The Papers of Charles Hamlin (mss24661)

367_02_001-	Hamlin, Charles S., Scrap Book – Volume 236, FRBoard Members

205.001 - Hamlin Charles S
Scrap Book - Volume 236
FRBoard Members

Box 367 Folder 2

TRANSFER
CONFIDENTIAL (F.R.)

RETURN TO
FILES SECTION
DO NOT REMOVE ANY
PAPERS FROM THIS FILE
CONFIDENTIAL (F.R.)

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date August 11, 1941

To The Files

Subject:

From Mr. Coe

M.P.C.

After correspondence with Mrs. Hamlin (see letters of May 25 and June 4, 1941) the items attached hereto and listed below, because of their possible confidential character, were taken from Vol-236 of Mr. Hamlin's scrap book and placed in the Board's files:

VOLUME 236

Page 13
Letter to United States Daily re article published about Board.

Page 15
(X-7307) Right to exercise trust powers of national banks formed through consolidations of national banking institutions previously authorized to exercise such powers.

Page 19
Memo to Mr. Morrill from Mr. Van Fossen re Direct Loans to Individuals.

Pages 23 & 25
Letter to F.R.Bk. of New York from Bank of France re gold movements and reply thereto.

Page 29
Memo to Gov. Meyer from Mr. Smead re F.R. Bank functions for which they receive no reimbursement.

Page 47
Memo to Board from Mr. Wyatt re constitutionality of legislation providing a unified commercial banking system for the United States.

Page 73
Preliminary Memo for the Open Market Policy Conference January 4, 1933.

Page 95
Confidential - Business and Credit Conditions.

Page 113
Memo to Mr. Hamlin from Mr. Goldenweiser re possible use of blocked accounts for war debt payments.

Page 125
Memo to Mr. Hamlin from Mr. Goldenweiser attaching a copy of the chart on gold and reserve bank credit which you requested at the time of the Open Market Policy Conference.

Page 131
Letter to Mr. Hamlin from F.R.Bk. of N.Y. re borrowings by officers and employees of F.R. Banks.

Page 151
(X-7325) Extension of Provisions of Section 10(b) and the second paragraph of Section 16 of the F.R. Act, as amended.

Pages 74, 76, 77, & 80 Blank

COPY

See Bk

December 13, 1932.

Dear Mr. Upham:

If I have misread your comments on the Federal Reserve Board, by all means dismiss my letter. I no longer have here the issue of THE BANKING WEEK that my letter referred to, but your letter of December 13 is evidence enough that what I took to be the point of your criticism was not at all what you had in mind.

The criticism was plainly not directed at me; and, of course, it was only because of this fact that I took the liberty of writing to you as frankly as I did. My impression was that the Board was being criticised unjustly in connection with an article of mine.

Let us have lunch instead of letters; not this week, for I may be away from tomorrow until Monday; but some day when you are in this neighborhood take a chance on finding me in Room 311. I spend only part of my time in Washington, but I think that I shall be here most of next week, and I am fairly certain that I shall be here from December 26 to January 5.

Sincerely yours,

DAIGER

Cyril B. Upham, Esq.,
THE UNITED STATES DAILY
Washington, D. C.

JMD:A

VOLUME 236
PAGE 13

0,13

COPY

See Bu

THE UNITED STATES DAILY

WASHINGTON

December 13, 1932.

Mr. J. M. Daiger,
719 - 15th Street, N.W.,
Washington, D. C.

Dear Mr. Daiger:

I am glad to have your letter of December 9.

My only knowledge of you has come from reading your article of a year ago on bank failures and the recent one on the Federal reserve system and politics, both of which were so well and ably done that I have formed a high opinion of the author.

May I comment frankly on your letter?

I have no "concern" over the opening of the files of the Federal Reserve Board to writers. I agree with you that it should be done. Nor did I "overlook" the fact that you were writing of past rather than current events. I cannot agree that an "authentic and positive narrative style" covers the disclosure of Reserve Board votes or quotations from official documents. If the Board cannot dignify charges by answering them, I cannot see why they should dignify them by permitting access to their files to refute them. Certainly those files must have been made available to you by some one or some agency.

I did not "manifestly assume" that your article was inspired or sponsored by the Board, because as a matter of fact, inquiry at the offices of the Board brought information that they knew nothing about it, and were equally puzzled as to where you got your facts. My

criticism, if it was criticism, was not directed at you, but at the person from whom you received your information.

Perhaps I am entirely wrong, and the facts in your article have all been made public before. I have attended all of the Congressional committee hearings, I think, however, and several of your statements were new to me. For instance, where, outside of System records, have the following facts been made public:

1. The vote disapproving the proposal of the New York bank for a raise in the rate, referred to on page 27 of your article.
2. The quotation from a memorandum by Dr. Miller, quoted on page 28.
3. The quotation from the confidential report on page 29.
4. The quotation from Dr. Miller's telegram on the same page.
5. The vote on the credit-easing program, on the same page.
6. The quotation from "some of the Governors" on the same page.
7. The vote on the Chicago rate, on page 30.

I had no intention of criticizing the Board for making past facts available to you, for I had no idea they did and was assured they did not. I think they might well make them available generally.

I shall be very glad to discuss this matter with you in person if you will let me know when it is convenient for you. I suspect that we think very much alike, but getting together by correspondence is difficult.

Sincerely yours,

(Signed) C. B. Upham, Chief,
Banking Division.

CBU;fo

C, S

FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

X-7307

December 13, 1932.

SUBJECT: Right to exercise trust powers of national banks formed through consolidations of national banking institutions previously authorized to exercise such powers.

Dear Sir:

As several of the Federal reserve agents have been advised, in correspondence relating to particular cases, the Federal Reserve Board has decided that where a national bank succeeds to the right to exercise trust powers by virtue of a consolidation of two or more national banks under the provisions of the Act of Congress of November 7, 1918, it is preferable to issue to the consolidated institution a certificate showing that it has the right to exercise trust powers previously granted to the consolidating banks, rather than to grant to the consolidated institution a new permit authorizing it to exercise trust powers. It is accordingly now the practice, when the Board receives advice from the Comptroller of the Currency that two or more national banks have consolidated under the provisions of the Act of November 7, 1918, and one or more of such banks has been granted trust powers previously, to send to the consolidated bank a certificate of the kind described above. A copy of the Board's letter to the consolidated bank and a copy of the

certificate inclosed therewith are also sent to the Federal reserve agent of the district. In these circumstances it is not necessary for the consolidated bank to make a formal application for the certificate, but if in any such case you find that the certificate has not been received the Board should be advised.

When the Board's Regulation F is next revised, Section III thereof will be amended so as to conform to the practice which the Board is following in cases of this kind.

Very truly yours,

Chester Morrill,
Secretary.

To all Federal reserve agents.

G15

Sec Bd

December 14, 1932

Mr. Morrill

Mr. Van Fossen

Direct Loans to Individuals, etc.

CONFIDENTIAL

Attached hereto is a statement showing the number of applications of individuals, partnerships and corporations for loans not granted by the Federal reserve banks to December 3, 1932, including a tabulation of the reasons for not granting the loans applied for.

It will be noted that of 564 applications refused, as shown in the statement, 309 were because of unsatisfactory security; 235 paper not eligible; 12 loans placed with other banks; 4 present credit deemed adequate; and 4 denial of credit by other banks not shown.

Direct loans to individuals, partnerships and corporations granted by the Federal reserve banks to December 12 and the amount of such loans outstanding on that date were as follows:

Federal Reserve Bank of New York		Advanced	Outstanding
Amawalk Nursery Company	Amawalk, N. Y.	$15,000	$15,000
Dorman Brothers	Astoria, N. Y.	5,000	4,000
Foster and Stewart Co.	New York, N. Y.	50,000	50,000
Friedman & Sons, Neckwear Co., Inc.	New York, N. Y.	25,000	17,500
Joseph H. Meyer Brothers	New York, N. Y.	15,500	15,500
Miller-Cummings Co., Inc.	New York, N. Y.	125,000	125,000
Morris White Mfg. Co.	New York, N. Y.	31,000	31,000
New Jersey Flour Mills Co.	Clifton, N. J.	50,000	25,000
Scaramelli & Co., Inc.	New York, N. Y.	20,000	15,000
S. Shuff Sons, Inc.	New York, N. Y.	10,000	10,000
Federal Reserve Bank of Philadelphia			
J. F. Apple & Co., Inc.	Lancaster, Pa.	400	--
J. B. Henkels (Henkels & McCoy)	Philadelphia, Pa.	3,427	--
Banta Refrigerator Co.	Clearfield, Pa.	3,000	3,000

VOLUME 236
PAGE 19

Q 19

		Advanced	Outstanding
Federal Reserve Bank of Atlanta			
Continental Turpentine & Rosin Corp.	Laurel, Miss.	$19,750	$19,750
Richmond Hosiery Company	Rossville, Ga.	50,000	25,000
Mississippi Cotton Seed Products Co.	Jackson, Miss.	48,000	48,000
Federal Reserve Bank of Minneapolis			
Bricelyn Canning Co.	Bricelyn, Minn.	90,247*	82,695
H. C. Erwin Co.	St. Cloud, Minn.	7,900*	7,900
Riddle Gym Co.	Minneapolis, Minn.	7,500	--
Nagill and Co.	Fargo, N. D.	4,000	4,000
Federal Reserve Bank of Kansas City			
New Mexico Lumber & Timber Co.	Bernalillo, N. M.	90,000	54,000

*Revised to eliminate renewals.

Following is a summary of the survey of credit conditions prevailing in industry, trade and agriculture of the Philadelphia Federal Reserve District submitted December 9, supplementary to the summary of the preliminary report contained in our memorandum of November 12, B-848.

The report submitted by Philadelphia consists largely of tabular statements, numbers 1 to 6 of which merely show separately for 10 manufacturing groups, for retail trade, for wholesale trade, and for "services" (hotels, restaurants, laundries, garages, etc.) the data contained in the preliminary report which was summarized in our November 12 memorandum. This section of the report is accompanied by a synopsis of selected individual replies to the questionnaire in respect to equipment facilities that would be improved if adequate credit were made available.

In Part II of the report is a table similar to the preceding but based on cases other than their own of deserving applicants who were unable to

borrow from local or other banks, as reported by concerns replying to the questionnaire. Of 1,314 replies to this section of the questionnaire 294 or 22 per cent knew of such applicants for credit. There is also a table (No. 9) showing that of 781 replies, 266, or 34 per cent, believe there has been a reduction in credit out of line with the reduction in the volume of business; while table No. 10 shows that of 489 replies, 230, or 47 per cent, believe that the cut in credit has resulted in a curtailment of business activity; table No. 11, that of 1,159 replies, 158, or 14 per cent, believe that local banking facilities are not adequate to take care of ordinary business requirements; and tables 12 and 13 show the reduction in loans, investments and deposits, etc., of member banks from October 4, 1929, to September 30, 1932, and the reduction in certain lines of business, prices, etc.

In Part III of the report, tables Nos. 14 to 19 inclusive, is a tabulation of the replies to the questionnaire by industrial areas (21) in the Philadelphia Federal reserve district. The greatest difficulty in obtaining credit as indicated by the replies received occurs in the Johnstown district and the least (none) in the Clearfield district. Over 40 per cent of replies received from the Altoona, Shore Counties (N. J.) and Johnstown districts state that local banking facilities are not adequate. Thirty to 40 per cent of those replying to the questionnaire from the Altoona, Chambersburg, Shore Counties (N. J.) and Pottsville districts state that they would buy additional stock of raw materials or supplies if sufficient credit could be had on suitable terms; 85 per cent of replies from the Johnstown district and 62 per cent from the Chambersburg district state they have obsolete machinery and equipment which would be replaced under normal business conditions; and over 30 per cent of replies received from the Shore Counties and Sunbury districts state that replacements, additions or other

improvements have been delayed because of inability to obtain capital or credit.

In Part IV of the report are tables 20 and 21 showing credit experiences of farmers in the Philadelphia Federal reserve district. Of 457 replies 173, or 37.9 per cent, had sought to obtain loans, other than mortgage loans, during the past year, of which 125 applications were granted in full and 4 in part, with 2 applications not as yet acted upon. Of 298 replies, 20, or 6.7 per cent had sought mortgage loans during the past year, of which 7 applications were granted in full, one in part, and 3 had not as yet been acted upon. The principal purposes for which loans were desired were as follows: Seed, fertilizer, etc., 27.7 per cent; pay off other debts, including taxes and interest, 17.6 per cent; new equipment, improvements, etc., 13.8 per cent. The agencies to which applications for loans were made were: Bank, 59.4 per cent; merchants, life insurance, etc., 16.2 per cent; Department of Agriculture loan fund, 15.6 per cent; Federal land bank, 8.3 per cent; and mortgage company .5 per cent. Of 362 replies, 277, or 76.5 per cent, state that the efficiency of farms has been lowered; and of 323 replies, 218, or 67.5 per cent, state that equipment facilities are in need of repair or replacement.

APPLICATIONS OF INDIVIDUALS, PARTNERSHIPS AND CORPORATIONS FOR LOANS NOT GRANTED BY THE FEDERAL RESERVE BANKS - TO DECEMBER 3, 1932

Federal Reserve Banks	Number of applications not granted during week ending -				Total number of applications not granted, July 21 to Dec. 3	Reasons for not granting loans applied for					Amount of loans declined July 21 to Dec. 3#
	Nov.12	Nov.19	Nov.26	Dec.3		Loans placed with other banks	Present credit deemed adequate	Paper not eligible	Paper not satisfactorily secured	Denial of credit not shown	
Boston	--	--	--	--	11	--	--	3	7	1	$114,240
New York	1	1	2	1	128	6	3	18	101	--	3,320,050
Philadelphia	1	--	--	2	50	--	1	30	19	--	965,600
Cleveland	--	1	--	--	11	--	--	4	7	--	76,000
Richmond	--	--	1	1	47	--	--	35	12	--	874,496
Atlanta	3	--	--	--	112	1	--	57	54	--	1,902,265
Chicago	--	--	--	--	104	--	--	56	48	--	1,320,400
St. Louis	--	1	--	--	32	1	--	7	24	--	271,300
Minneapolis	--	2	1	--	22	1	--	11	10	--	287,000
Kansas City	2	2	--	1	26	2	--	13	8	3	114,469
Dallas	1	--	--	--	10	--	--	1	9	--	73,200
San Francisco	--	--	--	1	11	1	--	--	10	--	178,250
Total	8	7	4	6	564	12	4	235	309	4	9,497,270

#Approximate; amounts sometimes not stated.

COPY

Sec 1a

(TRANSLATION)

BANK OF FRANCE PARIS, March 9, 1932.

THE GOVERNOR OF THE BANK OF FRANCE

To Mr. George L. Harrison

Governor of the Federal Reserve Bank
of New York.

Dear Mr. Governor:

The recent gold movements between New York and Paris have caused, in the press of the United States as well as of Europe, inaccurate comments which are frequently biased. Certain of these statements, especially those made for political reasons, show so much lack of understanding of the nature and purpose of the operations of the Bank of France that they do not merit attention. There are some, however, which I believe it necessary to prevent from receiving credence; and which, although technically too groundless to be taken seriously in financial circles, present a danger, in view of the way in which they are presented, of influencing public opinion in the United States and of causing misunderstandings equally detrimental to our two countries.

I have, therefore, considered it advisable to state precisely, for your own sake, the position which events have lead me to assume, so that you may take it into consideration. I shall do so with the friendly frankness which has always characterized our relations, and to which I attach a particularly high value.

In the report which I read a few weeks ago at the general stockholders

meeting of the Bank of France, I made an effort to define and justify the attitude of the Bank in view of the world crisis. I was lead to confirm our adherence to the principle of the gold standard; being inspired, moreover, by the terms of the declaration which, shortly before, the heads of our two governments had drawn up in complete accord. I considered it advisable, in the present period of uncertainty and doubt, to proclaim formally the firm decision of the Bank of France to remain true to the traditional principles which have always determined its policy, and which, especially, have served as the basis of our monetary law.

