

Re: Board's relationship
to the dispute.

11/10/39

In September 1938 a Section 30 proceeding had been threatened and the proposed respondent demanded an immediate hearing before any certificate had been filed with the Board. The Board declined to grant a hearing on the ground that, since the facts had not been certified to it as provided by law, it had no jurisdiction over the matter and it could not properly set a date for a hearing. The Board also declined to participate in conferences involving the question whether a Section 30 proceeding should be instituted, because it felt that it would be improper for it to do so with respect to a matter in which it might later be called upon to sit as a judge.

Today the situation is somewhat different. More than a year has elapsed and no formal proceedings under Section 30 have been instituted. Other remedies have been resorted to, including formal proceedings under the Securities Exchange Act, court actions and certain conferences designed to settle the matter out of court, with respect to all of which the Board has maintained a strictly "hands off" attitude. However, the situation has not been cleared up and its continuance might have undesirable consequences not only to the member bank but also to the general banking situation in at least one Federal Reserve district.

The present suggestion is somewhat ambiguous; and it may be construed (1) as a suggestion that the Comptroller invite the Board to discuss certain facts involving a dispute between him and the national bank, or (2) as a suggestion that the Board arbitrate a dispute between the Comptroller and the bank, or (3) as a renewal of the suggestion that the Board hold hearings under Section 30 in order to "adjudicate" the issues involved, although no certificate has been filed with the Board under Section 30 and the Board still has no jurisdiction under that section.

Before deciding whether or not to participate in any discussion of the subject, it would seem wise to obtain more information as to the nature of the proposed discussions and as to whether or not the Comptroller of the Currency has issued a warning under Section 30 or is planning to institute proceedings under Section 30.

If the suggestion contemplates that the Board should now hold hearings under Section 30 for the purpose of adjudicating certain matters in dispute between the Comptroller and the bank, it would seem appropriate for the Board to take the same position as it did in September 1938.

If the suggestion contemplates that the Board should arbitrate a dispute between the Comptroller of the Currency and the bank, it would seem that, in so far as concerns matters clearly within the jurisdiction of the Comptroller of the Currency (such as the exercise of his statutory authority to enforce compliance with certain provisions of the National Bank Act), such a proceeding would be inappropriate; because the Comptroller cannot abdicate his authority nor can the Board assume his responsibilities.

If, however, the suggestion merely contemplates an informal conference between representatives of the bank, the Comptroller, the Board, and possibly other supervisory authorities, it would be more difficult for the Board to justify a refusal to participate in such a conference.

The Board has primary responsibility with respect to the supervision of holding company affiliates of member banks and with respect to the enforcement of some provisions of the banking laws affecting member banks and at least a secondary responsibility with respect to the examination and general supervision of all member banks; and it would seem that the Board could not justify a failure to discharge these responsibilities or to participate in any way in the solution of a problem which might have adverse effects upon the general banking situation merely because a resort by the Comptroller of the Currency to one of several different possible remedies would result in a hearing before the Board under Section 30.

In other words, the holding of hearings under Section 30 is not the only responsibility which the Board has with respect to member banks and their affiliates and it would not be justified in failing to discharge its other responsibilities simply because there is a chance that it might be called upon to hold a hearing under Section 30.

Section 30 was intended to strengthen the hands of the bank supervisory authorities by providing an additional means of preventing unsound banking practices or violations of the banking laws; and it ought not to be construed in such a way as to deprive the Board of any other means it may have of maintaining a sound banking situation or as relieving the Board of any responsibility for enforcing compliance with the banking laws by other means.

In view of these considerations, if no Section 30 proceeding is pending and if no attempt is being made to precipitate a premature hearing on matters shortly to be involved in a Section 30 proceeding, there would seem to be no reasonable ground upon which the Board could refuse to discuss any important question affecting the welfare of a member bank and the general banking situation with the representatives of the member bank, the bank holding company, or the other bank supervisory authorities.