such coins without a license and that such Act and regulation repealed the Trading with the Enemy Act and the Executive Order mentioned above. The aforementioned

Treasury regulation provided that gold coins of recognized special value to collectors of rare and unusual coins may be acquired without a license therefor. In overruling this position and affirming the conviction, the court, inter alia, said that the Trading with the Enemy Act covers punishment for doing certain prohibited acts while the Gold Reserve Act turns its attention to the practical matter of getting the gold into the possession of the United States; the two Acts as applied to this case are not conflicting and thus no such contention as to repeal can be sustained.

In Ruffino v. United States, 114 F. (2d) 696 (C.C.A., 9th, 1940), the defendant was indicted for alleged violations of section 5(b) of the Trading with the Enemy Act, as amended, and section 3 of the Gold Reserve Act of 1954. It appears that defendant "not being a person permitted to acquire gold bullion by any regulation issued by the Secretary of the Treasury and approved by the President * * *, did * * * wilfully * * * acquire certain gold bullion * * *." Defendant contended that "the Trading With The Enemy Act, as amended, does not make it an offense to acquire gold bullion" and that the Gold Reserve Act does not prescribe a criminal penalty. The court indicated that the latter position must be conceded, but that by Executive Order issued under section 5(b) of the Trading with the Enemy Act, as amended, does cover gold bullion. In holding the indictment to be sufficient to charge an offense denounced by the Trading with the Enemy Act and the Executive Order issued thereunder, the court said that section 13 of the Gold Reserve Act of 1934 "expressly ratified all orders issued by the President under the act of March 9, 1933, [which amended section 5(b) of the Trading with the Enemy Act], including, necessarily [the Executive Order in question] * * *. Hence we find no difficulty in holding that order is valid and effective; and as has been seen it prohibits the acquisition of gold bullion [etc.] * * *."

In Fuller v. United States, 114 F. (2d) 698 (C.C.A., 9th, 1940), the defendant was convicted of conspiring to acquire or to transport gold in violation of the Gold Reserve Act of 1934. The indictment was intended to charge an offense under the Federal criminal statute covering conspiracies to commit offenses against the United States, etc. Also, the indictment characterized the acquisition and transportation of gold as being in violation of the Gold Reserve Act of 1934 and the Treasury Department regulations thereunder. However, the court held that since the indictment evidenced the pleader's delusion that "every unlicensed acquisition or transportation of gold violates" such Act and regulations, such indictment was insufficient.

The court pointed out that conceding this, the United States contends that the indictment charged a conspiracy to violate section 5(b) of the Trading with the Enemy Act, as amended, and Executive Order issued thereunder. However, in rejecting this contention and reversing the conviction, the court held that such Act and Executive Order "relate, not to gold, as such, but to gold coin, gold bullion and gold certificates, neither of which is mentioned in the indictment."

Stewart v. Justice's Court of Lindsay, 45 P. (2d) 424 (Calif., 1935), raised the question as to whether the delivery of a check (subsequently cashed) to the justice of the peace constituted a sufficient security for the issuance of a writ of attachment. Under the California law it was provided that in such cases the justices could accept, in lieu of sureties, "an equal sum of money in United States gold coin."

In holding that the foregoing security was adequate in the circumstances, the court said that "an objection based upon failure to deposit gold coin" was not available, since by Executive Orders issued under section 5(b) of the Trading with the Enemy Act and section 11(n) of the Federal Reserve Act "the use of gold coin for such purposes was prohibited and made impossible."

Security-First National Bank, etc. v. Cuesta, 59 P. (2d) 542 (Calif., 1936), involved a suit by the bank for possession of realty. It was contended in defense that the sale at which bank sought to acquire the property was a nullity due to illegality of the notice thereof. Such notice stated that the sale would be at public auction, etc. "'for cash (payable in United States Gold Coin at time of Sale)'". This defense was based on the fact that at the time of sale, February 16, 1934, the Executive Order (pursuant to section 5(b) of the Trading with the Enemy Act, as amended) and orders of the Treasury Department forbade transactions in gold, etc.

The court held that such notice was not invalidated as claimed, since under the Joint Resolution of June 5, 1935, it was provided that "every obligation * * * shall be discharged upon payment [in] * * * legal tender." This legislation, in effect, struck from such notice the provision relating to payment in gold.

In In re Ramberg's Estate, 20 N.Y.S. (2d) 619 (1940), heirs of the deceased, Ramberg, through the Consul General of Norway, claim that their distributive shares from the estate should be paid over to such Consul on their behalf. Such heirs, however, resided in Norway;

but the Consul sought to justify such distribution under the terms of a treaty with Norway. In forbidding such distribution the court pointed out that the claim might be disposed of on the ground that "under present conditions [German occupation of Norway] he [the Consul] does not possess power to transmit to the distributees [under such treaty], since he is not recognized by the authority which has control of the territory in which they [heirs] reside." However, the court said that an additional consideration compels the same result. Thus, the court pointed out that in 1940 section 5(b) of the Trading with the Enemy Act, as amended, was further amended so as to authorize the President to regulate or prohibit dealings, etc., in property in which any foreign state or a national or political subdivision thereof has any interest, by any person within the United States. The court also pointed out that this 1940 amendatory legislation also confirmed the Executive Order of April 10, 1940, and regulations thereunder, which prohibited, without a license, transfers of the type herein desired. The court held that such Executive Order "prohibits in unmistakable terms the payment of the distributive shares * * * either to the Norwegian Nationals themselves or to the Consul * * * on their behalf."