As you know, the Law of June 25, 1928, does not permit exchange assets to be included in the coverage for sight obligations of the Bank of France, which should assure an exclusively metallic basis for money, just as the Bank of England and the Federal reserve banks. The liquidation of the devisen which the Bank of France had been obliged to acquire before the stabilization of the franc, had been, nevertheless, hindered from that time on by many obstacles, which it seems to me to be useless to recall. Our constantly favorable balance of payments, and the firmness of the franc resulting therefrom, only permitted very limited sales of devisen. We effected these sales with all the more prudence since we were, above all, taking care not to withhold our cooperation from the foreign central banks and in this way aggravate the difficulties which they had to face.

We have never, however, lost sight of the fact that the monetary law of June 25, 1928, implicitly imposed upon the Bank of France the obligation to liquidate its foreign assets. This is why we have continually endeavored,

by the encouragement of foreign financing on the Paris market, to bring about a reversal in the balance of payments which would have facilitated disposal of our devisen. Unfortunately our efforts failed of success, and the technical measures which the French Government had taken, upon our suggestion, soon became useless, because of an atmosphere of mistrust which we had no means of dissipating.

At the time of your last visit to Europe, we discussed the question at length, and, while greatly deploring the fact that causes foreign to our wishes did not permit us to carry out the program which we considered desirable, we easily reached agreement as to the principles which ought to determine our policies and as to the final object to be attained.

The monetary crisis which developed in Europe beginning with the spring of 1931, and which finally ended in the suspension of the convertability into gold of the pound sterling, confirmed my conviction that it would be advisable to return everywhere, as soon as possible, to the true gold standard; and that we, ourselves, at the Bank of France ought to furnish an example by liquidating our holdings, which, up to a certain point, might have been considered as indicating the maintenance of a kind of artificial gold exchange standard. Messrs. Parnier and Lacour-Gayet had occasion, at the time of their visit to the United States in October, 1931, to discuss with you the problems raised by the abandonment of this monetary system which, after having given rise to such hopes, has caused so much disappointment. I was particularly pleased that these conversations brought to light once more the perfect harmony of views which has always existed between our two institutions.

Since motives of principle have caused me to foresee the necessity of a policy of this nature, my decision has only been substantiated by the fall of the pound sterling, which greatly affected French opinion, and which resulted in consequences for the Bank of France of which you are aware. The application of this decision was put into operation under the pressure of circumstances, at a moment which, I must admit, was not favorable; but this application was put into effect without delay and was applied indiscriminately to all the foreign currencies which the Bank has in its portfolio.

I made every effort to prevent this action of the Bank of France from accentuating the pressure from which these currencies may have been suffering, and I believe I succeeded in my efforts. The Bank operates, as much as possible, by direct sales on the market, and takes into account the market's powers of absorption. On the other hand I am too conscious of the duties implied by international cooperation to have considered, at any time, the possibility of a rapid conversion into gold of all our assets in New York and other markets.

I do not doubt, dear Mr. Governor, that you have understood this course of action. I would have deemed it superfluous to explain this to you by letter, after the exchange of views by telephone which have already taken place between you and Mr. Crane on one hand and my associates on the other, if I had not thought that the confident and friendly collaboration which has been established between our two institutions, should aid us in enlightening the opinion of our two countries. It is in this spirit that we have made every effort to make known to French public opinion the real meaning of the recent

financial measures voted by the American Congress. It seems to me just as necessary to prevent an erroneous interpretation by the press of the operations which we undertake. For my part, I take advantage of every opportunity to rectify the errors of interpretation which are committed. I know that you, also, take such action and I desire to thank you for doing so.

Please be good enough, dear Mr. Governor, to excuse this long letter and accept, with my kindest remembrances, the assurance of my most cordial sentiments.

(Signed) C. Moret.

(Translated by Albes, March 23, 1932.)

COPY

April 9, 1932.

My dear Mr. Governor:

I am most grateful for your helpful letter of March 9 in which you are good enough to explain in detail the position which events have led you to assume in regard to recent gold movements between New York and Paris.

As you note in your letter, it is entirely true that we in the Federal Reserve Bank of New York have fully understood and appreciated the course of action which you have been constrained to follow. But even so, I deeply appreciate the spirit of cooperation which has led you to write me so fully on this subject.

As you know, and as I have explained in the past to Mr. Parnier and Mr. Lacour-Gayet, we have felt for some time that it would be desirable rather than hurtful from the point of view of our position to have the Bank of France gradually repatriate its dollar balances. In principle, I have never felt that it is wise for one central bank to hold too great a proportion or too large an amount of its reserves in the form of foreign exchange. Events in the past few years have demonstrated only too clearly many of the failures of the gold exchange standard. Quite apart from the economic principles involved, there is the further consideration that foreign balances in too large an amount become a matter of public interest to such an extent that, however independent a central bank may be of political influence, there is always a risk of public pressure on the central bank at a time when, from a monetary standpoint, it may be most inconvenient to respond to that public pressure. In your own case, as you yourself intimate,

and largely because of the events of last fall, your own position regarding your foreign balances was influenced through circumstances which you were anxious to control but which, unhappily could not be prevented.

However, the manner in which you have carried through the conversion of a substantial part of your foreign assets into gold has, so far as we are concerned, been a matter of complete satisfaction, and never once have you failed to show clearly your desire to carry out your policy in a helpful and constructive fashion. It is most unfortunate that some of the press here and in Europe have at times misinterpreted your policies and your motives. But ther has never been a time when we have failed to understand either, or when we have failed, wherever possible, to explain the complete evidence of your desire to consummate your objectives in the least hurtful manner possible. I was, therefore, all the more pleased to receive your letter which I have read to all of my directors and which I have sent to the Federal Reserve Board, of which, as you know, the Secretary of the Treasury is a member. I hope it is not necessary for me to assure you that I shall continue to avail myself of every opportunity to correct any misinterpretation or misunderstanding of your position in the matter.

Please let me thank you again not only for your letter but for the spirit which prompted it, and believe me, my dear Mr. Governor, with warm personal regards,

Faithfully yours,

(Signed) George L. Harrison, Governor.

M. Clement Moret,
Governor, Bank of France,
Paris, France.

GLH:MM

325

COPY

See Bu

To Gov. Meyer
From Mr. Smead

December 12, 1932.

In compliance with your request there is given below a list of the more important functions performed by the Federal reserve banks for the United States Government for which they receive no reimbursement.

United States Government Security Operations

1. Denominational exchange of coupon bonds
2. Interchange of coupon and registered bonds
3. Telegraphic transfer of securities.
4. Redemption of called or matured securities.
5. Cancellation and shipment of securities to the Treasury.
6. Forwarding of registered bonds to the Treasury for redemption.
7. Examination, verification and custody of collateral held against deposits in depositary banks.
8. Purchase and sale of securities for Treasury account.

Depository Functions.

1. Pay Government checks and warrants.
2. Pay coupons from Government securities
3. Transfer funds by telegraph.
4. Handle war loan deposits accounts with depositary banks; receive deposits of postal savings funds, post office funds, money order funds; deposits on account of the 5 per cent fund for the redemption of national bank notes; interest on public deposits; and surplus deposits of public funds from depositary banks.
5. Collect checks received in payment of income and other taxes, etc.

Currency Functions.

1. Receive United States currency and coin for exchange and redemption.
2. Cancel and ship to Washington currency unfit for circulation.

Reports received from the Federal reserve banks covering the cost of their various operations are set up on functional lines and consequently do not in many cases show separately the cost of that part of a given operation performed for the account of the United States Government.

Such figures as are available show the cost of handling the operations themselves, exclusive of rent, light, heat, and power, and general overhead expenses. The cost (exclusive of such unapportioned expenses) of handling United States Government securities for which the banks receive no reimbursement amounted to $394,780 during the fiscal year ended June 30, 1932, the cost of paying Government checks to $116,910, and the cost of cashing Government coupons to $63,100. Separate figures are not available showing the cost of other operations performed for the United States Government, but you may be interested in knowing that the functions of the coin departments of the reserve banks, which include the coin functions formerly performed by the subtreasuries, were conducted during the fiscal year ended June 30 at a cost of $341,200, exclusive, as stated above, of rent, light, heat and power, and general overhead expenses. In connection with the depositary and coin functions performed by the Federal reserve banks for the United States Government, the Government maintains a deposit account with the Federal reserve banks on which the Federal reserve banks pay no interest.

The Federal reserve banks receive reimbursement from the United States Treasury for work in connection with new issues of securities, and also receive reimbursement from the Reconstruction Finance Corporation for operations conducted for its account.

L-9

December 5, 1932.

TO: The Federal Reserve Board.

FROM: Walter Wyatt, General Counsel.

SUBJECT: Constitutionality of legislation providing a unified commercial banking system for the United States.

Senate Resolution 71, adopted on May 5, 1930, directed the Committee on Banking and Currency to conduct an investigation and recommend legislation "to provide for a more effective operation of the National and Federal reserve banking systems of the country." Following extensive hearings by a sub-committee of which he was Chairman, Senator Glass introduced Senate Bill 4115, 72nd Congress. At a hearing on the bill before the Committee on Banking and Currency on March 29, 1932, Governor Meyer presented a letter expressing the unanimous views of the members of the Federal Reserve Board, which contained the following statement:

> "It should be recognized that effective supervision of banking in this country has been seriously hampered by the competition between member and non-member banks, and that the establishment of a unified system of banking under national supervision is essential to fundamental banking reform."

Bankers had testified that certain provisions of the bill would make it difficult for member banks to compete with nonmember banks and would cause defections from the Federal Reserve System and the National Banking System; and during his testimony Governor Meyer called attention to the statement quoted above and stressed the fact that "effective supervision of banking in this country has been seriously affected by competition between member and nonmember banks", and that "competition between the State and national banking systems has resulted in weakening both steadily." Thereupon Senator Glass requested Governor Meyer to "suggest to us a constitutional method of creating a unified banking system in this country."

Volume 236
Page 47

In view of the circumstances under which this request was made, the history of our banking System, and the provisions of Senate Resolution No. 71, it appears that, by "creating a unified banking system", is meant bringing all commercial banking business in the United States into a single banking system subject to effective regulation and supervision by the Federal Government.

Congress has already created the National Banking System and the Federal Reserve System; and the problem is how to achieve uniformity of corporate powers, regulation and supervision with respect to banks engaged in the commercial banking business and to provide for their safe and effective operation, by eliminating the existing competition between the Federal Government and the forty-eight States for the privilege of granting charters to banks transacting that type of business.

Since commercial banking necessarily involves the receipt of deposits subject to withdrawal by check, Congress can achieve that result if it can enact legislation which will have the effect of confining the business of receiving deposits subject to withdrawal by check to National banks, which have uniform powers under the National Bank Act, are subject to effective regulation and supervision by the Federal Government, and are required to be members of the Federal Reserve System.

The question presented, therefore, is whether, in order to provide for a more effective operation of the National Banking System and the Federal Reserve System, Congress has the power under the Constitution to restrict the business of receiving deposits subject to withdrawal by check to National banks.

A consideration of the decisions of the Supreme Court of the United States leaves no room for doubt that this question must be answered in the affirmative. While numerous authorities supporting this conclusion are cited and discussed below, the principal reasons may be stated concisely as follows:

1. The power to create the National Banking System and the Federal Reserve System as useful instrumentalities to aid the Federal Government in the performance of certain important Governmental functions includes the power to take such action as Congress may deem necessary to preserve the existence and promote the efficiency of those systems. McCulloch v. Maryland, 4 Wheat. 316; Farmers and Mechanics National Bank v. Dearing, 91 U. S. 29; Westfall v. United States, 274 U. S. 256.

2. Having provided the country with a National currency through the National Banking System and the Federal Reserve System, Congress may constitutionally preserve the full benefits of such currency for the people by appropriate legislation. Veazie Bank v. Fenno, 8 Wall. 533; Legal Tender Cases, 12 Wall. 457.

3. The existence of a heterogeneous banking structure in which there have been more than 10,000 bank failures during the past twelve years constitutes a burden upon and an obstruction to interstate commerce; and Congress may enact appropriate legislation to correct this condition. United States v. Ferger, 250 U. S. 195; Stafford v. Wallace, 258 U. S. 495; Board of Trade v. Olsen, 262 U. S. 1.

Any one of these grounds standing alone would be a sufficient constitutional justification for the enactment of legislation restricting the conduct of the commercial banking business to National banks; and, when all three grounds are considered together, there can be no doubt that such legislation would be not only constitutional but also entirely appropriate and in accordance with a proper division of authority between the Federal Government and the States.

Having the power to confine the commercial banking business to National banks, Congress can exercise that power in any manner which it deems appropriate and adequate for its purposes. It is not necessary that the legislation assume the form of a revenue act or an act to regulate interstate commerce, though either of these means would be appropriate.

I. THE POWER TO CREATE AND MAINTAIN A BANKING SYSTEM.

Ample authority for the first conclusion stated above is contained in the opinion of Chief Justice Marshall in the case of McCulloch v. Maryland (1819), 4 Wheat. 316, 4 L. Ed. 579, wherein the Supreme Court of the United States established the following principles:

1. Congress has the power to create banks as convenient, appropriate, and useful instrumentalities to aid the Federal Government in the performance of its functions.

2. This power is derived from a group of great powers, including the powers to lay and collect taxes, to borrow money, to regulate commerce, to declare and conduct wars, to raise and support armies and navies and, "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

3. If the end be legitimate and within the scope of the Constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect.

4. If a certain means to carry into effect any of the powers, expressly given by the Constitution to the Government of the Union, be an appropriate measure, not prohibited by the Constitution, the degree of its necessity is a question of legislative discretion, not of judicial cognizance.

5. The States have no power by taxation or otherwise to retard, impede, burden, or in any manner control the operation of the Constitutional laws enacted by Congress to carry into execution the powers vested in the Federal Government.

6. The Constitution and laws of the United States are the supreme laws of the land; and "it is of the very essence of supremacy to remove

all obstacles to its action within its own sphere."

Applying these principles, Congress has created the National Banking System and the Federal Reserve System, which are now recognized as appropriate, if not indispensable, agencies to assist the Government in the performance of certain essential Governmental functions. The States have no legal power to retard, impede, burden, or in any manner control the operation of these agencies; and Congress clearly has the right to enact such legislation as it may deem necessary to "remove all obstacles" to their safe and effective operation. If it deems it necessary to prevent banks organized under State laws from engaging in the commercial banking business in order to accomplish this object, Congress may lawfully do so.

Since the decision of the Supreme Court in McCulloch v. Maryland is the legal foundation stone upon which our National Banking System, our Federal Reserve System and our Federal Farm Loan System have been built and their constitutionality sustained, that case should be considered in more detail. The essential facts giving rise to the decision were as follows:

The Bank of the United States was granted a special charter by the Act of Congress approved April 10, 1816, and was authorized to establish branches throughout the United States. It established its head office in Philadelphia and a branch in Baltimore, Maryland. The Legislature of the State of Maryland enacted a statute taxing all banks or branches thereof in the State which were not chartered by the State and prescribing a penalty to be collected from the officers of any bank that failed to pay the tax. The Bank of the United States did not pay this tax on the transactions of its Baltimore branch, and a suit was brought against McCulloch, the Cashier

of the Branch, to recover the penalty.

McCulloch defended on the ground that the State law was unconstitutional and void because it was in conflict with a valid Federal statute. The State contended that the Act of Congress chartering the Bank of the United States was unconstitutional and that, therefore, the State statute was valid. By a unanimous opinion, the Supreme Court of the United States held that the Act of Congress chartering the Bank of the United States was valid and that the State law purporting to tax the bank was invalid.

The following quotations from the masterful opinion rendered by Chief Justice Marshall will illustrate the profound reasoning upon which the Court's decision was based (4 Wheat. 407, 411, 415, 421, 422, 424):

> "Although, among the enumerated powers of government, we do not find the word 'bank' or 'incorporation', we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may with great reason be contended, that a government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be entrusted with ample means for their execution."

