

COMMENTS ON F. D. I. C. BILL

(Draft of December 14, 1934.)

All references are to subsections of section 12(b) as proposed to be amended.

(b) The use of the term "Board" as referring to the Board of Directors of the Corporation may be very confusing; because this is a section of the Federal Reserve Act, which uses the term "Board" as meaning the Federal Reserve Board. Since the management of the Corporation is vested in its Board of Directors, it would seem more appropriate to make reference to the "Corporation" as in the present law. The advisability of striking out the provision as to who shall be chairman of the Board of Directors is very doubtful.

(c) These definitions are quite voluminous and I doubt that all of them are necessary, especially in view of the definitions contained in section 1 of the Federal Reserve Act. In this connection, attention is invited to the fact that the proposed definition of "Board" conflicts with the definition of that term as used in section 1 of the Federal Reserve Act as also does the definition of the terms "national bank" and "member bank".

Paragraph (9) of subsection (c). The term "unpaid balance due for money or its equivalent received by a bank for credit in the usual course of business" is of doubtful advisability, as it would make the term "deposit" include uncollected checks received for collection and not yet credited to the customer's account. It would seem better to say something like this "Unpaid balance due for money or other actually and finally collected funds received by a bank and credited to a

depositor as an absolute liability of the bank subject to withdrawal on demand or in accordance with the usual terms applicable to the withdrawal of time deposit or savings deposits". I also doubt the advisability of including the words "and such other obligations of a bank as the Board shall from time to time prescribe by its regulations", as this may lead to pressure being brought on the Corporation to include obligations which are not really deposits.

(e) This section as revised would make it impossible for the Comptroller of the Currency to permit a national bank to commence business or for the Federal Reserve Board to admit a State bank to membership in the Federal Reserve System until it has been approved by the Corporation for insurance. This is a radical change from existing law, which requires the Corporation to insure all national banks chartered by the Comptroller of the Currency and all State banks admitted to membership by the Federal Reserve Board, upon proper certification by the Comptroller or the Federal Reserve Board. Likewise the provisions regarding termination of insurance transfer from the Federal Reserve Board and the Comptroller of the Currency, respectively, to the Corporation the control over what banks shall remain open as national banks and what State banks shall remain as members of the Federal Reserve System. This is a radical change which probably would encounter opposition in Congress.

The requirement that the Comptroller or the Board shall certify that a bank applying for insurance has assets "in excess of its capital requirements" adequate to enable it to meet all liabilities to depositors and other creditors is believed to be sound but it may encounter serious opposition. In this connection, it may be noted that

on February 9, 1934, the Federal Reserve Board recommended that this subsection be amended so that capital notes and debentures and certificates issued to waiving depositors might be excluded in determining whether a bank might properly be certified for admission to the permanent insurance fund. This is vitally important with respect to a large number of member and nonmember banks which have been reorganized on the basis of a waiver of deposits. It is understood that last February, the Corporation agreed that such an amendment should be adopted. For this purpose, it is suggested that there be inserted in this subsection the following: "For the purpose of such certification, the phrase 'liabilities to depositors and other creditors' shall not include liabilities upon capital notes or debentures legally issued and outstanding, or upon other obligations of the bank, payable only after provision has been made for the full satisfaction of all claims of depositors and other creditors except claims upon such capital notes, such debentures and such other obligations".

(f) It is suggested that this paragraph be changed as follows: At the beginning insert the words "Until July 1, 1937,". At the end of the second sentence insert the words "and remain such until July 1, 1937.". These two changes are suggested; because this section is drafted as if nonmember banks were to remain indefinitely as members of the permanent fund, whereas it is understood that it has been agreed that membership in the Federal Reserve System is to be a condition precedent to insurance after July 1, 1937. It is recognized that this is provided for in a way by the next to the last paragraph of the bill; but this method of treating the subject makes it too easy to strike out

a single paragraph and leave nonmember banks permanently eligible for insurance. It is also suggested that this paragraph be amended by striking out the words "require a certificate by the authority having supervision of such banks" and substituting the word "determine". It would seem that the Corporation would not wish to rely upon certifications made by the State authorities and that the Corporation would desire hereafter to determine for itself on the basis of its own examination whether or not a nonmember State bank applying for insurance is eligible for insurance.

(g) For the reasons heretofore indicated, it is suggested that there be inserted before the word "bank", where such word first appears in this paragraph, the word "nonmember".

(i) Inasmuch as this paragraph contains no guiding principle, it might be held unconstitutional under the doctrine of the Supreme Court's recent decision in the Hot Oil Case. It could be strengthened by adding at the end of the first sentence the words "as necessary to protect the solvency of such banks".

Paragraph (2) of subsection (i). This is a well-drafted paragraph but does not seem to conform to the latest understanding on the subject of examinations.

Paragraph (3) of subsection (i) does not conform to the understanding regarding reports of condition.