In Herzfeld v. National City Bank of New York, 24 N.Y.S. (2d) 69 (1940), the plaintiff, a New York importer of Belgian rugs sought to replevy shipping documents relating to a certain rug shipment. The contract between the parties called for payment in Belgian francs; and the vendors' bank in Belgium wrote defendant that such shipping documents should be made available to plaintiff upon collection by the defendant of a sight draft for the sale price of the rugs shipped, credit to be given accordingly. Upon notification of receipt of the shipping documents by defendant, plaintiff applied for and received a license from the United States Treasury Department in accordance with Executive Order of January 15, 1954, issued under section 5(b) of the Trading with the Enemy Act, as amended, permitting plaintiff to make payment in the necessary amount of Belgian francs to defendant on behalf of the Belgian vendor. Subsequently, this license was amended so as to require the Belgian francs to be held in an account in defendant bank "in which a national of Belgium has a property interest within the meaning of the Executive Order * * * of April 10, 1940, as amended."

Defendant's refusal to turn over the shipping documents on plaintiff's tender of the Belgian francs was based primarily upon the fact that the amendment to the license forbade a tender of payment within the intent of the sales contract.

To: Mr. Wyatt -20-

In granting plaintiff's motion for judgment, the court held that the contracting parties "must be deemed to have dealt with each other in contemplation of the existence of these restrictions under the laws of the United States, to the extent that such restrictions and any subsequent amendments thereof * * * might affect the use or transmission of the proceeds of the sale when consummated in this country by the delivery of the merchandise as against payment in the form agreed upon between the parties in their contract."

Respectfully,

Jerome W. Shay

JWS:mnm

GENERAL COUNSEL'S OFFICE
Dictated by.....
Approved by.....
Revised by.....

August 8, 1941.

Mr. Wyatt

Mr. Shay

Constitutionality of "bank holiday" proclamations, etc.

The constitutionality of the Presidential "bank holiday" proclamations and orders, the regulations issued thereunder and the law upon which all such matters were based, has been sustained in several decisions of the Federal courts.

Thus, in a suit by the receiver of a national bank to recover an assessment upon the bank's shares, the substance of one defense was the unconstitutionality of the Presidential "bank holiday" proclamations and the Executive Orders relating to (1) regulations of the Secretary of the Treasury under which banks might reopen, and (2) the appointment of conservators for banks not reopened. In overruling such defense, the court held that "there can be no doubt as to the validity" of the matters alleged to be unconstitutional. Hanley v. Corwin, 15 F. Supp. 396 (D. C., N. Y., 1936), affirmed by the Circuit Court of Appeals in 89 F. (2d) 1008 (1937).

In a suit similar to the one just noted, the shareholders of the defunct national bank sought to establish a deprivation of property without due process of law resulting largely from the Presidential "bank holiday" proclamations and the Executive Order relating to regulations of the Secretary of the Treasury under which banks might be reopened. However, the court ruled against the shareholders since such Presidential action "was a reasonable step * * * authorized by" statute which "was constitutional." Smith et al. v. Witherow, 102 F.(2d) 638, (C.C.A., 3rd, 1939).

In another decision, the court held that the inability of a State bank to make repayment of deposits caused, in part, by the Presidential "bank holiday" proclamations and the Executive Orders relating to (1) the reopening of banks on authorization of the proper authority, and (2) the conservatorship of banks not authorized to reopen, operated to discharge the surety on the bank's depositary bond. Said the court: "there can be no doubt as to the validity of this legislation"; it was "constitutional and valid." City of East Cleveland v. Fidelity & Deposit Co. of Maryland, 5 F. Supp. 212, (D.C., Ohio, 1933).

JWS/nlg

GENERAL COUNSEL'S OFFICE,

Dictated by.....

Approved by.....

Revised by.....

Respectfully,

Jerome W. Shay,
Law Clerk.

May 13, 1940

Files

Mr. Smead

Under the present requirements of the Treasury, Federal Reserve banks have to obtain authority from the Secretary of the Treasury for the issuance of a license to State banks upon admittance to membership in the Federal Reserve System. Since formal admission to membership has to be delayed at times until telegraphic or other advice is received from the Treasury Department authorizing the Federal Reserve bank to issue the license, and since the granting of such authority appears to be largely a matter of form, I asked Under Secretary Bell whether there was any objection on the part of the Treasury to giving the Federal Reserve banks blanket authority to issue licenses to existing State banks upon their admission to membership in the Federal Reserve System. I understand that this matter was referred to Treasury counsel.

Shortly before his leaving the office for a few days, Mr. Bell asked Mr. Heffelfinger to tell me that the Department preferred not to make any changes at this time in existing procedure. Mr. Heffelfinger stated that Mr. Bell thought this question might be reopened for consideration at a later date.

ELS:jbs

FEDERAL RESERVE BANK OF SAN FRANCISCO

May 11, 1940

Mr. Leo Paulger,
Care of the Board of Governors
of the Federal Reserve System,
Washington, D. C.