** ** **

> "But the constitution of the United States has not left the right of Congress to employ the necessary means for the execution of the powers conferred on the government to general reasoning. To its enumeration of powers is added that of making 'all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the Government of the United States, or in any department thereof.'"

** ** **

"To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances."

** ** **

"We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional."

** ** **

"If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for excluding the use of a bank, if required for its fiscal operations. To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government. That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy."

** ** **

"After this declaration, it can scarcely be necessary to say that the existence of state banks can have no possible influence on the question. No trace is to be found in the constitution of an intention to create a dependence of the government of the Union on those of the states, for the execution of the great powers assigned to it. Its means are adequate to its ends; and on those means alone was it expected to rely

> for the accomplishment of its ends. To impose on it the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course precarious; the result of its measures uncertain, and create a dependence on other governments, which might disappoint its most important designs, and is incompatible with the language of the constitution. But were it otherwise, the choice of means implies a right to choose a national bank in preference to state banks, and Congress alone can make the election." (Italics supplied)

Having announced that it was "the unanimous and decided opinion" of the Court that the Act to incorporate the Bank of the United States was a law made in pursuance of the Constitution, and was a part of the supreme law of the land, the Chief Justice proceeded to consider the question whether the State could tax the bank (4 Wheat. 426, 427, 436):

> "This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and cannot be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries, on the truth or error of which, and on their application to this case the cause has been supposed to depend. These are, 1st. that a power to create implies a power to preserve. 2d. That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve. 3d. That where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme."

** ** ** ** ** **

> "* * * It is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments as to exempt its own operations from their own influence. This effect need not be stated in terms. It is so involved in the declaration of supremacy, so necessarily implied in it, that the expression of it could not make it more certain. We must, therefore, keep it in view while construing the constitution."

** ** ** ** ** **

"The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared." (Italics supplied)

In the case of Osborn v. United States Bank (1824), 9 Wheat. 738, 6 L. Ed. 204, substantially the same questions as had been considered by the Supreme Court in McCulloch v. Maryland, were presented in substantially the same form. Yielding to the request of Counsel, the whole subject was reexamined and the principles announced in McCulloch v. Maryland were restated and upheld.

Considering more fully the question of the possession by the bank of private powers associated with its public authority and meeting the contention that the two were separable and that the public power should be treated as within, and the private power as without, the implied power of Congress, the Supreme Court expressly held that the authority of Congress was to be ascertained by considering the bank as an entity, possessing the rights and powers conferred upon it, and that the lawful power to create the bank and give it the attributes which were deemed essential should not be rendered unavailing by detaching particular powers and considering them alone and thus destroying the efficacy of the bank as a national instrument.

The ruling of the court, therefore, was to the effect that, although a particular character of business might not, when considered alone, be within the implied power of Congress, yet, if such business was appropriate

or relevant to the banking business, the implied power was to be tested by the right to create a bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful.

In rendering the opinion of the Court, Chief Justice Marshall said (9 Wheat. 860-863):

> "* * * That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the government, is admitted; but the bank is not such an individual or company. It was not created for its own sake, or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the court, in the case of McCulloch v. The State of Maryland, is founded on, and sustained by, the idea that the bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.'"

** ** ** ** ** **

> "* * * Can this instrument, on any rational calculation, effect its object, unless it be endowed with that faculty of lending and dealing in money which is conferred by its charter? * * * The distinction between destroying what is denominated the corporate franchise, and destroying its vivifying principle, is precisely as incapable of being maintained as a distinction between the right to sentence a human being to death, and a right to sentence him to a total privation of sustenance during life. Deprive a bank of its trade and business, which is its sustenance, and its immortality, if it have that property, will be a very useless attribute. This distinction, then, has no real existence. To tax its faculties, its trade and occupation, is to tax the bank itself. To destroy or preserve the one, is to destroy or preserve the other."

** ** ** ** ** **

> "* * * The operations of the bank are believed not only to yield the compensation for its services to the government, but to be essential to the performance of those services. Those operations give its value to the currency in which all the transactions of the government are conducted. They are, therefore, inseparably connected with those transactions.

> They enable the bank to render those services to the nation for which it was created, and are, therefore, of the very essence of its character, as national instruments * * *." (Italics supplied)

The charter of the Bank of the United States, having expired in 1836, the country was left to depend for its currency on a multitude of State banks which sprang up under numerous different State laws, most of which contained either no provisions or inadequate provisions regarding capital, reserves and supervision.

Having experienced the difficulty of conducting the War of 1812 without the aid of a Federal banking system, however, Congress, during the Civil War enacted the National Bank Act on February 25, 1863, and revised it on June 3, 1864. This time it did not undertake to create a single bank with branches throughout the Union, but provided for the creation of numerous local banks each independent of the other but all operating under a single banking law and under the supervision of the Treasury Department of the United States Government.

In the case of Farmers and Mechanics National Bank v. Dearing (1875), 91 U. S. 29, 23 L. Ed. 197, the Supreme Court applied the doctrines of its earlier decisions to National banks organized under the National Bank Act of 1864. The case involved the question whether State usury laws were applicable to National banks; and, in holding that they were not, the Court said (p. 33) :

> "The constitutionality of the act of 1864 is not questioned. It rests on the same principle as the act creating the second bank of the United States. The reasoning of Secretary Hamilton and of this court in McCulloch v. Maryland (4 Wheat. 316) and in Osborn v. Bank (9 Wheat. 738), therefore, applies. The national banks organized under the act are instruments designed to be used to aid the government in the administration

of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them, Congress is the sole judge.

"Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give'. Against the national will 'the States have no power, by taxation or otherwise, to retard, impede, burthen, or in any manner control the operation of the constitutional laws exacted by Congress to carry into execution the powers vested in the General Government'. Osborn v. Bank, supra; Weston and Others v. Charleston, 2 Pet. 466; Brown v. Maryland, 12 Wheat. 419; Dobbins v. Erie County, 16 Pet. 435.

"The power to create carries with it the power to preserve. The latter is a corollary from the former." (Italics supplied)

In Davis v. Elmira Savings Bank (1896), 161 U. S. 275, 16 Sup. Ct. 502, the same question arose in another form. The legislature of the State of New York provided by law that a savings bank organized under the laws of that State should have a preference as a depositor in other banks in case of the insolvency of the latter, and it was sought to apply this provision to the case of a deposit by a savings bank in a National bank which had subsequently become insolvent. The Supreme Court of the United States held that such a provision of a State law could not apply to National banks, because it was in conflict with that provision of the National Bank Act which requires the assets of an insolvent National bank to be distributed ratably among its creditors. In so holding, the Court said: (p. 503)

"National banks are instrumentalities of the federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a State to define their duties or control the conduct of their

affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal government to discharge the duties, for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court." (Italics supplied)

In Easton v. Iowa (1903), 188 U. S. 220, 23 Sup. Ct. 288, Easton, the president of a National bank was convicted in the State court under a State law making it a crime to receive deposits while the bank was insolvent. On appeal, the Supreme Court of the United States held that the State law had no application to a National bank. In so holding, the court said (pp. 290, 293):

" * * * the Federal legislation creating and regulating national banks * * * has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States. Having due regard to the national character and purposes of that system, we cannot concur in the suggestions that national banks, in respect to the powers conferred upon them, are to be viewed as solely organized and operated for private gain. The principles enunciated in McCulloch v. Maryland, 4 Wheat. 316, 425, and in Osborn v. United States Bank, 9 Wheat. 738, though expressed in respect to banks incorporated directly by acts of Congress, are yet applicable to the later and present system of national banks."

** ** ** ** ** **

"Our conclusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations; * * * that it is not competent for state legislatures to interfere, whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government." (Italics supplied)

Having been denied the right to impose limitations and restrictions upon National banks, the States have granted increasingly liberal powers to competing State banks and, in many instances, have subjected them to fewer restrictions and less effective regulation and supervision. This has led Congress to modify the safeguards contained in the original National Bank Act, in order to enable National banks to compete with State banks and thus to preserve the existence of the National Banking System. Such competition between the Federal Government and the various States has led to more and more laxity in bank regulation and supervision.

Moreover, when Congress has undertaken to enact legislation designed to "provide for the safer and more effective use of the assets of National banking associations" it has been told that the proposed legislation would make it difficult for National banks to compete with State banks and would cause National banks to reorganize as State banks.

Since "it is not competent for State legislatures to interfere * * * with national banks or their officers in the exercise of the powers bestowed upon them by the general Government", they cannot do so indirectly by granting State banks competitive advantages; and, if the competition of State banks interferes with the safe and effective operation of National banks, Congress can put an end to such interference with the national purpose by preventing State banks from competing with National banks for commercial banking business.

First National Bank v. Union Trust Co. (1917), 244 U. S. 416, 37 Sup. Ct. 734, turned upon the constitutionality of Section 11(k) of the

Federal Reserve Act, which granted to National banks the right to act, in certain circumstances, as trustees, executors and administrators. It was contended that, unlike the business of banking, there was no natural connection or relationship between acting in these capacities and carrying on the fiscal operations of the Federal government and that, moreover, the legislation constituted a direct invasion of the sovereignty of the States, which control not only the devolution of the estates of deceased persons and the conduct of private business within the States, but as well the creation of corporations and the qualifications and duties of such as may engage in the business of acting as trustees, executors and administrators. The Supreme Court of the United States, however, took cognizance of the fact that Congress had authorized National banks to act in these capacities in order to enable them to compete with State corporations which were authorized to transact such business in connection with their banking business; and, therefore, the Court sustained the constitutionality of the law.

In rendering the opinion of the Court on this question, Chief Justice White reviewed the earlier decisions of the Supreme Court in the cases of McCulloch v. Maryland and Osborn v. Bank and said (p. 737):

> " * * * What those cases established was that although a business was of a private nature and subject to State regulation, if it was of such a character as to cause it to be incidental to the successful discharge by a bank chartered by Congress of its public functions, it was competent for Congress to give the bank the power to exercise such private business in cooperation with or as part of its public authority. Manifestly this excluded the power to the State in such case, although it might possess in a general sense authority to regulate such business, to

> use that authority to prohibit such business from being united by Congress with the banking function, since to do so would be but the exertion of State authority to prohibit Congress from exerting a power which, under the Constitution, it had a right to exercise. From this it must also follow that even although a business be of such a character that it is not inherently considered susceptible of being included by Congress in the powers conferred on national banks, that rule would cease to apply if, by State law, State banking corporations, trust companies, or others which, by reason of their business, are rivals or quasi rivals of national banks, are permitted to carry on such business. This must be, since the State may not by legislation create a condition as to a particular business which would bring about actual or potential competition with the business of national banks, and at the same time deny the power of Congress to meet such created condition by legislation appropriate to avoid the injury which otherwise would be suffered by the national agency." (Italics supplied)

Likewise, the States may not, by granting increasingly liberal powers to State banks and trust companies, create a competitive situation that makes it impossible for Congress to preserve the existence of the National Banking System without removing the safeguards necessary to make it a safe and effective system and at the same time deny the right of Congress to meet the situation by putting an end to such competition.

In the case of State of Missouri v. Duncan (1924), 265 U. S. 17, 44 Sup. Ct. 427, the Burnes National Bank of St. Joseph, Missouri, being duly authorized to act as executor by a permit issued by the Federal Reserve Board under the provisions of Section 11(k) of the Federal Reserve Act, was named as executor by a citizen of Missouri who died leaving a will. The bank applied to the Probate Court for letters testamentary but was denied appointment on the ground that National banks were not permitted to act as executors under the laws of Missouri. Thereupon, the National bank applied to the Supreme Court of the State for a writ of mandamus to require the

judge of the Probate Court to issue letters testamentary. The Supreme Court of Missouri denied a writ of mandamus and an appeal was taken to the Supreme Court of the United States, which reversed the opinion of the State court and held that the Probate Court had no right to deny the National bank letters testamentary.

After quoting the second paragraph of Section 11(k) of the Federal Reserve Act, as amended by the Act of September 26, 1918 (40 Stat. 967), the Supreme Court said, through Mr. Justice Holmes (pp. 23, 24):

> "* * * This says in a roundabout and polite but unmistakable way that whatever may be the State law, national banks having the permit of the Federal Reserve Board may act as executors if trust companies competing with them have that power. The relator has the permit, competing trust companies can act as executors in Missouri, the importance of the powers to the sustaining of competition in the banking business is so well known and has been explained so fully heretofore that it does not need to be emphasized, and thus the naked question presented is whether Congress had the power to do what it tried to do."
>
> ** ** ** ** ** **
>
> "The States cannot use their most characteristic powers to reach unconstitutional results. Western Union Telegraph Co. v. Kansas, 216 U. S. 1. Pullman Co. v. Kansas, 216 U. S. 56. Western Union Telegraph Co. v. Foster, 247 U. S. 105, 114. There is nothing over which a State has more exclusive authority than the jurisdiction of its courts, but it cannot escape its constitutional obligations by the device of denying jurisdiction to courts otherwise competent. Kenney v. Supreme Lodge of the World, 252 U. S. 411,415. So here--the State cannot lay hold of its general control of administration to deprive national banks of their power to compete that Congress is authorized to sustain." (Italics supplied)

Nor would it seem that the States, through the exercise of their power to charter banks, can maintain a situation which impairs the efficiency of the National Banking System and the Federal Reserve System. The

power to create these systems includes the power to preserve them; and Congress can eliminate the ruinous competition that now exists between the National Banking System and the forty-eight State banking systems if it finds it necessary to do as a means of preserving the efficacy of its own instrumentalities.

In Westfall v. United States (1927), 274 U. S. 256, 47 Sup. Ct. 629, the defendant, who was not even an official of any member bank of the Federal Reserve System, was indicted for aiding and procuring a branch manager of a State bank which was a member of the Federal Reserve System to misapply the funds of the bank in violation of a provision of Section 9 of the Federal Reserve Act. He attacked the constitutionality of the Statute on the ground that Congress had no power to punish offenses against the property rights of State banks and that the statute is so broad that it covers such offenses when they would not result in any loss to the Federal Reserve Bank. The Supreme Court of the United States, however, held that the statute was constitutional and said (p. 258):

> "* * * And if a state bank chooses to come into the System created by the United States, the United States may punish acts injurious to the System, although done to a corporation that the State also is entitled to protect. The general proposition is too plain to need more than statement. That there is such a System and that the Reserve Banks are interested in the solvency and financial condition of the members also is too obvious to require a repetition of the careful analysis presented by the Solicitor General. The only suggestion that may deserve a word is that the statute applies indifferently whether there is a loss to the Reserve Banks or not. But every fraud like the one before us weakens the member bank and therefore weakens the System. Moreover, when it is necessary in order to prevent an evil to make the law embrace more than the precise thing to be prevented, it may do so. It may punish the forgery and utterance of spurious interstate bills of lading in order to protect the genuine

commerce. United States v. Ferger, 250 U. S. 199. See further Southern Ry. Co. v. United States, 222 U. S. 20, 26. That principle is settled. Finally Congress may employ state corporations with their consent as instrumentalities of the United States, Clallam County v. United States, 263 U. S. 321, and may make frauds that impair their efficiency crimes. United States v. Walter, 263 U. S. 15". (Italics supplied)

If Congress can go to that length in order to protect the Federal Reserve System from a relatively minor danger, it can relieve the member banks of that System of the competition of nonmember banks for commercial banking business, in order to protect the Federal Reserve System from the greater danger of having the efficiency and safety of its operations impaired by such competition. If, in order to accomplish this object, it deems it appropriate to restrict the transaction of a commercial banking business to National banks, which are required to be members of the Federal Reserve System, Congress clearly has the right to do so.

A brief review of the history of Federal banking legislation will disclose that Congress already has made two attempts to create a unified banking system for the United States and that, in the language of Mr. Justice Holmes in State of Missouri v. Duncan, "The naked question presented is whether Congress has the power to do what it tried to do."