(j) The changes in paragraph "Fifth" of this subsection would not seem to be sufficiently important to justify lengthening the bill. In paragraph "Seventh", I question the words "and reports" for reasons indicated above.

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Subsection (1), Paragraph (1). I question the words "from the date of the enactment of this act" as this is merely a section of the Federal Reserve Act, which was enacted on December 23, 1913. Would it not be better to say "from the date of the enactment of the amendment of which this is a part" - or, better still, "from July 1, 1936".

Subsection (1), Paragraph (2). The necessity for this paragraph and its meaning are not at all clear.

Subsection (1), Paragraph (6). It would seem that any representative of the Corporation handling the funds of the Corporation or of any closed bank should be required to furnish bond for the protection of the Corporation.

Subsection (1), Paragraph (7). This apparently is in conflict with part of the language of paragraph (5) which seems to authorize the Corporation to make compromises without the approval of any court.

Subsection (1), Paragraph (9). Referring back to the definition of "State banks", it is not clear whether this paragraph applies to insured State member banks or not. The significance of the words "shall and in any other case may" is not clear.

Subsection (1), Paragraph (10). The reason for the figure "(1)" after the word "subsection" is not apparent.

Subsection (1), Paragraph (12). Change word "shall" to "may".

Subsection (1), Paragraph (15). The significance of the words "cease to be a new bank" is not clear.

Subsection (1), Paragraph (17). The meaning and purpose of this paragraph is not clear.

Subsection (1), Paragraph (19). It is believed that this paragraph should be studied carefully, as it would appear to prevent the making of offsets in the usual way and to require that the debtor pay off his liability before he receives repayment of his deposits. It should be made clear that liabilities can be offset against the deposits where the accounts are mutual.

Subsection (1), Paragraph (20). The meaning and purposes of the words "shall thereupon revert to the depositor" is not clear.

Subsection (1), Paragraph (21). This would seem to prevent the Corporation from purchasing and liquidating assets of closed banks where the Corporation is acting as receiver. Such prohibition would seem very inadvisable.

Subsection (1), Paragraph (22). This paragraph seems logical; but it may arouse opposition, because it would appear to transfer certain powers of the Comptroller of the Currency and the Federal Reserve Board to the Corporation or at least to give the Corporation a veto power over powers now exercised by the Board and the Comptroller.

Subsection (1), Paragraph (23). It hardly seems necessary or appropriate to continue insuring deposits in a bank for two years after its insurance has been canceled. It would seem that all that is necessary is to give all depositors a reasonable opportunity to withdraw their deposits after receiving notice of cancelation, and in most cases ninety days would be sufficient for this purpose. In

the cases of some time deposits, it might be necessary to allow say ten days, after such time deposit is subject to withdrawal on motion of the depositor. At any event, it is not clear why such deposits should be insured for two years although the bank is required to conform to the obligations of an insured bank for three years after termination of insurance.

Subsection (m), Paragraph (2). The purpose of the words "in subordination to the rights of depositors or otherwise" is not clear.

(n) It is assumed that this paragraph refers to the stamp tax; and it is believed that such tax should be abolished as an unnecessary nuisance which does not produce much income.

Subsection (y), Paragraph (1). This paragraph is not at all clear. Notwithstanding the first part of the paragraph, the comma preceding the words "after proceedings" would raise a question as to whether the Corporation in its discretion could permit nonmember banks to retain the benefits of insurance after July 1, 1937. Likewise, the words "with like effect as if terminated on said date by the Board, after proceedings under paragraph 23 of subsection (1) of this section" would seem to continue the insurance in effect two years after July 1, 1937, even though the first part of the paragraph indicates that nonmember banks are not to be insured after that date. As a matter of legislative strategy, I dislike to see this vitally important paragraph tacked on near the end of the bill, where it sticks out like a sore thumb and simply invites a motion to strike it from the bill. If it

is really intended to require all banks to be member banks in order to be insured after July 1, 1937, it would seem that provisions to this effect should be woven throughout the entire bill, in order to make it difficult to strike out such provisions.

Subsection (y), Paragraph (2). This non-discrimination paragraph seems utterly inappropriate in view of the provisions of Paragraph (1) to the effect that nonmember banks shall not be insured after July 1, 1937.

The proposed amendment to subsection (e) of section 13b of the Federal Reserve Act would seem to be unimportant and unnecessary. If this section is to be amended at all, it should be amended in such a way as to clarify a very confusing situation and provide for a practical method for dealing with this subject.

The proposed amendments to section 22 of the Federal Reserve Act are unnecessarily voluminous. The same object could be accomplished by a short provision in section 12B to the effect that all insured banks, their officers, directors and employees, and the examiners of the Federal Deposit Insurance Corporation, shall be subject to the provisions of section 22 of the Federal Reserve Act.

The proposed amendment to section 751 of the Revenue Act of 1932 is believed inadvisable for the reasons indicated above.