Dear Leo:

I am sorry it was necessary for you to draw to our attention that we had inadvertently recommended to the Secretary of the Treasury the issuance of a license to the Placer County Bank, Auburn, prior to the approval of membership by the Board of Governors.

I can assure you it will not occur again.

Yours very truly,

Carded

MAY 2 1940

Dear Ira:

This is an informal note, and I hope that you will reply in kind. You will recall that last fall we had some correspondence regarding the procedure in connection with the issuance of licenses to State banks joining the System and that in my letter of October 20 I stated that it was felt "that the recommendation of a Reserve Bank to the Secretary of the Treasury regarding the issuance of a license should follow, rather than precede, approval of an application for membership." This is the procedure followed by all of the other Federal Reserve Banks. I notice, however, that you forwarded your recommendation to the Secretary of the Treasury regarding the issuance of a license to the Placer County Bank, Auburn, California, at about the same time that you forwarded the membership application of the bank to the Board. According to our files, the issuance of the license was authorized by the Treasury on April 17. From this distance it seems that somebody along the line overlooked our previous correspondence, particularly my letter of October 20. Is that the case?

Sincerely,

Leo H. Paulger

Mr. Ira Clark,
Federal Reserve Bank of San Francisco,
San Francisco, California.

RFL:owb

FILE COPY

copy Placer County Bank, Auburn, Calif. sent 5/11/40

April 11, 1940.

Secretary of the Treasury,
Washington, D. C.

Dear Sir:

We have recommended to the Board of Governors of the Federal Reserve System that the Placer County Bank, Auburn, California, be admitted to Federal Reserve membership. We unqualifiedly recommend that it be granted a license and that such license be delivered by us to the Placer County Bank upon admission to membership without the formality of filing an application. We await your reply.

Very truly yours,

(signed)

Ira Clerk

(Read over the phone by Clarence Smith, Assistant National Bank Examiner.)

copy: Placer County Bank, Auburn Calif.

ltr dtd 4/3/40

TREASURY LICENSING OF STATE MEMBER BANKS

Under present practice new State member banks are required to be licensed by the Secretary of the Treasury. While not entirely clear, the authority of the Secretary of the Treasury in requiring that licenses be issued to State member banks is probably derived from the Executive Order of March 10, 1933. In September 1939 I raised this question informally with Mr. Sherbondy, an attorney in the general counsel's office of the Treasury. At that time he intimated that the staff of the Treasury had considered eliminating the requirement of licensing member banks but stated, that in view of the present international situation, it would be unfortunate to raise any question as to the right of the Secretary of the Treasury to require licenses for State banks upon admission to membership in the System.

The practice of licensing new State member banks originated as follows:

In May 1933 a Federal Reserve bank inquired of the Secretary of the Treasury whether a State bank, which has been authorized by State authorities to perform any and all of its usual banking functions, except as otherwise prohibited, and which is later admitted to membership in the Federal Reserve System, is required to secure a license from the Secretary of the Treasury authorizing it to continue performance of such functions. The Treasury replied as follows:

> "State bank upon admission to membership in Federal Reserve System must secure license from the Secretary of Treasury to perform all usual and normal banking functions except as otherwise prohibited. Understand Federal Reserve Board only admitting to membership such banks able to operate without restriction. License will be issued upon your recommendation."

A copy of this reply was furnished to the Board which in turn transmitted it to all Federal Reserve banks (Trans. 1804, May 24, 1933). The Board's correspondence in connection with this point appears to have been lost.

The procedure for licensing new State member banks by the Secretary of the Treasury is as follows: After a State bank makes application for membership in the System the Federal Reserve bank either writes or wires to the Secretary of the Treasury recommending that a license be issued to the bank in question when it has been admitted to membership. This telegram or letter is referred to an Assistant Chief

National Bank Examiner in the office of the Comptroller of the Currency where a letter is prepared for the signature of the Acting Secretary of the Treasury addressed to the Federal Reserve bank directing such bank to issue a license to the bank in question "if and when all conditions of membership have been completed and the bank has been admitted to the Federal Reserve System."

---

*The Executive Order of March 10, 1933 reads in part as follows:

"By virtue of the authority vested in me by section 5(b) of the Act of October 6, 1917 (40 Stat. L., 411) as amended by the Act of March 9, 1933, and by section 4 of the said Act of March 9, 1933, and by virtue of all other authority vested in me, I hereby issue the following Executive order.

"The Secretary of the Treasury is authorized and empowered under such regulations as he may prescribe to permit any member bank of the Federal Reserve System and any other banking institution organized under the laws of the United States to perform any or all of their usual banking functions, except as otherwise prohibited.

* * * *

"All banks which are members of the Federal Reserve System, desiring to reopen for the performance of all usual and normal banking functions, except as otherwise prohibited, shall apply for a license therefor to the Secretary of the Treasury. Such application shall be filed immediately through the Federal reserve banks. The Federal reserve bank shall then transmit such applications to the Secretary of the Treasury. Licenses will be issued by the Federal reserve bank upon approval of the Secretary of the Treasury. The Federal reserve banks are hereby designated as agents of the Secretary of the Treasury for the receiving of application and the issuance of licenses in his behalf and upon his instructions."