When it enacted the National Bank Act, Congress recognized that banking is a matter of National public interest and attempted to create a unified banking system under Federal supervision. As will be shown in more detail hereinafter, the Act of March 3, 1865, which imposed a prohibitive tax on the circulating notes of State banks, was intended not only to provide a uniform currency but also to compel State banks to

convert into National banks. It succeeded in eliminating State bank currency and almost succeeded in eliminating State banks; but the State banks overcame the handicap of not being able to issue currency and multiplied in number until, by 1910, their number was almost twice that of National banks.

By the enactment of the Federal Reserve Act of December 23, 1913, Congress made another attempt to create a unified banking system, by requiring all National banks in the continental United States to become members of the Federal Reserve System and inviting State banks to do so voluntarily. This object was recognized by the Federal Reserve Board in a circular issued on June 7, 1915, and published in the Federal Reserve Bulletin for July, 1915, at page 145, wherein the Board said:

> "A unified banking system, embracing in its membership the well-managed banks of the country, small and large, State and National, is the aim of the Federal reserve act. There can be but one American credit system of nation-wide extent, and it will fall short of satisfying the business judgment and expectation of the country and fail of attaining its full potentialities if it rests upon an incomplete foundation and leaves out of its membership any considerable part of the banking strength of the country."

When we entered the Great War, however, only 53 State banks with resources aggregating $756,000,000 had become members of the Federal Reserve System; and, in order to induce additional State banks to become members, so that the financial resources of the Nation might be mobilized for the great struggle then confronting it, Congress made a number of concessions which materially diminished its own control over State member banks of the Federal Reserve System.

By the Act of June 21, 1917, (40 Stat. 232), it eliminated the

requirements of the original Federal Reserve Act that State member banks must comply with the loan limitations of the National Bank Act and must be examined at least twice a year by the Comptroller of the Currency and provided that, subject to the provisions of the Federal Reserve Act and the regulations of the Federal Reserve Board made pursuant thereto, such banks should retain their full charter and statutory rights as State banks or trust companies and might continue to exercise all corporate powers granted by the States in which they were created.

On October 13, 1917, the President of the United States appealed to the State banks and trust companies to become members of the Federal Reserve System for patriotic purposes, saying that, "The extent to which our country can withstand the financial strains for whichwe must be prepared will depend very largely upon the strength and staying power of the Federal Reserve Banks." (Ann. Rep. F.R. Board, 1917, p. 9.)

Notwithstanding these concessions by Congress and this appeal of President Wilson, however, there were only 936 State member banks with resources aggregating $7,338,813,000 in the Federal Reserve System on January 1, 1919. Only 11 per cent of the State banks had become members of the Federal Reserve System, and these banks held only 54.5 per cent of the resources of all State banks and trust companies in the country. (Ann. Rep. F.R.Board, 1918, pp. 26 and 27.)

Moreover, at the peak of State bank membership, which occurred on June 30, 1922, there were only 1648 State banks and trust companies which were members of the Federal Reserve System out of a total of approximately 20,000 State banks and trust companies in the country; and the member

State banks and trust companies held only 51 per cent of the total resources of all State banks and trust companies. (Ann. Rep. F.R. Board, 1922, p. 29; Ann. Rep. Comp. Cur., 1931, pp. 3, 5). And on June 30, 1932, there were only 835 State member banks and trust companies in the Federal Reserve System.

Furthermore, the amendments of June 21, 1917, which were enacted in order to induce State banks to become members of the Federal Reserve System voluntarily, had greatly weakened the control of the Federal Government over State member banks; the successive amendments to the National Bank Act, which were intended to enable National banks to compete more effectively with State banks, had materially lowered the standard previously set by the National Bank Act; the "better supervision of banking", which is one of the major purposes of the Federal Reserve Act, had been seriously impeded; and the ten years 1921 to 1931 witnessed numerous failures of State member banks and a larger number of failures of National banks than had occurred previously in the entire history of the National Banking System from 1863 to 1921.

Mr. Eugene Meyer, then Managing Director of the War Finance Corporation, made the following statement on January 31, 1923, in testifying before the Committee on Banking and Currency of the House of Representatives (Hearings on S. 4280, 67th Congress, Part I, p. 56):

> "There are necessarily many difficulties involved in our dual system of banking. We have a State banking system, a national banking system, and a Federal reserve system, the latter having a membership derived from both

the State and the national systems. The State banking departments supervise the State banks, and the Comptroller of the Currency supervises the national banks, while the Federal reserve system has a supervision of its own for the member banks, and there has been at times some disposition to competition between the State and the national banking systems.

"The State banking laws frequently permit practices which national banks can not legally engage in. This is creating competition between the two systems which can not be regarded as wholesome and may lead to the gradual weakening of both. * * * The competition that exists at the present time between State and national banks can not fail to remind one of the competition that prevailed a generation ago among the various States seeking to become domiciles for corporations--a competition that was based upon the laxity of the laws governing incorporation. Nothing could be more disastrous than competition between the State and national banking groups, based upon competition in laxity." (Italics supplied)

In testifying before the Committee on Ways and Means of the House of Representatives on April 27 and 28, 1932, in his capacity as Governor of the Federal Reserve Board and Chairman of the Board of Directors of the Reconstruction Finance Corporation and in the light of his experience as Managing Director of the War Finance Corporation, Mr. Eugene Meyer discussed this subject again. (Hearings re Payment of Adjusted Service Certificates, 72nd Congress, 1st Session, pp. 631, 642, 643). His testimony was, in part, as follows:

"Personally I feel, as I stated to a subcommittee of the Banking and Currency Committee the other day, that we will never have a satisfactory banking system in the United States until banks of deposit, commercial banks, can be gathered under one chartering, supervising, and regulatory power. The constant competition between State and National banking systems has resulted in a weakening of the laws and the safeguards of both systems which I think contributed in no small degree to the ex-

cesses of the inflation period and to the suffering of the deflation period. The minds of the committees charged with banking and currency responsibilities are engaged in studying this problem.

** ** **

"I am entirely in favor of maintaining State rights to the extent that they can properly be maintained. But there are various functions over which the Federal Government has had to assume jurisdiction. We have the postal service and have had it since the beginning of the Government. As other activities become national and interstate on a greater scale, I feel that we must take account of these changed conditions. We must have elasticity in our conception of decentralization and the advantage of local control when there are vital changes in financial and economic conditions."

This subject was also discussed by Mr. Owen D. Young, Deputy Chairman of the Federal Reserve Bank of New York, in his testimony before the subcommittee of the Senate Committee on Banking and Currency on February 4, 1931. (Hearings pursuant to Senate Resolution No. 71 of the 71st Congress, pp. 353 et seq.). He said:

"I want to say, first, Mr. Chairman, * * that all commercial deposit banking in the United States should be carried on under one law, that examination of banks and their control should be under one authority. Their reserves should be mobilized in the Federal Reserve system. Then we could develop for the country as a whole a sound banking system, and definitely fix responsibility. That would mean that all banks of deposit, as distinguished from savings, should be national banks.

"As it is now, banks are chartered both by the National Government and by each of the 48 States. They are in competition, each endeavoring to offer the most attractive charters and the most liberal laws, to say nothing of the liberality of administrative officials in interpreting the laws. The national banking act has to compete not only with the most conservative States but the most liberal ones. Consequently,

there has been a constant tendency to liberalize banking laws and to weaken their administration. In such cases the argument is always made that it is desirable to liberalize the law so as to enable the banks to be of great service to borrowers.

"The first question always regarding banks doing a demand deposit business should be the safety of the deposits and the ability of the bank to return them to depositors instantly on request, unless they be time deposits. No thought of service to borrowers should be permitted to impair the safety and security of deposits. Banks of deposit are, after all, primarily custodians of liquid funds. Only such use of such funds should be permitted as may be consistent with the interests of the depositors.

"In the early years of our Government, our business was largely done by currency moving from hand to hand. It was felt at that time, and properly so, that we should have a national and uniform currency. Consequently, Congress was given power to coin money and regulate the value thereof. This power was made effective as to paper money by the national bank act. Now our business is carried on mostly by transfers of bank deposits, currency forming only a small part of our money transfers. If control of our currency were necessary in the beginning by the Federal Government, control of our bank deposits by it now would seem desirable. We have transferred, either affirmatively or by acquiescence, many powers to the Federal Government which ought not to be there. I am bitterly opposed to the impairment of the rights of the States in their appropriate field. It does seem strange, however, that in the face of such gravitation toward Federal authority, we should have retained divided rather than unified power over our deposit banking system.

"Except for the currency in our pockets, our banks of deposit hold the liquid capital of the people of the United States. The transfer of this capital from one of us to another, promptly and safely, should be facilitated. That means, however, that every bank of deposit is truly engaged in a national business. Its soundness and safety is of concern to our people everywhere. Our business of deposit banks is not local in character; it is, and should be, national. Therefore, in my judgment, it should be governed by the national law.

** ** ** ** ** **

"I should hope, sir, that you might find a way to bring

all State banks holding themselves out to do a national business and carrying demand deposits into the Federal reserve system by compulsion."

Having failed to accomplish fully its purposes by creating the Federal Reserve System and inviting State banks to become members voluntarily and by modifying the safeguards contained in the National Bank Act and the Federal Reserve Act, in order to encourage the organization of National banks and to induce State banks to become members of the Federal Reserve System, Congress may resort to other measures. It can abandon inducement and resort to compulsion. In other words, it can prevent the transaction of a commercial banking business except by National banks, which must be members of the Federal Reserve System.

That Congress has the power to adopt this means to accomplish its great objects follows necessarily from the fundamental principles established by the Supreme Court of the United States in its decision in the case of McCulloch v. Maryland and the other cases discussed above; but there are also other reasons and additional authorities for this conclusion.

II. THE POWER TO PROVIDE A NATIONAL CURRENCY.

A separate and independent ground for the above conclusion and an effective method of bringing all commercial banking into the National Banking System is found in the measures adopted by Congress to provide a National currency for the Nation and in the decisions of the Supreme Court regarding the constitutionality of such measures.

By the Act of March 3, 1865 (13 Stat. 484), later reenacted as the Act of July 13, 1866, (14 Stat. 146), Congress imposed a tax of 10 per cent

on the circulating notes of State banks paid out by National or State banks. The avowed purpose of this legislation was to create a uniform currency by driving the circulating notes of State banks out of existence and, if necessary, by driving all State banks into the National Banking System; and the Supreme Court of the United States upheld its constitutionality. Veazie Bank v. Fenno (1869), 8 Wall. 533, 19 L. Ed. 482.

How near this legislation came to creating a unified banking system is indicated by the fact that up to November 15, 1864, there were only 584 National banks with capital aggregating $81,961,450 and, by October 1, 1865, there were 1,566 National banks capitalized at $276,219,450. In 1862, prior to the passage of the National Bank Act there were 1,492 State banks; in July, 1864, there were 467 National banks and 1,089 State banks; in 1865 there were 1294 National banks and 349 State banks; in 1866, there were 1634 National banks and 297 State banks; and by 1868, the number of State banks fell to 247, the lowest figure for any time since 1857. (Report, National Monetary Commission, Volume 5, pp. 22, 103; Annual Report, Comp. Cur., 1931, p. 3.)

It is appropriate, therefore, to examine in this connection not only the legal basis for the decision of the Supreme Court in the case of Veazie Bank v. Fenno, but also the circumstances giving rise to that opinion. While the situation then confronting Congress assumed a different form, the problem of the Sixties and the method of its solution furnish a guide to the method of dealing with the problem of effecting desirable reforms in our present banking system.

In his report to Congress dated November 28, 1863, (p. 57) the Comptroller of the Currency said:

"* * * The idea that the national banks cannot supersede the State banks without breaking them down and ruining their stockholders is an erroneous one, and can only be honestly entertained by those who have not carefully considered the subject or noticed the process of conversion, which has changed some banks in the west, and is changing others in the east, from one system to the other. No war is being waged, or is intended to be waged, by the national system upon State institutions. So far from it, it opens the way by which the interests of stockholders can be protected, at the same time that the character of their organizations is changed.

"* * * The amount of losses which the people have sustained by insolvent State banks, and by the high rate of exchanges--the result of a depreciated currency--can hardly be estimated. That some of the new States have prospered, notwithstanding the vicious and ruinous banking systems with which they have been scourged, is evidence of the greatness of their resources and the energy of their people. The idea has at last become quite general among the people that the whole system of State banking, as far as circulation is regarded, is unfitted for a commercial country like ours. The United States is a nation as well as a union of States. Its vast railroad system extends from Maine to Kansas, and will soon be extended to the Pacific ocean. Its immense trade is not circumscribed by State lines, nor subject to State laws. Its internal commerce is national, and so should be its currency. At present some fifteen hundred State banks furnish the people with a bank-note circulation. This circulation is not confined to the States by which it is authorized, but is carried by trade or is forced by the banks all over the Union. People receive it and pay it out, scarcely knowing from whence it comes or in what manner it is secured. Banks have been organized in some States with a view to lending their circulation to the people of others. Probably not one quarter of the circulation of the New England banks is needed or used in New England--the balance being practically loaned to other States. The national currency system is intended to change this state of things, not by a war upon the State banks, but by providing a means by which the circulation which is intended for national use shall be based upon national securities through associations organized under a national law." (Italics supplied)

In his report of November 25, 1864, (p. 54) the Comptroller of the Currency said:

> "As long as there was any uncertainty in regard to the success of the national banking system, or the popular verdict upon its merits and security, I did not feel at liberty to recommend discriminating legislation against the State banks. It is for Congress to determine if there is any longer a reasonable uncertainty on these points, and if the time has not arrived when all these institutions should be compelled to retire their circulation. It is indispensable for the financial success of the treasury that the currency of the country should be under the control of the government. This cannot be the case as long as State institutions have the right to flood the country with their issues. As a system has been devised under which State banks, or at least as many of them as are needed, can be reorganized, so that the government can assume a rightful control over bank note circulation, it could hardly be considered oppressive if Congress should prohibit the further issue of bank notes not authorized by itself, and compel, by taxation, (which should be sufficient to effect the object without being oppressive,) the withdrawal of those which have been already issued. My own opinion is, that this should be done, and that the sooner it is done the better it will be for the banks themselves and for the public. As long as the two systems are contending for the field, (although the result of the contest can be no longer doubtful,) the government cannot restrain the issue of paper money; and as the preference which is everywhere given to a national currency over the notes of the State banks indicates what is the popular judgment in regard to the merits of the two systems, there seems to be no good reason why Congress should hesitate to relieve the treasury of a serious embarrassment, and the people of an unsatisfactory circulation." (Italics supplied)

The circumstances giving rise to the enactment of the Act of March 3, 1865, and the purposes sought to be accomplished thereby were graphically described by Senator Sherman, Chairman of the Finance Committee, when he reported the Bill to the Senate on February 27, 1865. His entire speech is worthy of careful study; but the following quotations will suffice. (Congressional Globe, 38th Congress, 2nd Session, pp. 1138, 1139.)

"The people of the United States having definitely determined to prosecute war, it only remained for Congress to provide the ways and means to carry it on. * * * * I still think that with parsimonious economy and heavy taxes from the beginning, we might have borrowed money enough on a specie basis to have avoided a suspension of specie payments; but when it came we were without a currency and without a system of taxation. Gold disappeared and was hoarded by banks and individuals. It flowed in a steady stream from our country. By the Sub-Treasury act we could not use the irredeemable bills of State banks, and with the terrible lessons of 1815 and 1837 staring us in the face, no one was bold enough to advise us to make as a standard of value the issues of fifteen hundred banks founded upon as many banking systems as there were States. Under these circumstances we had but one resource.

"We had to borrow vast sums, and as a means to do it we had to make a currency. This was done by the issue of United States notes. Subsequently, to unite the interests of private capital with the security of the Government as a basis of banking, we established a system of national banks, and upon this currency, as a medium for collecting taxes and borrowing money, have waged a war unexampled in the grandeur of its operations, and, as I trust, soon to be crowned with unconditional success.

