

STATEMENT OF JOSEPH W. BARR, CHAIRMAN, BOARD OF DIRECTORS
OF THE FEDERAL DEPOSIT INSURANCE CORPORATION
Before the
SUBCOMMITTEE ON COMMERCE AND FINANCE
OF THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
on H.R. 8499 and H.R. 9410

June 10, 1964

Mr. Chairman: I appreciate the opportunity to appear before this Subcommittee and express the views of this Corporation on H.R. 8499 and H.R. 9410, two identical bills to amend the Federal securities laws with respect to the regulation of collective investment funds maintained by banks. As you know, Director K. A. Randall and I are new members of the Board of Directors of the Federal Deposit Insurance Corporation and have had limited time to acquaint ourselves with the important aspects of this legislative proposal. I have some familiarity with collective investment funds and managing agency accounts in banks from my own personal investments and those which are maintained for the benefit of my children. This experience is of some value to me in considering this legislation, and I believe involves no conflict of interest on my part. All of such interests were reported and filed with the Senate Committee on Banking and Currency at the time of my confirmation.

This legislation arose out of the controversy between the Securities and Exchange Commission and the Comptroller of the Currency as to whether both the Securities and Exchange Commission and the banking agencies or just the banking agencies should have jurisdiction over collective investment funds, which include managing agency accounts, maintained by banks. As Congressman Fascell has well stated in his

testimony yesterday:

"I shall not repeat the multitude of contentions that were made by the two agencies, except that I might summarize the SEC's claims to be that common trust funds of managing agency accounts bear such similarity to mutual funds as to make them amenable to the Federal securities laws; and that while an exemption from the 1940 Act is available for collective investment funds of Smathers-Keogh accounts under the Act's section 3(c)(13) employee's pension trust provisions, the interests therein are 'securities' under the 1933 Act.

"The Comptroller's claims might be summarized as total exemption for such collective investment funds from applicability of the securities laws, and that the revised regulation, the supervision by banking agencies, and the overlay of trust law provide as much or more protection than do the securities acts."

This Corporation believes that it is sound public policy to permit banks to collectively invest funds held as managing agent for their customers. Prior to 1962 the Board of Governors of the Federal Reserve System regulated trust activities of national banks, including managing agency accounts. National banks were then permitted to collectively invest only trust funds held by the bank as trustee, executor, administrator or guardian for "true fiduciary purpose." Funds so invested by banks were considered by the Securities and Exchange Commission to be exempt from the securities laws administered by that Commission.

The authority to regulate the trust activities of national banks was transferred to the Comptroller of the Currency by Public Law 87-722 in September of 1962. The Comptroller of the Currency issued an amendment to his Regulation 9 which eliminated the "true fiduciary purpose" test of the former regulation of the Board of Governors of the Federal Reserve System and permitted national banks to collectively invest funds deposited with them in managing agency accounts and under self-employed

persons retirement plans (Smathers-Keogh Act). The Securities and Exchange Commission has taken the view that operation of such funds by banks are subject to that Commission's supervision and regulation the same as mutual funds. The Comptroller has taken a contrary position.

Under H.R. 8499 authority of all banks to collectively invest common trust funds would be extended to include funds received by a bank as managing agent. The law would place the regulation of such collective investment by banks in the Comptroller of the Currency with enforcement authority in the three Federal banking supervisory agencies over the banks under their respective areas of supervision. The collective investment of such funds would be excluded from the requirements of the Federal securities laws administered by the Securities and Exchange Commission. The issue presented by this proposed legislation is whether or not regulation of collective investment funds should be vested in both the Securities and Exchange Commission and the banking agencies or should be placed in one or more of the Federal banking supervisory authorities. This legislation is far-reaching and may have a substantial effect on insured banks and their customers who wish to avail themselves of the investment services of banks.

The effect of the legislation upon the some 10,200 banks with deposits of less than \$10 million is not entirely clear at this time. The opportunity of smaller banks to provide complete trust services and the share of the smaller banks in the funds available for investment will largely depend on the facility with which these banks may engage in the collective investment business as part of their trust activities.

We do not have sufficient information at this time to determine whether or not these smaller banks will set up their own common trust funds or will participate in common trust funds maintained by larger correspondent banks and, if so, to what extent such participation will occur. Important in the bank's decision would be whether or not it would have the cost and reporting burdens of supervision by both the Securities and Exchange Commission and a banking agency or only that of a banking agency. A preliminary survey shows that in 16 states there are statutes which appear to exclude agency accounts from participation in State banks' common trust funds. The question arises whether national banks will be permitted to place agency account funds in collective investment with regular trust funds where State banks are denied this authority. We propose to make a study of these laws, together with existing Federal statutes and the regulation of the Comptroller to see what effect they would have upon the authority of national and State banks to operate collective investment funds if this legislation should be enacted.

There are other problems which we believe may require attention and study which may arise under the uniform common trust fund laws adopted in 30 of the states and the laws of the other states which a preliminary survey indicates may have adopted statutes that regulate common trust fund activities. In some of the other states it appears that judicial decisions have in some cases cast serious doubt as to whether agency account funds may be considered or treated the same as common trust funds. These matters raise important questions, the answers to which we think will be significant in our taking a position on the issue raised by this proposal. They should

be thoroughly explored before the Congress takes final action on this legislation.

In order to obtain more information concerning these problems and the degree in which smaller banks may participate in collective investment funds the Corporation proposes to obtain through our field examiners sufficient information upon which an informed decision can be made as to whether the authority to regulate collective investment funds maintained by banks should be vested in the Securities and Exchange Commission or elsewhere. Until our study in this area is completed, we are unprepared to recommend to the Congress where this regulatory authority should be placed.

In view of these considerations, it is recommended that the Congress defer final action on these proposals until this study is completed by the Corporation. The Corporation would welcome any questions which the Subcommittee or its members might suggest be submitted to insured banks in our proposed study. We will complete this study within 30 days and believe that its results would be very helpful in deciding the issues raised by the proposed legislation.

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