Section 4 of the Act of March 9, 1933 provides in part as follows:

"In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National

Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President."

The doubt as to the authority of the Secretary of the Treasury to require such licenses is based upon the fact that he has not issued any regulations on the subject "with the approval of the President". This, however, could be done if it was anticipated that his authority would be drawn in question in connection with a prospective case.

GENERAL COUNSEL'S OFFICE

Dictated by .....

Approved by .....

Revised by .....

AKC:ah:mmcd

AKC

470.

January 17, 1940

To: The Files

From: Mr. Wyatt, General Counsel

Re: Conversation with Mr. Charles W. Collins re licensing of State member banks.

Ref 1/17/40

Mr. Charles W. Collins, Washington legal representative of the Bank of America N. T. & S. A., of San Francisco, California, called me on the telephone this morning and we had a conversation, the substance of which is set forth below:

Mr. Collins started by saying that he wanted some "free legal advice". He said that his opinion had been requested on the question whether it is necessary for a new State bank applying for membership in the Federal Reserve System to obtain a license from the Secretary of the Treasury.

I told him that the answer to the question is "yes". He expressed some surprise and wanted to know where the legal requirement is. I suggested that he read section 5(b) of the Trading With the Enemy Act and section 4 of the Emergency Banking Act of March 9, 1933.

He said that he had them before him and had already read them. I then went on to explain that, under the proclamations issued by the President at the time of the bank holiday and which have not yet been revoked or repealed, member banks are forbidden to transact any business except to the extent permitted by licenses issued by the Secretary of the Treasury.

Mr. Collins expressed surprise at this and inquired whether the Board could approve a State bank for membership without a license having been issued.

I replied that the Board could approve a bank for membership prior to the issuance of a license; but that, in practice, a bank is not permitted to complete its membership until it has obtained a license from the Secretary of the Treasury.

Mr. Collins then commented that, if the bank has to get a license from the Secretary of the Treasury, it might as well work the matter out with the Secretary in the first place and that the bank "couldn't afford to put itself out on a limb and run the risk of losing its deposit insurance".

(I did not point out to Mr. Collins that a nonmember insured bank does not need to have a license, because he might have construed it as a suggestion that the bank should reorganize as a nonmember bank. Furthermore, I had explicitly stated that "member banks" are required

See

MINUTES ON JAN 17 1940

FOR FILES
Sarah Murphy

State copy not received
See Presidential Proclamation 11/7/40
Copy filed Pt 12 Transamerica Corp.
411.001 Bank of America

to obtain licenses and I felt that he ought to be able to reach his own conclusions or at least make his own inquiries about nonmember insured banks.)

Mr. Collins then wanted to know the exact mechanical steps by which a license is issued and whether the Board's regulations or conditions of membership require newly admitted State banks to obtain licenses.

I did not have the details at my fingertips, but conferred with Mr. Wingfield and called Mr. Collins back and advised him as follows:

There is nothing in the Board's regulations or conditions of membership requiring State member banks to obtain licenses; but the Board has issued general instructions to the Federal Reserve banks under which they do not issue Federal Reserve bank stock to newly admitted State banks until such banks have obtained licenses. I told him that, after the Board has approved a bank for membership, the Federal Reserve bank telegraphs the Secretary of the Treasury recommending that a license be issued to the bank, and the Secretary sends the Federal Reserve bank a telegraphic reply authorizing it to issue a license to the bank, as agent for the Secretary of the Treasury. The Federal Reserve bank will not issue the Federal Reserve bank stock until the issuance of the license has been authorized.

I told Mr. Collins that the Federal Reserve banks have no blanket authority to issue such licenses as agents for the Secretary of the Treasury but issue them only upon specific authorization by the Secretary in each individual case.

Mr. Collins then commented, "That sums it up completely".

Mr. Collins had requested a copy of Regulation H in its latest revised form and, after arranging for him to send to this office for a copy, the conversation was terminated.

Walter Wyatt,
General Counsel.

WW:eba

LICENSING POWER OF SECRETARY OF THE TREASURY OVER A NEW STATE MEMBER BANK

Presidential Proclamation of March 6, 1933. The power of the Secretary of the Treasury to license member banks originated with the President's Bank Holiday Proclamation of March 6, 1933, which was issued under section 5(b) of the Act of October 6, 1917, and which, after proclaiming a four-day bank holiday, provided in part as follows:

file date - 1/17/40

"During such holiday, excepting as hereinafter provided, no such banking institution or branch shall pay out, export, earmark, or permit the withdrawal or transfer in any manner or by any device whatsoever, of any gold or silver coin or bullion or currency or take any other action which might facilitate the hoarding thereof; nor shall any such banking institution or branch pay out deposits, make loans or discounts, deal in foreign exchange, transfer credits from the United States to any place abroad, or transact any other banking business whatsoever.

"During such holiday, the Secretary of the Treasury, with the approval of the President and under such regulations as he may prescribe, is authorized and empowered (a) to permit any or all of such banking institutions to perform any or all of the usual banking functions,..."

Emergency Banking Act of March 9, 1933. — The Act of March 9, 1933 approved and confirmed this Proclamation and amended the statutory provision under which it was issued. Section 4 of the Act of March 9, 1933, provided in part:

"In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President...."

File copy filed
VP #12 Transamerica Corp.