** ** ** ** ** **

"A still more important feature of this bill is the section to compel the withdrawal of State bank notes. As the volume of currency affects the price of all commodities, I have no doubt the amount of such paper money now outstanding adds to the cost of our purchases $50,000,000. The refusal of Congress, at the last session, to pass restrictive measures to compel its redemption has seriously affected the value of our currency. The national banks were intended to supersede the State banks. Both cannot exist together; yet, while the national system is extending, the issues of State banks have not materially decreased. Indeed, many local banks have been converted into national banks, and yet carefully keep out their State circulation. They exact interest from the people on this circulation, and yet avail themselves of the benefits of the new system. They transfer their capital to national banks, issue new circulation upon it, and yet studiously keep out the old. They issue two circulations upon the same capital. It is far better at once to abandon the national banking system than to leave it as a cloak for outstanding State issues.

"If the State banks have power enough in Congress to prolong their existence beyond the present year, we had better suspend the organization of national banks. As the first

friend of this measure in the Senate, I would vote today for its repeal rather than allow it to be the agency under which State banks can inflate our currency. And the power of taxation cannot be more wisely exercised than in harmonizing and nationalizing and placing on the secure basis of national credit all the money of the country." (Italics supplied)

The various legislative steps leading up to the passage of the Act of July 13, 1866, were stated as follows in the opinion of the Supreme Court in the case of Veazie Bank v. Fenno by Mr. Chief Justice Chase, who had been Secretary of the Treasury during the events related (8 Wall. 536-540):

"At the beginning of the rebellion the circulating medium consisted almost entirely of bank notes issued by numerous independent corporations variously organized under State legislation, of various degrees of credit, and very unequal resources, administered often with great, and not unfrequently with little skill, prudence and integrity. The acts of Congress, then in force, prohibiting the receipt or disbursement, in the transactions of the National government, of anything except gold and silver, and the laws of the States requiring the redemption of bank notes in coin on demand, prevented the disappearance of gold and silver from circulation. There was, then, no National currency except coin; there was no general regulation of any other by National legislation; and no National taxation was imposed in any form on the State bank circulation.

"The first act authorizing the emission of notes by the Treasury Department for circulation was that of July 17th, 1861. The notes issued under this act were treasury notes, payable on demand in coin. * * *

"On the 31st of December, 1861, the State banks suspended specie payment. Until this time the expenses of the war had been paid in coin, or in the demand notes just referred to; and, for some time afterwards, they continued to be paid in these notes, which, if not redeemed in coin, were received as coin in the payment of duties.

"Subsequently, on the 25th of February, 1862, a new policy became necessary in consequence of the suspension and of the condition of the country, and was adopted. The notes hitherto issued, as has just been stated, were called treasury notes, and were payable on demand in coin. The act now passed author-

ized the issue of bills for circulation under the name of United States notes, made payable to bearer, but not expressed to be payable on demand, * * * .

"This currency, issued directly by the government for the disbursement of the war and other expenditures, could not, obviously, be a proper object of taxation.

"But on the 25th of February, 1863, the act authorizing National banking associations was passed, in which, for the first time during many years, Congress recognized the expediency and duty of imposing a tax upon currency. By this act a tax of two per cent. annually was imposed on the circulation of the associations authorized by it. Soon after, by the act of March 3d, 1863, a similar but lighter tax of one per cent. annually was imposed on the circulation of State banks, in certain proportions to their capital, and of two per cent. on the excess; and the tax on the National associations was reduced to the same rates.

** ** ** ** ** **

"At a later date, by the act of June 3d, 1864, which was substituted for the act of February 25th, 1863, authorizing National banking associations, the rate of tax on circulation was continued and applied to the whole amount of it, and the shares of their stockholders were also subjected to taxation by the States; and a few days afterwards, by the act of June 30, 1864, to provide ways and means for the support of the government, the tax on the circulation of the State banks was also continued at the same annual rate of one per cent. as before, but payment was required in monthly instalments of one-twelfth of one per cent. with monthly reports from each State bank of the amount in circulation.

"It can hardly be doubted that the object of this provision was to inform the proper authorities of the exact amount of paper money in circulation, with a view to its regulation by law.

"* * * The act just referred to was * * * followed some months later by the act of March 3d, 1865, amendatory to the prior internal revenue acts, the sixth section of which provides, 'that every National banking association, State bank, or State banking association, shall pay a tax of ten per centum on the amount of the notes of any State bank, or State banking association, paid out by them after the 1st day of July, 1866'.

"The same provision was re-enacted, with a more extended application, on the 13th of July, 1866, in these words: 'Every National banking association, State bank, or State banking association, shall pay a tax of ten per centum on the amount of notes of any person, State bank, or State banking association used for circulation, and paid out by them after the first day of August, 1866, and such tax shall be assessed and paid in such manner as shall be prescribed by the Commissioner of Internal Revenue.'

"The constitutionality of this last provision is now drawn in question, and this brief statement of the recent legislation of Congress has been made for the purpose of placing in a clear light its scope and bearing, especially as developed in the provisions just cited. It will be seen that when the policy of taxing bank circulation was first adopted in 1863, Congress was inclined to discriminate for, rather than against, the circulation of the State banks; but that when the country had been sufficiently furnished with a National currency by the issues of United States notes and of National bank notes, the discrimination was turned, and very decidedly turned, in the opposite direction."

Let us consider the present problem in the light of past experience: By the Revenue Act of 1932, approved June 6, 1932, Congress recently imposed a tax of 2 cents on each check, without making any distinction between checks drawn on State banks and those drawn on National banks. Is there any reason why Congress could not increase this tax to 10 per cent of the amount of each check but exempt therefrom the checks drawn upon National banks and Federal reserve banks, the instrumentalities which it has created to aid the Government in the performance of certain important functions?

While there are other grounds for holding that Congress could do so, adequate grounds for such a conclusion are contained in the reasons given by Mr. Chief Justice Chase for the court's decision in the case of Veazie Bank v. Fenno.

After disposing of the contentions that the tax was a direct tax and had not been apportioned among the States, as required by the Constitution, and that the act imposing the tax impaired a franchise granted by the State, which it was urged Congress had no right to do, he stated and disposed of the principal question as follows (8 Wall. 548-550):

> "It is insisted, however, that the tax in the case before us is excessive, and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the Bank, and is, therefore, beyond the constitutional power of Congress.
>
> "The first answer to this is that the Judicial cannot prescribe to the Legislative Departments of the Government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the Legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a corporation, or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution.
>
> "But there is another answer which vindicates equally the wisdom and the power of Congress.
>
> "It cannot be doubted that under the Constitution the power to provide a circulation of coin is given to Congress. And it is settled by the uniform practice of the government and by repeated decisions, that Congress may constitutionally authorize the emission of bills of credit. It is not important here to decide whether the quality of legal tender, in payment of debts, can be constitutionally imparted to these bills; it is enough to say, that there can be no question of the power of the government to emit them; to make them receivable in payment of debts to itself; to fit them for use by those who see fit to use them in all the transactions of commerce; to provide for their redemption; to make them a currency, uniform in value and description, and convenient and useful for circulation. These powers, until recently, were only partially and occasionally exercised. Lately, however, they have been called into full activity, and Congress has undertaken to supply a currency for the entire country.

"The methods adopted for the supply of this currency were briefly explained in the first part of this opinion. It now consists of coin, of United States notes, and of the notes of the national banks. Both descriptions of notes may be properly described as bills of credit, for both are furnished by the government; both are issued on the credit of the government; and the government is responsible for the redemption of both; primarily as to the first description, and immediately upon default of the bank, as to the second. When these bills shall be made convertible into coin, at the will of the holder, this currency will, perhaps, satisfy the wants of the community, in respect to a circulating medium, as perfectly as any mixed currency that can be devised.

"Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end, Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile.

"Viewed in this light, as well as in the other light of a duty on contracts or property, we cannot doubt the constitutionality of the tax under consideration." (Italics supplied)

Likewise, having undertaken to provide an elastic currency for the country by enacting the Federal Reserve Act, which authorized the issuance of Federal reserve notes through the Federal reserve banks, Congress may constitutionally secure the benefit of that currency to the people by appropriate legislation.

Federal reserve notes are secured by the assets of Federal reserve banks; and the Federal reserve banks depend largely upon their member banks to furnish the assets required for this purpose. They derive all their cap-

ital from subscriptions by member banks to their capital stock and most of their deposits consist of the legal reserves deposited with them by their member banks.

In normal times, Federal reserve notes are secured largely by eligible paper acquired by the Federal reserve banks from their member banks, and, as pointed out by the Federal Reserve Board in the circular quoted in part above, the Federal Reserve Act contemplated the creation of a banking system which would include most, if not all, of the commercial banks in the country.

This result not having been accomplished by the methods heretofore adopted, it would seem clear that Congress has the power to enact appropriate legislation in order to preserve for the Nation the full benefits of the flexible currency which it undertook to provide by the enactment of the Federal Reserve Act. If it finds that, in order to accomplish this purpose, it is necessary to prevent the transaction of a commercial banking business except by National banks, which must be members of the Federal Reserve System, Congress may constitutionally adopt this means and the courts will not interfere; because the degree of the necessity for the enactment of such legislation is a question of legislative discretion, not of judicial cognizance. McCulloch v. Maryland.

At one time it was contended that Congress is not authorized to provide the people of the United States with a National currency, that the only power of this general character granted to it was the power to coin money and regulate the value thereof, and that this power is confined to matters pertaining to metallic money.

Such an argument was answered, however, in the decision of the Supreme Court of the United States in the Legal Tender Cases (1871), 12 Wall. 457, 20 L. Ed. 287, wherein the Supreme Court upheld the validity of certain acts of Congress making United States notes and Treasury notes legal tender for the payment of debts. In that case, the Court, speaking through Mr. Justice Strong, said (544-546):

> "It is not easy to see why, if State bank notes can be taxed out of existence for the purposes of indirectly making United States notes more convenient and useful for commercial purposes, the same end may not be secured directly by making them a legal tender.
>
> "* * * The Constitution was intended to frame a government as distinguished from a league or compact, a government supreme in some particulars over States and people. It was designed to provide the same currency, having a uniform legal value in all the States. It was for this reason the power to coin money and regulate its value was conferred upon the Federal government, while the same power as well as the power to emit bills of credit was withdrawn from the States. The States can no longer declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in Congress. If the power to declare what is money is not in Congress, it is annihilated. * * * it might be argued with much force that when it is considered in what brief and comprehensive terms the Constitution speaks, how sensible its framers must have been that emergencies might arise when the precious metals (then more scarce than now) might prove inadequate to the necessities of the government and the demands of the people--when it is remembered that paper money was almost exclusively in use in the States as the medium of exchange, and when the great evil sought to be remedied was the want of uniformity in the current value of money, it might be argued, we say, that the gift of power to coin money and regulate the value thereof, was understood as conveying general power over the currency, the power which had belonged to the States, and which they surrendered." (Italics supplied)

In a separate concurring opinion, Mr. Justice Bradley said (p. 562):

> "Another ground of the power to issue treasury notes or bills is the necessity of providing a proper currency

for the country, and especially of providing for the failure or disappearance of the ordinary currency in times of financial pressure and threatened collapse of commercial credit. Currency is a national necessity. The operations of the government, as well as private transactions, are wholly dependent upon it. The State governments are prohibited from making money or issuing bills. Uniformity of money was one of the objects of the Constitution. The coinage of money and regulation of its value is conferred upon the General government exclusively. That government has also the power to issue bills. It follows, as a matter of necessity, as a consequence of these various provisions, that it is specially the duty of the General government to provide a National currency. The States cannot do it, except by the charter of local banks, and that remedy, if strictly legitimate and constitutional, is inadequate, fluctuating, uncertain, and insecure, and operates with all the partiality to local interests, which it was the very object of the Constitution to avoid. But regarded as a duty of the General government, it is strictly in accordance with the spirit of the Constitution, as well as in line with the national necessities." (Italics supplied)

The tax imposed by the Act of July 13, 1866, accomplished the object of eliminating the circulating notes of State banks and thus giving us a National currency of uniform value; but it has not accomplished the object of eliminating the competition of State banks and thus creating a unified commercial banking system as a basis for that currency.

Prior to the Civil War, banks derived most of their profits from the issuance of circulating notes and relied to a much lesser extent than they do now on deposits as a source of earning power. In fact, the amount of their circulating notes frequently exceeded the amount of their deposits. (Rep. National Monetary Commission, Vol. 5, pp. 16, 27.) It was expected, therefore, that the imposition of a prohibitive tax on their circulating notes would cause all State banks either to convert into National banks or to go out of business.

A way was soon found, however, to conduct a profitable banking business without issuing circulating notes. It was through the development of the use of checks in lieu of currency as a means of payment. This was convenient to depositors and profitable to the banks, since the latter could enjoy the use of the money pending its withdrawal and even while the checks were in process of collection; and the practice was encouraged by National banks as well as State banks. Moreover, arrangements facilitating the easy flow of checks throughout the country made the use of checks so popular that it has been estimated that, at the present time, more than 90 per cent of all payments are made by means of checks.

Checks, therefore, have to a very large extent taken the place of currency as a medium of payment; and State banks, operating under laws allowing a greater latitude and requiring less rigorous supervision and regulation than the National Bank Act, have grown in number until, in the peak year of 1921, there were 20,349 State banks (other than mutual savings banks) compared with 8,154 National banks and, in 1931, there were 13,728 State banks compared with 6,805 National banks. The reduction in the number of banks of both classes resulted principally from failures and consolidations. (Ann. Rep. Compt. Currency, 1931, p. 3.)

Moreover, with the return of the predominance of State banks, many of the disadvantages of a heterogeneous banking structure have reappeared in another form; and checks, which have replaced currency as the principal medium of payment, frequently prove to be an ineffective medium. Checks go unpaid because the banks upon which they were drawn have failed. Bal-

ances against which depositors expected to draw checks in settlement of their business transactions are unavailable for that purpose, because the banks have closed their doors.

Not only has the effective operation of the National Banking System and the Federal Reserve System been seriously impaired by the "competition in laxity" of bank regulation and supervision, described in the statements of Governor Meyer and Mr. Owen D. Young quoted above, but the proportion of National banks to the total number of commercial banks in the country has fallen from 87 per cent in 1868 to 33 per cent in 1931; and only 38 per cent of all the commercial banks were members of the Federal Reserve System in 1931. A material portion of commercial banking business, therefore, is conducted outside of the Federal Reserve System and contributes nothing to the basis for our currency.

The tax on circulating notes having become ineffective as a result of the use of checks in lieu of currency, Congress has the right to bring the Act of July 13, 1866, up to date by making the tax applicable to checks drawn on State banks.

III. THE POWER TO REGULATE AND PROTECT INTERSTATE COMMERCE.

Either one of the two grounds discussed above is sufficient to sustain the conclusion herein reached; but there is still another separate ground upon which the same conclusion could be sustained independently. The right to enact legislation to make banks more reliable instrumentalities of interstate commerce is included in the power granted to Congress by Section 8 of Article 1 of the Constitution, "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

In a long series of decisions, this clause of the Constitution has been held to give Congress control over all phases of interstate commerce, as well as over all other matters so connected with interstate commerce as to require Congressional control over them in order to make effective the control over such commerce itself. The rule of these decisions is that "commerce" does not include merely the transfer of goods, but that the proper regulation of commerce must include the regulation of all aspects of commerce and of all instrumentalities upon which the carrying on of commerce depends. Mondou v. New York, New Haven, and Hartford R. R. Co., 223 U. S. 1, 32 Sup. Ct. 169. Since the transportation system of the country is regarded as an essential instrumentality to this end, it has, under the Commerce Clause, been subjected to Congressional regulation on a vast scale. Railroad cars not used in interstate commerce, but which may be placed in the same train with those that are, must conform to the Federal Safety Appliance Act. Southern Railway Co. v. United States, 222 U. S. 20, 32 Sup. Ct. 2. Intrastate freight rates are subjected to Federal regulation when they interfere with interstate rates. Railroad Commission of Wisconsin v. Chicago, B. and Q. R. R. Co., 257 U. S. 563, 42 Sup. Ct. 232. The issuance of fraudulent bills of lading is punishable under a Federal statute, even when they cover no interstate shipment. United States v. Ferger, 250 U. S. 199, 39 Sup. Ct. 445. Stockyards, although engaged in dealing locally in live stock, are subjected to Federal control, because they are essential cogs in the machinery of interstate commerce. Stafford v. Wallace, 258 U. S. 495, 42 Sup. Ct. 397. The same is true of the principal grain markets. Board of Trade of City of Chicago v. Olsen, 262 U. S. 1, 43 Sup. Ct. 470. The decisions contain many other examples of a similar nature.

Although the courts have held that the powers of Congress under the Commerce Clause extend to a great variety of matters related to commerce--from the quality of radio broadcasting stations to the criminality of traffic in certain articles--no judicial interpretation nor any extension of the literal terms of that Clause is necessary to make it include the very essentials of commerce, i.e., the acts of transferring the goods and of transmitting the consideration for them. The one is as essential as the other. A breakdown in the means of payment would be as disastrous as a breakdown in the means of shipment, since virtually every commercial transaction requires the services of a commercial bank for its consummation.

That the power to regulate commerce among the several States includes the power to remove obstructions and impediments to such commerce and to regulate the instrumentalities as well as the articles of that commerce is too well settled by numerous decisions of the Supreme Court to require argument. No attempt will be made, therefore, to review the multitude of decisions of the Supreme Court regarding the extent of this important power. A few leading cases will suffice.

The scope of the power of Congress over interstate commerce was stated concisely by the Supreme Court in Mondou v. New York, N. H. & H. R. R. Co. (1911), 223 U. S. 1, 32 Sup. Ct. 169, wherein the Court sustained the validity of the Federal Employees' Liability Act and reaffirmed the power of Congress to determine the necessity for, and to enact, uniform National legislation to replace the variant State legislation governing the same subject (pp. 173, 174):

"The clauses in the Constitution (art. I., sec. 8, clauses 3 and 18) which confer upon Congress the power 'to regulate commerce * * * among the several states,' and 'to make all laws which shall be necessary and proper' for the purpose, have been considered by this court so often and in such varied connections that some propositions bearing upon the extent and nature of this power have come to be so firmly settled as no longer to be open to dispute, among them being these:

"1. The term 'commerce' comprehends more than the mere exchange of goods. It embraces commercial intercourse in all its branches, including transportation of passengers and property by common carriers, whether carried on by water or by land.

"2. The phrase 'among the several states' marks the distinction, for the purpose of governmental regulation, between commerce which concerns two or more states and commerce which is confined to a single state and does not affect other states,-- the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the states severally.

"3. 'To regulate,' in the sense intended, is to foster, protect, control, and restrain, with appropriate regard for the welfare of those who are immediately concerned and of the public at large.

"4. This power over commerce among the states, so conferred upon Congress, is complete in itself, extends incidentally to every instrument and agent by which such commerce is carried on, may be exerted to its utmost extent over every part of such commerce, and is subject to no limitations save such as are prescribed in the Constitution. But, of course, it does not extend to any matter or thing which does not have a real or substantial relation to some part of such commerce." (Italics supplied)

That these considerations apply as much to the instruments as to the agents of such commerce, is shown by the brilliant passage which immediately follows in the opinion (p. 174) :

"As is well said in the brief prepared by the late Solicitor General: 'Interstate commerce---if not always, at any rate when the commerce is transportation--is an act. Congress, of course, can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or inter-

> ruption, or to make that act more secure, more reliable, or more efficient. The act of interstate commerce is done by the labor of men and with the help of things; and these men and things are the agents and instruments of the commerce. If the agents or instruments are destroyed while they are doing the act, commerce is stopped; if the agents or instruments are interrupted, commerce is interrupted; if the agents or instruments are not of the right kind or quality, commerce in consequence becomes slow or costly or unsafe or otherwise inefficient; and if the conditions under which the agents or instruments do the work of commerce are wrong or disadvantageous, those bad conditions may and often will prevent or interrupt the act of commerce or make it less expeditious, less reliable, less economical, and less secure. Therefore, Congress may legislate about the agents and instruments of interstate commerce, and about the conditions under which those agents and instruments perform the work of interstate commerce, whenever such legislation bears, or, in the exercise of a fair legislative discretion, can be deemed to bear, upon the reliability or promptness or economy or security or utility of the interstate commerce act.'" (Italics supplied)

If banks are destroyed, commerce is stopped; if banks are suspended, commerce is interrupted; if banks are not of the right kind or quality, "commerce in consequence becomes slow or costly or unsafe or otherwise inefficient"; and if the laws, regulations and supervision under which banks perform their functions are wrong or inadequate, "these bad conditions may and often will prevent or interrupt the act of commerce or make it less expeditious, less reliable, less economical, and less secure". Therefore, it would seem that Congress may legislate about banks as agents and instruments of interstate commerce and may prescribe the conditions under which banks perform the work of finally consummating transactions in interstate commerce, "whenever such legislation bears, or, in the exercise of a fair legislative discretion, can be deemed to bear, upon the reliability or promptness or economy or security or utility" of the act of interstate commerce.

The fundamental incentive for interstate commerce is profit; and no transaction in interstate commerce is finally consummated until payment has been received for the goods which have been sold and shipped. In many instances, the very act of shipping goods in interstate commerce is inseparably connected with the forwarding, through a series of banks, or bills of lading attached to bills of exchange which must be paid or accepted before the goods are released. The ultimate payment which constitutes the object and the final act of nearly every transaction in interstate commerce is made by means of a check drawn upon a bank in one State in favor of a payee in another State; and such checks are forwarded for collection through a series of banks scattered over at least two, and frequently more, different States. Banks, therefore, are essential instrumentalities of interstate commerce.

Nearly every bank failure delays or prevents the final consummation of numerous transactions in interstate commerce by preventing or delaying the payment of the checks given in settlement therefor; and Congress clearly would be justified in finding that a heterogeneous banking system in which there have been more than 10,000 suspensions involving deposits amounting to nearly 5 billion dollars since 1920, is a burden upon and an obstruction to interstate commerce.

Since "Congress * * * can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption, or to make the act more secure, more reliable, or more efficient", it would seem clear that Congress can create a unified banking system in order to remove such an

obstruction and burden to interstate commerce.

In Houston, etc. R. Co. v. United States (1914), 234 U. S. 342, 34 Sup. Ct. 833, wherein the Supreme Court sustained the validity of an Act of Congress regulating purely intrastate freight rates when such rates were found by the Interstate Commerce Commission to interfere with interstate rates, the Court said: (p. 836)

> "It is unnecessary to repeat what has frequently been said by this court with respect to the complete and paramount character of the power confided to Congress to regulate commerce among the several states. It is of the essence of this power that, where it exists, it dominates. Interstate trade was not left to be destroyed or impeded by the rivalries of local government. The purpose was to make impossible the recurrence of the evils which had overwhelmed the Confederation, and to provide the necessary basis of national unity by insuring 'uniformity of regulation against conflicting and discriminating state legislation.' By virtue of the comprehensive terms of the grant, the authority of Congress is at all times adequate to meet the varying exigencies that arise, and to protect the national interest by securing the freedom of interstate commercial intercourse from local control." (Italics supplied)

It has been recognized that one of the principal reasons for subjecting interstate commerce and matters related to it to National rather than local regulation is the fact that interstate commerce "is of National importance, and admits and requires uniformity of regulation." Walton v. Missouri (1876), 91 U. S. 275.

In Mondou v. New York, N. H. & H. R. Co., supra, the court said: (p. 175)

> "We are not unmindful that that end was being measurably attained through the remedial legislation of the several states, but that legislation has been far from uniform, and it undoubtedly rested with Congress to determine whether a national law, operating uniformly in all the states, upon all carriers by

railroad engaged in interstate commerce, would better subserve the needs of that commerce." (Italics supplied)

Obviously the same principle applies to banks or a banking system which Congress has created. See Easton v. Iowa, supra, wherein the Court said that the national bank legislation "has in view the erection of a system extending throughout the country, and independent so far as powers conferred are concerned, of State legislation which, if permitted to be applicable might impose limitations and restrictions as various and as numerous as the States".

It is not only within the power of Congress, therefore, to create a unified banking system in order to remove existing impediments and obstructions to interstate commerce resulting from the existence of 48 different State banking systems, but it is also right, meet and proper for Congress to do so, since the object is a National one which can be dealt with effectively only by the National legislature.

This conclusion is not based upon the theory that the banking business is itself commerce, but upon the fact that banks are instrumentalities of interstate commerce and that an unsound and unsatisfactory banking system is a burden upon and an impediment to interstate commerce.

If, therefore, Congress decides to solve this problem through the exercise of its powers over interstate commerce and as a means to removing an obstruction to interstate commerce, it need not confine the legislation to transactions of an interstate character, but may legislate for the banking system as a whole; since every commercial bank actually functions as an instrumentality of interstate commerce and every failure of a commercial bank obstructs and impedes the consummation of numerous transactions in interstate commerce.

The effective regulation of interstate commerce requires the regulation of some matters which in and of themselves are not interstate commerce, but which have a direct relationship to such commerce. In other words, if the transaction which is of itself purely intrastate is a vital part of interstate commerce, the regulation of that transaction may be undertaken by Congress under the Commerce Clause.

In Stafford v. Wallace (1922), 258 U. S. 495, 42 Sup. Ct. 397, the Court considered the validity of an Act of Congress which, among other things, provided for Federal supervision and control of stockyards. The Court found that, although many of their transactions are purely local, the business of the packers and of the stockyards is an integral and essential part of the interstate commerce in live stock and meat, and accordingly held the statute to be a valid exercise of the power conferred on Congress by the Commerce Clause.

In rendering the opinion of the Court, Mr. Chief Justice Taft said (pp. 517, 521):

> "* * * The only question here is whether the business done in the stockyards, between the receipt of the live stock in the yards and the shipment of them therefrom, is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulation. A similar question has been before this court and had great consideration in Swift v. United States, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518. The judgment in that case gives a clear and comprehensive exposition, which leaves to us in this case little but the obvious application of the principles there declared.
>
> ** ** ** ** ** **
>
> "* * * Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regula-

> tory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent." (Italics supplied)

Two cases dealing with Congressional legislation regarding grain futures markets have an important bearing not only upon the right of Congress to regulate the commercial banking business in order to prevent an obstruction to interstate commerce but also upon the proper method of preparing such legislation.

In the first of these cases, Hill v. Wallace (1922), 259 U. S. 44, 42 Sup. Ct. 453, an Act of Congress designed to regulate the conduct of business of Boards of Trade through the exercise of the power of taxation was held to be unconstitutional. In Board of Trade v. Olsen (1923), 262 U. S. 1, 43 Sup. Ct. 470, however, the Court upheld the validity of a statute having the same object, on the ground that it was intended to remove an obstruction or interference with interstate commerce in the form of price manipulation and control in these markets.

Unlike the statute held unconstitutional in Hill v. Wallace, the statute which was sustained as constitutional in Board of Trade v. Olsen clearly stated its relation to interstate commerce. It contained a recital and finding of the facts disclosed in the hearings and committee reports, to the effect that transactions in grain involving sales for future delivery as commonly conducted on boards of trade are affected with a National public interest and that they are susceptible of speculation, manipulation and control resulting in fluctuations in prices which constitute an obstruction to and a burden upon interstate commerce in grain.

With certain exceptions, the Act forbade boards of trade to use the mails or interstate telephone, telegraphic, wireless, or other communication in offering or accepting sales of grain for future delivery or to disseminate prices or quotations thereof, unless such boards of trade are located at terminal markets which have been designated by the Secretary of Agriculture as contract markets, comply with certain regulations and restrictions contained in the Act, and submit to the supervision of the Secretary of Agriculture.

In rendering the opinion of the Court sustaining the constitutionality of the Act, Mr. Chief Justice Taft said (262 U. S. 31-41, 43 Sup. Ct. 475-479):

> "Appellants contend that the decision of this Court in Hill v. Wallace, 259 U. S. 44, is conclusive against the constitutionality of the Grain Futures Act. Indeed in their bill they pleaded the judgment in that case as res judicata in this, as to its invalidity. The act whose constitutionality was in question in Hill v. Wallace was the Future Trading Act (c. 86, 42 Stat. 187). It was an effort by Congress, through taxing at a prohibitive rate sales of grain for future delivery, to regulate such sales on boards of trade by exempting them from the tax if they would comply with the congressional regulations. It was held that sales for future delivery where the parties were present in Chicago, to be settled by offsetting purchases or by delivery, to take place there, were not interstate commerce and that Congress could not use its taxing power in this indirect way to regulate business not within federal control."

** ** ** ** ** **

> "The Grain Futures Act which is now before us differs from the Future Trading Act in having the very features the absence of which we held in the somewhat carefully framed language of the foregoing prevented our sustaining the Future Trading Act. As we have seen in the statement of the case, the act only purports to regulate interstate commerce and sales of grain for future delivery on boards of trade because it finds that by manipulation they have become a constantly recurring

burden and obstruction to that commerce. Instead, therefore, of being an authority against the validity of the Grain Futures Act, it is an authority in its favor."

** ** ** ** ** **

"It is impossible to distinguish the case at bar, so far as it concerns the cash grain, the sales to arrive, and the grain actually delivered in fulfillment of future contracts, from the current of stock shipments declared to be interstate commerce in Stafford v. Wallace, 258 U. S. 495, 42 Sup. Ct. 397, 66 L. Ed. 735. That case presented the question whether sales and purchases of cattle made in Chicago at the stockyards by commission men and dealers and traders under the rules of the stockyards corporation could be brought by Congress under the supervision of the Secretary of Agriculture to prevent abuses of the commission men and dealers in exorbitant charges and other ways, and in their relations with packers prone to monopolize trade and depress and increase prices thereby. It was held that this could be done, even though the sales and purchases by commission men and by dealers were in and of themselves intrastate commerce, the parties to sales and purchases and the cattle all being at the time within the city of Chicago."

** ** ** ** ** **

"This case was but the necessary consequence of the conclusions reached in the case of Swift & Co. v. United States, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518. That case was a milestone in the interpretation of the commerce clause of the Constitution. It recognized the great changes and development in the business of this vast country and drew again the dividing line between interstate and intrastate commerce where the Constitution intended it to be. It refused to permit local incidents of great interstate movement, which taken alone were intrastate, to characterize the movement as such. The Swift Case merely fitted the commerce clause to the real and practical essence of modern business growth. It applies to the case before us just as it did in Stafford v. Wallace."

** ** ** ** ** **

"In the act we are considering, Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation, and control which are detrimental to the producer and con-

sumer and persons handling grain in interstate commerce and render regulation imperative for the protection of such commerce and the national public interest therein.

"It is clear from the citations, in the statement of the case, of evidence before committees of investigation as to manipulations of the futures market and their effect, that we would be unwarranted in rejecting the finding of Congress as unreasonable, and that in our inquiry as to the validity of this legislation we must accept the view that such manipulation does work to the detriment of producers, consumers, shippers and legitimate dealers in interstate commerce in grain and that it is a real abuse.

** ** **

"* * * The question of price dominates trade between the states. Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it. By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the states in grain, and that it recurs and is a constantly possible danger. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided." (Italics supplied)

Likewise, if Congress finds that our present banking system, which has given rise to more than 10,000 bank failures since 1920, which necessarily have delayed and obstructed the consummation of innumerable transactions in interstate commerce, is a burden upon and obstruction to interstate commerce, the Supreme Court would not be warranted in rejecting the finding of Congress as unreasonable or in concluding that legislation designed to correct this situation and remove such an obstruction to interstate commerce is not a proper exercise of the power to regulate commerce among the States.