RC Memo 1/17/40

Presidential Proclamation of March 9, 1933. - On March 9, 1933, after passage of the Emergency Banking Act, the President issued a Proclamation continuing the Proclamation of March 6 in effect until further notice. The relevant provision of the Proclamation was as follows:

> "... all the terms and provisions of said Proclamation of March 6, 1933, and the regulations and orders issued thereunder are hereby continued in full force and effect until further proclamation by the President."

Executive Order of March 10, 1933. - On March 10, 1933, the President issued an executive order which specifically stated that it was based on section 5(b) of the Act of October 6, 1917 as amended by the Act of March 9, 1933, and on section 4 of the Act of March 9, 1933, in addition to all other authority vested in the President. The other relevant provisions of the Executive Order were as follows:

> "The Secretary of the Treasury is authorized and empowered under such regulations as he may prescribe to permit any member bank of the Federal Reserve System and any other banking institution organized under the laws of the United States, to perform any or all of their usual banking functions, except as otherwise prohibited.
>
> "The appropriate authority having immediate supervision of banking institutions in each State or any place subject to the jurisdiction of the United States is authorized and empowered under such regulations as such authority may prescribe to permit any banking institution in such State or place, other than banking institutions covered by the foregoing paragraph, to perform any or all of their usual banking functions, except as otherwise prohibited.
>
> "All banks which are members of the Federal Reserve System, desiring to reopen for the performance of all usual and normal banking functions, except as otherwise prohibited, shall apply for a license therefor to the Secretary of the Treasury. Such application shall be filed immediately through the Federal Reserve Banks. The Federal Reserve Bank shall then transmit such applications to the Secretary of the Treasury. Licenses will be issued by the Federal Reserve Bank upon approval of the Secretary of the Treasury. The Federal Reserve Banks are hereby designated as agents of the Secretary of the Treasury for the receiving of application and the issuance of licenses in his behalf and upon his instructions."

* * * *

Status of State bank entering the Federal Reserve System. - From a review of the material quoted above it will be seen that the reopening of any State member bank is specifically covered and, under the Executive Order of March 10, 1933, such reopening requires a license from the Secretary of the Treasury. The situation with respect to a State bank that wishes to enter the Federal Reserve System, however, is not as clear. Is it required to obtain a license from the Secretary of the Treasury?

Member banks "desiring to reopen". - The provision of the Executive Order of March 10, 1933, that specifically refers to licenses is equally specific in referring only to member banks "desiring to reopen". Since a State bank that wishes to enter the System does not "desire to reopen", it can well be argued that it requires no license. In further support of such a conclusion it could be argued that such a result would accord with the general purposes behind the bank holiday and the related proclamations and executive orders.

Other provisions related to question. - It must be noted, however, that the paragraph regarding banks "desiring to reopen" is not the only one that must be consulted here.

It will be seen that the Proclamation of March 6, 1933, which was continued in effect by the Proclamation of March 9, 1933, and which is still in effect, contains a flat prohibition against any bank carrying on any banking operations, and this prohibition is subject to the condition that:

> "...the Secretary of the Treasury, with the approval of the President and under such regulations as he may prescribe, is authorized and empowered (a) to permit any or all of such banking institutions to perform any or all of the usual banking functions..."

It is to be observed, further, that section 4 of the Emergency Banking Act of March 9, 1933, contains a similar general prohibition, so far as member banks are concerned, which is subject to relaxation "by the Secretary of the Treasury, with the approval of the President".

In view of these prohibitions, it would seem that the member bank would have to get them relaxed, from some source, before it could transact business. It may be noted, too, that both section 4 of the Emergency Banking Act and the provision under which the bank holiday proclamations were issued contain criminal penalties.

The Executive Order of March 10, 1933, may be pointed to as the authority under which the Secretary of the Treasury, by means of

individual licenses, grants the necessary relaxation of the prohibitions that are contained in the proclamations and in section 4 of the Emergency Banking Act. In addition to the provision mentioned above regarding member banks "desiring to reopen", the Executive Order of March 10 contains a provision that:

> "The Secretary of the Treasury is authorized and empowered under such regulations as he may prescribe to permit any member bank of the Federal Reserve System and any other banking institution organized under the laws of the United States, to perform any or all of their usual banking functions * * * "

Arguments against licensing power of Secretary of Treasury. - In the light of these provisions (and assuming their continued effectiveness), it would seem that only three arguments could be offered against the power of the Secretary of the Treasury to license a new State member bank. One argument might be that if the Secretary of the Treasury acts under section 4 of the Emergency Banking Act his action is invalid because he does not grant the license:

> "... to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President".

Another argument (and one similar to the first) might be that if the license is issued directly under the authority given by the Proclamation of March 6, 1933 (as continued by the Proclamation of March 9, 1933) it is invalid because it is not issued by the Secretary of the Treasury "with the approval of the President and under such regulations as he may prescribe". The third argument (also similar to the first) might be that if the Secretary of the Treasury acts under the Executive Order of March 10, 1933 the action is invalid because he does not act "under such regulations as he may prescribe".

Answers to arguments. - In so far as the first and second arguments depend on lack of approval by the President, they would seem to be effectively answered by the Executive Order of March 10, 1933, which certainly seems to grant such approval. It would seem to make no difference that such approval is granted in general terms rather than in individual cases.