If the purchase and sale of cattle by commission men, dealers and traders at the Chicago stock yards, and the sale of grain for future de-

livery on the Chicago Board of Trade and the dissemination of prices and quotations thereof, can be brought by Congress under the supervision of the Federal Government, on the ground that abuses in such business constitute obstructions to interstate commerce, it seems clear that the transaction of a commercial banking business, involving the payment of checks given in settlement of transactions in interstate commerce and the handling of innumerable bills of exchange secured by bills of lading growing out of transactions in interstate commerce, can also be brought under the supervision of the Federal Government.

Such cases as Hammer v. Dagenhart (1918), 247 U. S. 251, 38 Sup. Ct. 529, and Bailey v. Drexel Furniture Company (1922), 259 U. S. 20, 42 Sup. Ct. 449, need not be distinguished in detail; because they relate to Federal legislation wherein Congress attempted to deal with purely local questions having no essential connection with interstate commerce; whereas commercial banking is a matter of National rather than local concern and is essentially connected with, and inextricably related to, interstate commerce.

Federal legislation to relieve interstate commerce of the impediments and obstructions resulting from a heterogeneous and inefficient banking structure would not constitute an invasion of the rights of the States; because it would relate to a subject which the fathers of the Constitution clearly intended to intrust to the National Government, in order that we might have a Nation and not a mere confederation of States and in order that the free flow of commerce between the different parts of the Nation might not be impeded by State legislation.

The importance of banking as an indispensable aid to commerce has already been recognized by the Supreme Court of the United States in the case of Noble State Bank v. Haskell (1911), 219 U. S. 104, 31 Sup. Ct. 186, wherein the Court said, through Mr. Justice Holmes (p. 188):

> "* * * Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of those conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currency in daily business. * * * Even the primary object * * * is not a private benefit, * * * but it is to make the currency of checks secure and by the same stroke to make safe the almost compulsory resort of depositors to banks as the only available means for keeping money on hand. * * * *" (Italics supplied)

It is appropriate and in accordance with the fundamental principles of our Government for Congress to undertake the task of making "the currency of checks secure"; because it is essential to the free and unhampered flow of commerce between the States, the regulation of which is intrusted to Congress alone by the Constitution.

If Congress should decide that more effective regulation and supervision of the commercial banking business is desirable in order to make the currency of checks secure, it is peculiarly fitting and proper that Congress should undertake to provide that remedy; because the problem is not a local one but relates directly to matters of National concern which are expressly intrusted to Congress by the Constitution.

In the case of United States v. Ferger (1919), 250 U. S. 199, the Supreme Court of the United States sustained the constitutionality of Section 41 of the Act of August 29, 1916, (39 Stat. 538), which provides for

the punishment of any person who forges or counterfeits a bill of lading, even though that section applies to cases where no shipment from one State to another is made or intended. The Court held that, in order to protect and sustain interstate commerce, Congress may prohibit and punish the forgery and utterance of bills of lading for fictitious shipments in interstate commerce.

In delivering the opinion of the Court, Mr. Chief Justice White said (250 U. S. 203-205):

> " * * * Thus both in the pleadings and in the contention as summarized by the court below it is insisted that, as there was and could be no commerce in a fraudulent and fictitious bill of lading, therefore the power of Congress to regulate commerce could not embrace such pretended bill. But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the proposition were sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (In re Debs, 158 U. S. 564) and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves. It would be superfluous to refer to the authorities which from the foundation of the Government have measured the exertion by Congress of its power to regulate commerce by the principle just stated, since the doctrine is elementary and is but an expression of the text of the Constitution. Art. I, Sec. 8, clause 18. A case dealing with a somewhat different exercise of power, but affording a good illustration of the application of the principle to the subject in hand, is First National Bank v. Union Trust Co., 244 U. S. 416.

** ** **

" * * * That, as instrumentalities of interstate commerce, bills of lading are the efficient means of credit resorted to for the purpose of securing and fructifying the flow of a vast volume of interstate commerce upon which the commercial intercourse of the country, both domestic and foreign, largely depends, is a matter of common knowledge as to the course of business of which we may take judicial notice. Indeed, that such bills of lading and the faith and credit given to their genuineness and the value they represent are the producing and sustaining causes of the enormous number of transactions in domestic and foreign exchange, is also so certain and well known that we may notice it without proof.

"With this situation in mind the question therefore is, Was the court below right in holding that Congress had no power to prohibit and punish the fraudulent making of spurious interstate bills of lading as a means of protecting and sustaining the vast volume of interstate commerce operating and moving in reliance upon genuine bills? To state the question is to manifest the error which the court committed. * * * It proceeds further, as we have already shown, upon the erroneous theory that the credit and confidence which sustains interstate commerce would not be impaired or weakened by the unrestrained right to fabricate and circulate spurious bills of lading apparently concerning such commerce. Nor is the situation helped by saying that as the manufacture and use of the spurious interstate commerce bills of lading were local, therefore the power to deal with them was exclusively local, since the proposition disregards the fact that the spurious bills were in the form of interstate commerce bills which in and of themselves involved the potentiality of fraud as far-reaching and all-embracing as the flow of the channels of interstate commerce in which it was contemplated the fraudulent bills would circulate. As the power to regulate the instrumentality was coextensive with interstate commerce, so it must be, if the authority to regulate is not to be denied, that the right to exert such authority for the purpose of guarding against the injury which would result from the making and use of spurious imitations of the instrumentality must be equally extensive." (Italics supplied)

The reference to the Court's decision in the case of First National Bank v. Union Trust Company, which appears at the end of the first paragraph quoted from the opinion in the Ferger case, is significant; because that is the case discussed elsewhere in this opinion, wherein the Supreme Court

uphold the right of Congress to grant trust powers to National banks in order to enable them to compete with State banks and trust companies. While that case dealt with a somewhat different exercise of power, the Supreme Court recognized that it afforded a good illustration of the application of the principle to the subject dealt with in the Ferger case. Conversely, it would seem that the court would not hesitate to apply the principle underlying its decision in the Ferger case to the subject of banking.

If bills of lading are instrumentalities of interstate commerce, so are checks and the banks upon which they are drawn, and if Congress has the right to prohibit and to punish the fraudulent making of spurious bills of lading in order to protect and sustain the vast volume of interstate commerce operating and moving in reliance upon genuine bills, then Congress must have the right to enact legislation to safeguard the use of checks in order to protect and sustain the vast volume of interstate commerce which is consummated by payments made by means of checks. Since the safe use of checks depends primarily upon the solvency of the banks upon which they are drawn, Congress must have the right to enact legislation to promote the safer and more effective operation of commercial banks.

Nor is Congress prevented from exercising this power by the fact that part of the business of commercial banks is purely local in character; but the power to regulate interstate commerce "must include the authority to deal with obstructions to interstate commerce * * * and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of commerce to regulate, although

they are not interstate commerce in and of themselves."

If Congress in its wisdom should find that our heterogeneous banking structure, which has given rise to more than 10,000 bank failures in the last twelve years, constitutes a burden upon or an obstruction to interstate commerce, therefore, there can be no doubt that Congress has the constitutional power to correct the situation by bringing all commercial banking business into a single system subject to effective regulation and supervision by the Federal Government, to the end that the currency of checks upon which practically every transaction in interstate commerce depends for its consummation may be made more secure.

IV. METHODS WHICH COULD BE ADOPTED.

Having the power to enact such legislation, Congress could exercise the power in any manner which it deems appropriate and adequate for this purpose. It is not necessary that the legislation assume the form of a revenue act or an act to regulate interstate commerce, though either of these means would be appropriate. In the light of the decisions of the Supreme Court of the United States in Stafford v. Wallace, and Board of Trade of Chicago v. Olsen, however, it would be desirable for such legislation to contain findings of fact and a recital of the National objects to be attained, as did the Grain Futures Act.

Among the constitutional means which Congress could adopt in order to accomplish these objects or to aid in their accomplishment are the following:

1. It could forbid the receipt of deposits subject to withdrawal by check by any individual, partnership or corporation other than a bank organized under the laws of the United States and provide suitable penalties for violations of this prohibition.

2. It could impose a prohibitive tax on all checks and similar documents drawn on, or payable at, banks not organized under the laws of the United States.

3. It could forbid any officer of the United States or any Federal reserve bank, National bank, Federal land bank, Joint Stock Land Bank, Federal Intermediate Credit Bank, or Federal Home Loan Bank to receive in payment, on deposit, for the purposes of exchange or collection, or for any other purpose, any check drawn upon any bank not organized under the laws of the United States.

4. It could forbid any bank organized under the laws of the United States to make loans or extend credit to, or deposit any of its funds in, or permit the use of any of its facilities by, any commercial bank not organized under such laws.

5. It could forbid the deposit of public funds of the United States in any bank not organized under the laws of the United States.

6. It could exempt all National banks from taxation, State or Federal, except taxes on real estate.

In order to be completely effective, the legislation could combine several of the measures suggested above. Thus, a comprehensive bill on this subject might include the following:

(1) A finding of facts by the Congress (on the basis of evidence already obtained pursuant to Senate Resolution No. 71 and other evidence which may be produced) to the effect that, in order (a) to provide for the safe and more effective operation of the National Banking System and the Federal Reserve System, (b) to preserve for the people the full benefits of the currency provided for by the Congress, and (c) to relieve interstate commerce of the burdens and obstructions resulting from the existing situation, it is necessary to restrict the business of receiving deposits subject to withdrawal by check to National banks and thereby to subject all commercial banking business to National regulation and supervision;

(2) A prohibition against the receipt of deposits subject to withdrawal by check except by banks organized under the laws of the United States;

(3) A prohibition against any officer of the United States or any bank organized under the laws of the United States receiving in payment, on deposit, for exchange or collection, or for any other purpose, any check drawn upon any bank not organized under such laws;

(4) A prohibition against any bank organized under the laws of the United States making loans or extending credit to, depositing any of its funds in, or permitting the use of any of its facilities by, any commercial banking institution not organized under such laws;

(5) A provision imposing a prohibitive tax on all checks or substitutes therefor drawn upon or payable at any bank not organized under

the laws of the United States; and

(6) A provision prescribing suitable penalties for violations of the above provisions.

If such legislation is enacted, its effective date necessarily would have to be postponed for a sufficient length of time to avoid too sudden and revolutionary a change in our existing financial structure and to allow time for existing State banks to adjust themselves to the situation, by converting into National banks or discontinuing the transaction of commercial banking business.

The time intervening between the enactment of such legislation and the date when it becomes effective could be devoted to the preparation and enactment of additional legislation for the purpose of providing further for the more effective operation, regulation and supervision of the National Banking System and the Federal Reserve System, by repealing undesirable amendments to the National Bank Act and Federal Reserve Act which grew out of the competition in laxity, equipping the supervisory authorities with adequate powers to enable them to perform their functions more effectively, and adopting such other measures as might be deemed appropriate.

Respectfully,

Walter Wyatt,
General Counsel.

See Bk

CONFIDENTIAL

December 31, 1932.

PRELIMINARY MEMORANDUM FOR THE OPEN MARKET POLICY CONFERENCE,
JANUARY 4, 1933.

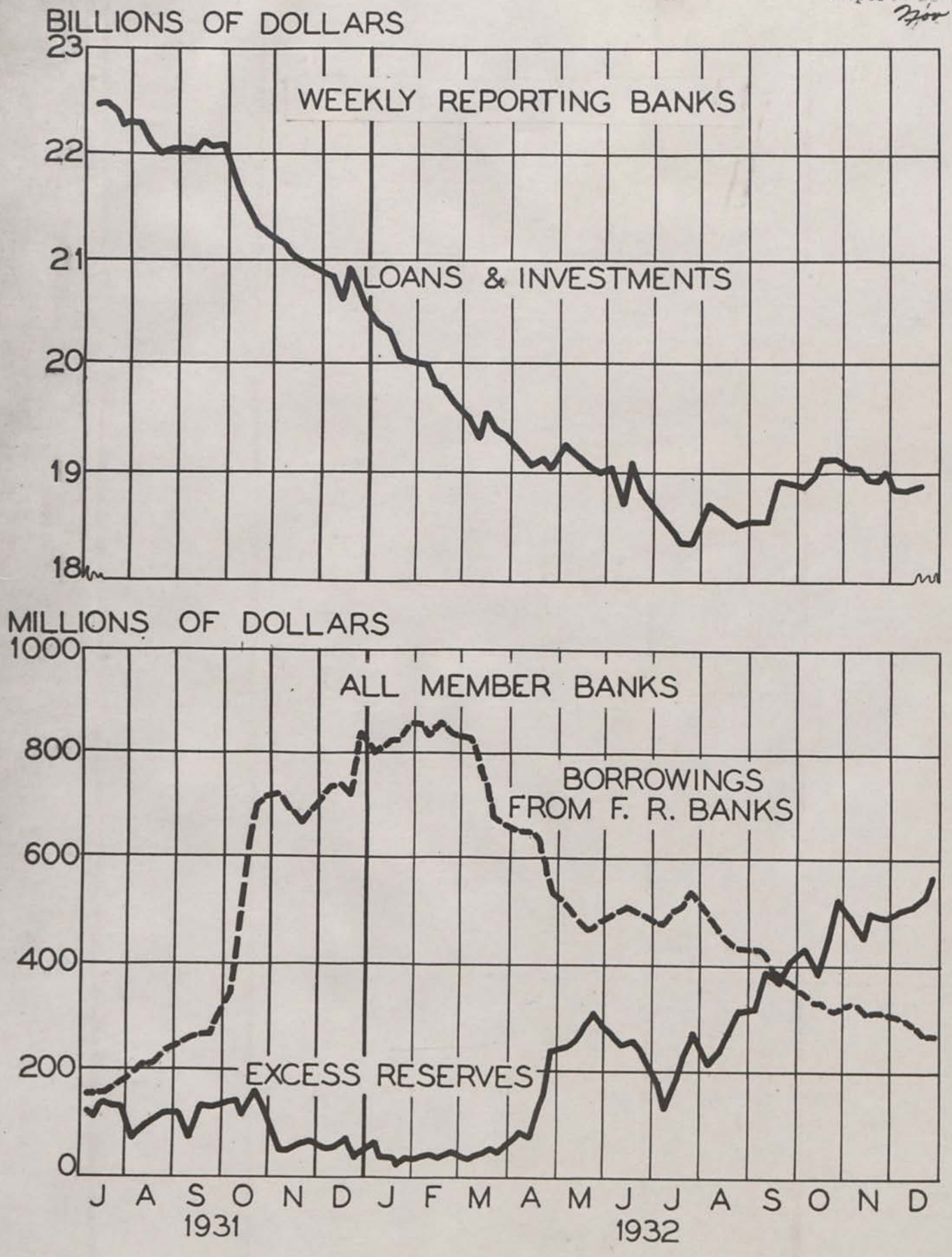
When the decision was made last February to begin open market purchases of securities the primary aim of the policy as revealed in the discussions was to check the unprecedented liquidation of bank credit which was exerting a seriously depressing influence on business and on prices. It was hoped that purchases of Government securities would enable member banks to pay off indebtedness and accumulate some excess reserves, with the consequence that the pressure to liquidate might be lessened and a moderate expansion of bank credit might occur, which would exert some influence in the direction of a recovery in business and in commodity and bond prices.

In the first half of the year funds made available by open market operations were largely absorbed by gold exports and currency hoarding, but in the second half of the year both these movements were reversed and, with the discontinuance of open market purchases, currency returns and gold imports were largely responsible for building up excess reserves and so became the active factors operating towards the objectives which had been set for open market operations.

Changes in Credit and Business

There have been substantial results towards achieving the objectives outlined above. These results may be summarized as follows:

(1) Member bank borrowing. When the open market policy was under discussion doubts were expressed as to the possibility of reaching the member banks outside of principal centers, whose borrowings accounted for a major part of reserve bank discounts. Since February 24 when purchases of government securities were begun discounts have been reduced from $835,000,000 to $265,000,000.