It is not clear whether the reference in the Proclamation of March 6, 1933 to "such regulations as he may prescribe" refers to regulations by the President or by the Secretary of the Treasury. If it requires regulations by the President it would seem to be satisfied

by the Executive Order of March 10, 1933. If it requires regulations by the Secretary of the Treasury the situation is not quite so clear, but it probably would be satisfied by a statement which was issued by the Secretary of the Treasury in response to an inquiry and was set forth in the Board's telegram of May 24, 1933 (Trans. 1804) to all Federal Reserve agents. The correspondence relating to this telegram has been lost, but the quoted advice from the Secretary of the Treasury reads in part as follows:

> "State bank upon admission to membership in Federal Reserve System must secure license from the Secretary of Treasury to perform all usual and normal banking functions except as otherwise prohibited..."

This statement by the Secretary of the Treasury also would seem to satisfy any need for regulations under the Executive Order of March 10, 1933.

Of more fundamental importance, however, is the question whether these various provisions for regulations require the issuance of regulations or merely authorize such issuance. It may be noted that all the provisions refer to regulations that "may" be issued. Moreover it would hardly seem a reasonable construction which would require the issuance of regulations even though they would serve no useful purpose. In the circumstances, therefore, it would seem to be the better view to consider the regulations to be merely permissive rather than mandatory.

Conclusion that Secretary of the Treasury has license power over new State member bank. - In view of the foregoing it seems proper to conclude that the Secretary of the Treasury has the power to license a State bank that is being admitted to the Federal Reserve System.

In addition, it seems important to consider what would be the result if he did not have such power. If we assume that the bank holiday proclamations are still in effect, such inability of the Secretary of the Treasury to license a new State member bank would not mean that the bank could enter the System without a license. It would mean that the bank could not enter the System at all.

It will be recalled that under the Proclamation of March 6, 1933 (as continued by the Proclamation of March 9, 1933) and section 4 of the Emergency Banking Act of March 9, 1933, there is a general prohibition against any member bank transacting business, and this prohibition would apply to the bank unless it was relieved by a license from the Secretary of the Treasury. This aspect of the question would seem to be important not only as a practical matter, but also in helping to understand and interpret the relevant proclamations and executive orders.

FS/ab

CIVIL SANCTIONS AVAILABLE AGAINST A NATIONAL BANK;
COUNTER-MEASURES AVAILABLE TO THE BANK

Possible Action by Secretary of the Treasury

Revocation of license. - The Secretary of the Treasury could revoke the license which every member bank is required to have under the Presidential proclamations and executive orders which were issued in connection with the 1933 Bank Holiday and which are still in effect.

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Each such license specifically provides that: "This license may be revoked in whole or in part by the Secretary of the Treasury at any time." The grounds for such revocation are not specifically stated, and they apparently would be the general grounds of preserving the soundness of the nation's banking and financial systems, protecting depositors, etc., on which the relevant statutes, proclamations and executive orders are based. It is not clear whether the license could be revoked without giving the bank a hearing, although it probably would depend upon the circumstances.

Refusal to deposit United States funds in bank. - The Secretary of the Treasury could withdraw all deposits of United States funds from the bank and refuse to deposit more. This would mean that all purchases of Government securities by the bank would then have to be made for cash (or by check or draft) rather than by the method now often used of giving book credit.

Possible Action by Comptroller of the Currency

Appointment of a conservator. - Under section 203 of the Emergency Banking Act of March 9, 1933, the Comptroller of the Currency can appoint a conservator for a national bank "whenever he shall deem it necessary in order to conserve the assets" of the bank. (This provision is permanent legislation contained in Title II of the Act, the title that is designated the "Bank Conservation Act.")

Appointment of receiver. - The Comptroller of the Currency can appoint a receiver for a national bank if he is "satisfied of the insolvency" of the bank, or if certain specific facts exist, such as failure of the bank to pay any outstanding judgment or to dispose of shares of its own stock. The Comptroller is directed to appoint a receiver for any national bank whose deposit insurance is terminated;

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as indicated below. Whenever the Comptroller of the Currency appoints a receiver to liquidate a national bank he must appoint the Federal Deposit Insurance Corporation as such receiver unless adequate provision has been made for payment of the bank's depositors.

Forfeiture of franchise for failure to comply with National Bank Act. - Under section 93 of Title 12 of the U.S.C.A., the franchise of a national bank may be forfeited, in a suit brought by the Comptroller of the Currency, for failure to comply with the National Bank Act.

Such a suit is a legal proceeding rather than merely an administrative matter and is brought directly by the Comptroller. Under section 41(16) of Title 28 of the U.S.C.A., the proper place to bring the suit apparently would be the district where the national bank is located.

Assessing shareholders to cover capital impairment. - Under section 5205 of the Revised Statutes the Comptroller of the Currency can require a national bank to assess its stockholders an amount necessary to make good any impairment of the bank's capital, and if stockholders do not pay the assessment their shares may be sold at auction. (Although the regular double liability on national bank stock has been repealed, it is understood that the Comptroller's office takes the position that the provisions for assessments to cover capital impairment remain in effect.)

Publication of examination report. - Under section 21 of the Federal Reserve Act the Comptroller of the Currency can publish the report of his examination of the national bank or of an affiliate if his suggestions or recommendations are not complied with within 120 days. Ninety days' notice of publication must be given.

Requiring bank to charge off items. - Without going so far as to proceed against the bank for insolvency or even for a capital impairment, the Comptroller of the Currency may direct the bank to charge off items which he believes to represent losses. There is no specific statutory provision for such charge-offs except the general prohibition against a national bank paying dividends in excess of available undivided profits, and the Comptroller's authority on the subject and his means of enforcing such authority are not entirely clear. However, in Thomas v. Taylor (1912) 224 U.S. 73, 82, the United States Supreme Court said that failure of the bank to make charge-offs when so ordered "is a violation of the law", and the court held that persons who bought bank stock in reliance on a statement of the bank that failed to reflect such ordered charge-offs could recover damages from the directors. Furthermore, if the Comptroller ordered the bank to charge off certain items as losses and the bank later published a statement that was contrary to such order, the officers and directors might be subject to criminal penalties for publishing false statements.

Possible Action by Board of Governors of the Federal Reserve System

Forfeiture of franchise for failure to comply with Federal Reserve Act. - Under section 2 of the Federal Reserve Act, the franchise of the national bank could be forfeited in a suit, brought by the Comptroller at the direction of the Board of Governors of the Federal Reserve System, for failure to comply with the Federal Reserve Act.

It should be noted that the provision provides for a regular legal proceeding, rather than an administrative hearing, and that the suit must be in the district in which the national bank is located.

Removal of officers or directors. - Upon certification by the Comptroller of the Currency that an officer or director of the bank has continued to violate the law or to engage in unsafe or unsound practices after warning, the Board of Governors may, under section 30 of the Banking Act of 1933, remove the officer or director from office. Notice and opportunity for hearing are required, and publicity is specifically forbidden.

Penalties for failure to divorce securities affiliate. - If the bank refuses to terminate an affiliation with a securities company, the Board of Governors may, under section 20 of the Banking Act of 1933, assess a penalty of $1,000 a day, recoverable by the Reserve bank of the district, for each day of violation. The Reserve bank may collect the penalty by suit or otherwise, and presumably could charge the bank's account. If violation continues for six months after warning by the Board, the bank's franchise may be forfeited in the manner previously described.

Revocation of holding company's voting permit. - If the holding company affiliate of a national bank violates the Banking Act of 1933 or the agreement which it entered in order to obtain a voting permit, the Board of Governors may revoke the voting permit, under section 5144 of the Revised Statutes, after giving the holding company notice and an opportunity to be heard.

After such a revocation, no national bank controlled by the holding company may receive Government deposits or pay any dividends on stock controlled by the holding company. The franchise of all national banks so controlled may, in the discretion of the Board of Governors, be forfeited in the manner previously described.

Suspension from Federal Reserve credit facilities. - Under section 4 of the Federal Reserve Act the Board of Governors could suspend the national bank from the use of the credit facilities of the Federal Reserve System if it finds that "undue use is being made of bank credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of

sound credit conditions." Reasonable notice and an opportunity for a hearing are required. (Similar provisions are in sections 11(m) and 13 of the Federal Reserve Act.)

Possible Action by Federal Deposit Insurance Corporation

Termination of Deposit Insurance. - The Federal Deposit Insurance Corporation, after giving the Comptroller of the Currency an opportunity to obtain correction and also allowing a hearing to the bank, could terminate the deposit insurance of the bank for "continued unsafe or unsound practices" or for violation of law. When the national bank's insurance is thus terminated, the Comptroller of the Currency must appoint a receiver for the bank, and the receiver must be the Federal Deposit Insurance Corporation unless adequate provision has been made for payment of the bank's depositors.

Possible Action by Reconstruction Finance Corporation

Use of contractual powers. - If the Reconstruction Finance Corporation owns stock in the bank or has loans to the bank, the Reconstruction Finance Corporation's contract gives it certain powers which it might exercise over the bank.

Possible Action by Securities and Exchange Commission

Action to prevent violation of Regulation U. - If the bank violated the Board's Regulation U, Loans by Banks for the Purpose of Purchasing or Carrying Stocks Registered on a National Securities Exchange, the Securities and Exchange Commission could investigate the matter and also could bring suit to enjoin the violation.

Suspension or termination of registration of holding company's securities on exchange. - If a holding company of the bank has securities registered on a national securities exchange and files false or misleading reports with the Securities and Exchange Commission, the Commission may investigate the matter and may suspend or terminate the registration of the holding company's securities on the exchange. Such investigation might extend to an investigation of certain matters involving the subsidiary national bank. (If the securities of the national bank were registered on a national securities exchange the Commission's power to hold investigations and to suspend or terminate the registration of securities would apply directly to the bank. However, only one bank, the Corn Exchange Bank Trust Company of New York, has securities registered on a national securities exchange. The few other bank stocks that are traded on exchanges are traded under certain exemptions which have been granted by the Securities and Exchange Commission.)

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Possible Counter-Measures by the Bank

Suit to enjoin action by agencies. - In addition to simply contesting whatever actions might be brought against it by the super-

vising agencies, the national bank might take the initiative and bring suits against one or more of the agencies to enjoin such agencies from carrying out threatened actions against the bank which are unlawful, arbitrary or oppressive.

Under sections 41(16) and 110 of Title 28 of the U.S.C.A., as interpreted by the United States Supreme Court in First National Bank v. Williams, (1919) 252 U.S. 504, the proper place for the bank to bring such a suit to enjoin the Comptroller of the Currency would be the district where the bank is located.

Suits by the bank attempting to enjoin any of the other agencies probably would have to be brought in the District of Columbia. Certain provisions in section 12B(j) of the Federal Reserve Act might raise some question as to whether the bank could not sue the Federal Deposit Insurance Corporation in the district where the bank is located, but it is believed that these provisions would be held to apply only to suits against the Corporation in its capacity as receiver of a State bank rather than to suits of the type here involved.

Leaving the National Bank System. - As a means of escaping action by one or more of the Federal agencies, the bank might convert into a State bank, and the bank might proceed to do this at the same time that it was bringing suit against one or more of the Federal agencies.

Since there is no specific statutory provision for the conversion of a national bank into a State bank, the usual procedure is to transfer all the assets and liabilities of the national bank to a State bank (either one already in existence or one established especially for the purpose). This would require a meeting of the stockholders of the national bank.

The effect of the conversion, so far as concerns the bank's relations to the Federal supervisory agencies, would depend on whether the bank converted into a State member bank, an insured nonmember State bank, or a noninsured State bank. As indicated below, the Federal Deposit Insurance Corporation probably could prevent the conversion to a noninsured State bank. However, the Federal authorities have very limited power to prevent the national bank from converting to a State member bank or insured nonmember State bank, and such control as they do have is the rather indirect power to prevent the State bank from being a member of the Federal Reserve System or from having its deposits insured, rather than the direct power to prevent the bank from leaving the National Bank System. The effect of each such conversion and the authority of the Federal agencies in the matter are indicated briefly below.

Converting to State member bank. - If the State bank to

which the assets and liabilities were transferred wished to operate as a State member bank of the Federal Reserve System, it would be subject to the power of the Secretary of the Treasury to withhold or revoke the license which all member banks are required to have. In addition, the Board of Governors could refuse to permit the State bank to enter the Federal Reserve System, or, if the State bank was already a member of the System, it probably would be subject to a condition of membership which would require the approval of the Board of Governors before the State bank could assume the assets and liabilities of the national bank.

So long as the State bank was a member of the Federal Reserve System its deposits would be automatically insured, but the Federal Deposit Insurance Corporation, after giving the Board of Governors an opportunity to correct the matter and also allowing a hearing to the bank, could terminate the bank's deposit insurance for "continued unsafe or unsound practices" or for violation of law, and such termination would require the Board of Governors to terminate the bank's membership in the Federal Reserve System.

Converting to insured nonmember State bank. - By transferring its assets and liabilities to a State bank that was insured, but was not a member of the Federal Reserve System, the national bank could escape the licensing power of the Secretary of the Treasury, could escape the powers of the Comptroller (forgetting for the moment his position as a director of the Federal Deposit Insurance Corporation), and could escape the powers of the Board of Governors of the Federal Reserve System.

However, the bank could not become an insured nonmember State bank without obtaining the approval of the Federal Deposit Insurance Corporation; and if it was already such an insured bank the Federal Deposit Insurance Corporation, after giving the State banking authorities an opportunity to correct the matter and also allowing a hearing to the bank, could terminate the deposit insurance of the bank for "continued unsafe or unsound practices" or for violation of law.

Converting to noninsured State bank. - If the national bank transferred its assets and liabilities to a State bank that was noninsured, the bank could escape the licensing power of the Secretary of the Treasury, and the powers of the Comptroller, the Board of Governors, and the Federal Deposit Insurance Corporation --- but the Federal Deposit Insurance Corporation probably could prevent such a transfer. The power of the Federal Deposit Insurance Corporation to prevent such a transfer is not entirely clear, but the situation may be briefly indicated.

Section 12B(v)(4) of the Federal Reserve Act requires every insured bank to obtain the approval of the Federal Deposit Insurance Corporation before transferring assets and deposit liabilities to any noninsured bank. No particular penalty is provided for violation of this provision other than the general penalty of terminating the

offending bank's insurance, which, obviously, would not fit the needs of the case. However, a reading of the entire statute shows an intention to have insured banks remain subject to insurance assessments and to certain other responsibilities for two years after their insurance is terminated. Furthermore, the Federal Deposit Insurance Corporation is given general power to sue and be sued and is given specific authority to bring suit to recover the insurance assessments that are due by any insured bank.

Accordingly, on reading all these provisions together it would seem that if the national bank attempted to transfer its assets to a noninsured bank without the approval of the Federal Deposit Insurance Corporation and thus to escape the two-year period provided by the statute, the Federal Deposit Insurance Corporation might be able to collect the assessments from the national bank on the theory that no effective transfer had been made, or it might be able to collect the assessments from the noninsured bank on the theory that in the circumstances if the noninsured bank accepted the assets it took them subject to the burden of paying the assessments. There would also seem to be some possibility that the Federal Deposit Insurance Corporation might be able to maintain a suit to enjoin the national bank from making such a forbidden transfer of assets and liabilities to a noninsured bank.

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