Excess Reserves and Indebtedness of All Member Banks, Compared with Loans and Investments of Weekly Reporting Banks

(2) Bank credit. Loans and investments of the reporting banks stopped declining in July and since that time have increased by $500,000,000. The increase was wholly in government securities though other forms of credit have shown greater stability. The increase also was concentrated in New York, but in other parts of the country the decline in credit has been checked.

(3) Bond market. The bond market made a recovery of about 25% and then lost approximately half the gain. The reaction was followed by a number of weeks of relative stability, and there is now some evidence of renewed strength. In recent weeks buying of long term government securities by banks, insurance companies and investors has resulted in new high prices since the autumn of 1931, and this buying movement appears to be spreading into other parts of the bond market. The prospects for an improved bond market are better than for some weeks past.

(4) Commodity prices. Commodity prices rose about 3 per cent and subsequently lost all of this gain, reflecting in part the pressure of depreciated currencies upon world prices, and especially the weakness of sterling. While depreciation of currencies has tended to increase or stabilize domestic paper prices it has depressed world gold prices by reducing the buying power of countries with depreciated currencies, and decreasing their production costs so they can sell at lower gold prices.

(5) Business. The volume of business as measured by production indexes rose about 14 per cent but has lost part of this gain.

The present situation may be summarized by saying that a good start was made toward recovery, that this movement has been interrupted, and is now hesitant and uncertain. The improvement in sentiment is perhaps even more marked than the improvement in the statistics; but in this respect also some ground has been lost in recent weeks.

Precedents in Earlier Depressions

Whether or not these developments in business and in prices are to be viewed as disappointing depends very largely upon expectations. A comparison of recent developments with those of previous periods of depression shows that recent events have followed much the usual pattern of business recovery from depression which is usually highly irregular and uncertain in the early stages.

The accompanying series of charts indicates the sequence of events in the more important depressions of the past fifty years. The amount of excess reserves that accumulated in New York banks in each of these periods, and the lapse of time before a sustained recovery in prices and in business activity got under way are summarized in the succeeding table.

Excess reserves - N. Y. City Banks

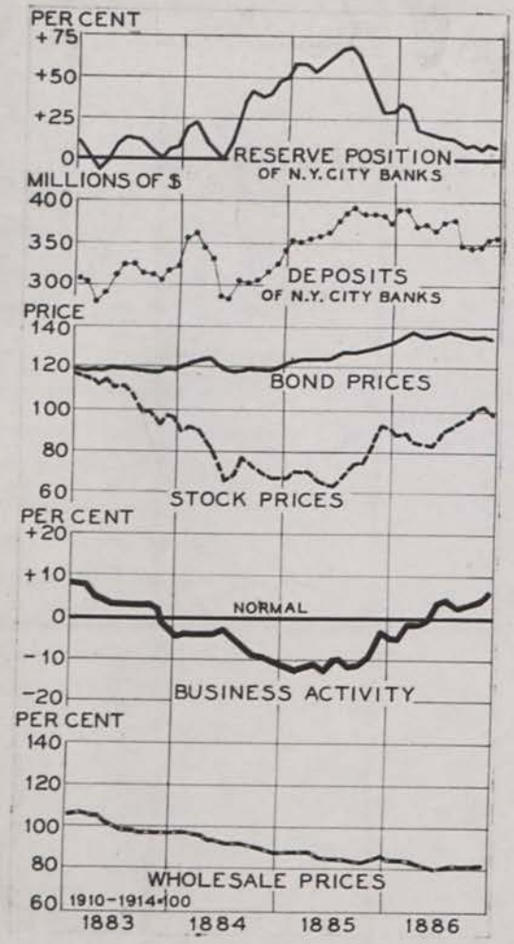
Period	Amount ($ million)	Per cent of Requirements
1884-'85	26 to 64	34 to 67
1893-'94	39 to 100	37 to 74
1896-'97	33 to 55	25 to 38
1908	30 to 58	11 to 18
1921-'22	(Practically none; borrowings equal to 1 1/2 times reserve requirements retired)	
1932 (since July)	100 to 300	14 to 40

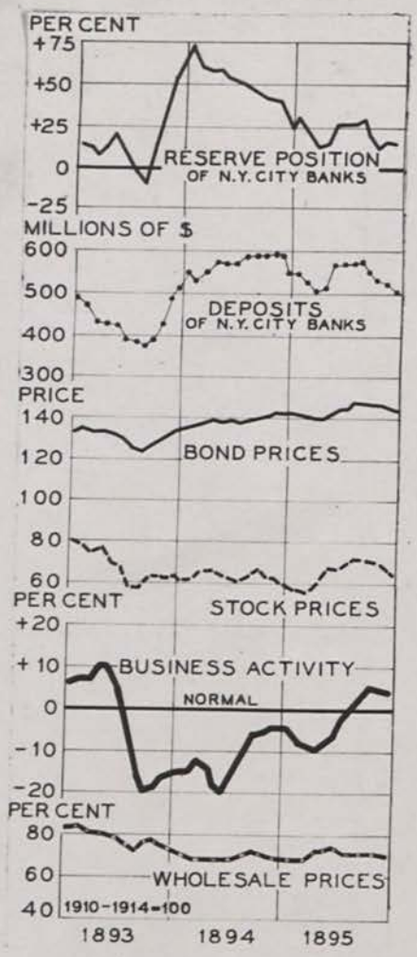
Lapse of time until sustained rise in bond prices began

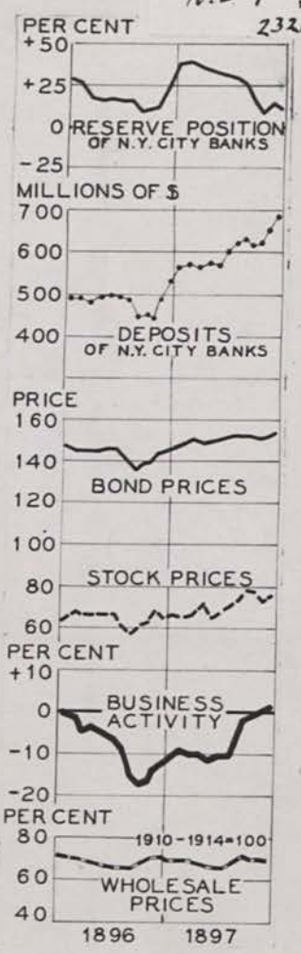
1884-'85 - about 6 months
1893-'94 - practically none
1896-'97 - none
1908 - practically none
1921-'22 - within 3 months of substantial reduction in bank indebtedness.

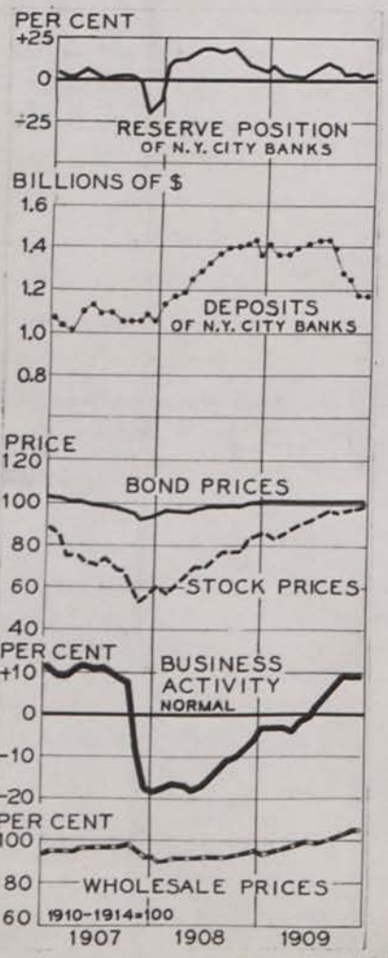
Lapse of time until sustained rise in business activity began

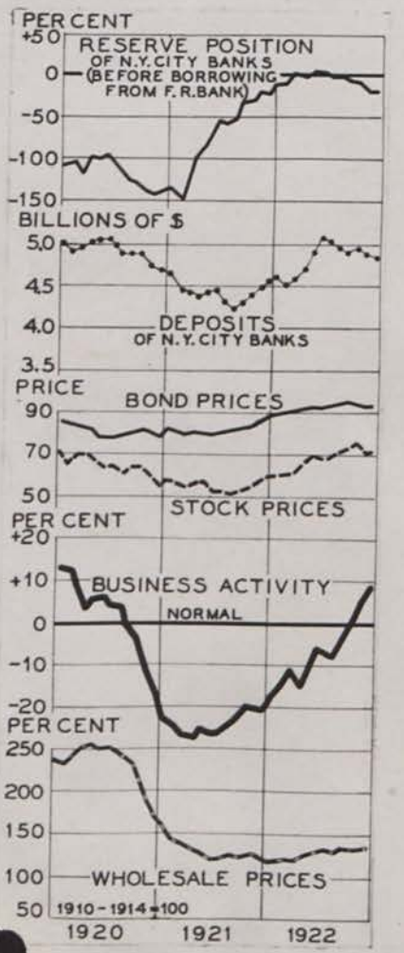
1884-'85 - nearly a year and a half
1893-'94 - about 10 months
1896-'97 - about 10 months
1908- - about 6 months
1921-'22 - about 6 months after substantial reduction in bank indebtedness

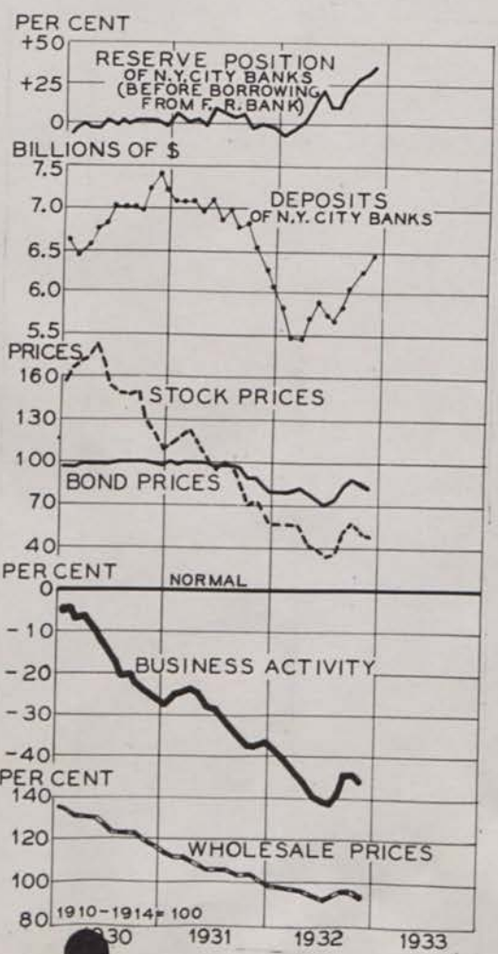












Sequence of Events in Periods of Depression

Lapse of time until sustained rise in commodity prices began

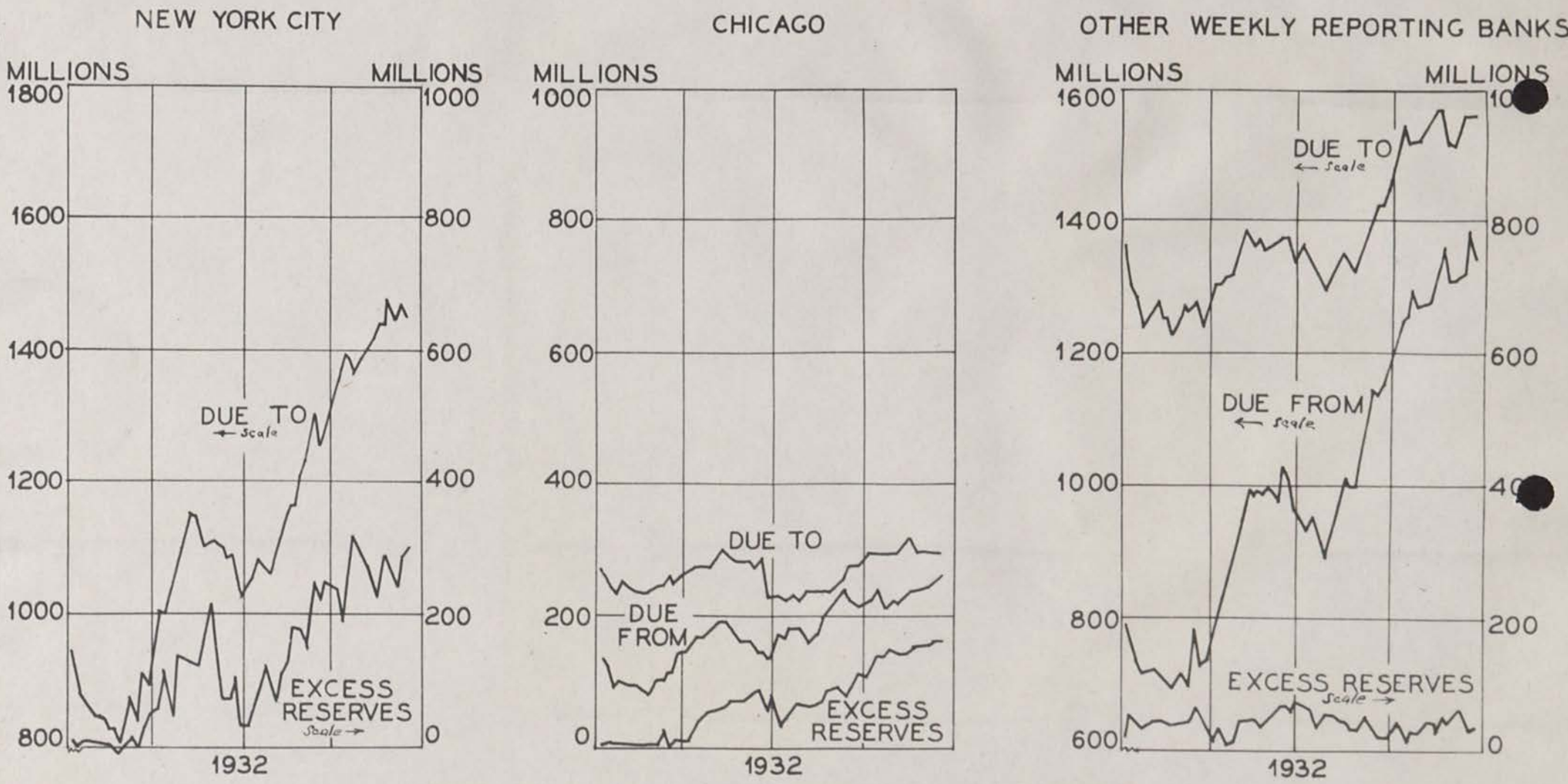
1884-'85	-	over two years
1893-'94	-	limited rise after at least 1 1/2 years
1896-'97	-	about one year
1908	-	gradual rise within 3 months; more rapid after 1 year
1921-'22	-	about a year after substantial reduction in bank indebtedness

Present and Prospective Reserve Position.

Excess reserves of member banks have generally been maintained since the November meeting of the conference at something above $500,000,000. Christmas currency demands proved smaller than were expected, and gold receipts which included the $95,550,000 debt payment of the British Government were larger than had been expected. Hence the member banks come to the end of the year with between $500,000,000 and $600,000,000 of excess reserves. This figure will be increased after the turn of the year. It remains to be seen how large the return flow of currency will be for we do not know whether the small Christmas takings of currency were due wholly to the depressed conditions or reflected some return of money from hoarding. The gold flow is definitely toward this country. From these two causes a gain to reserves may be anticipated in the next six weeks of anywhere from $200,000,000 to $400,000,000, in the absence of any unusual circumstances.

In determining the effectiveness of any given amount of excess reserves in constituting pressure for the employment of funds several considerations appear important.

(1) Location. Excess reserves are now largely concentrated in New York and Chicago as shown on the attached chart. In both these cities, however, the increase in excess reserves has been paralleled by an increase in amounts "due to banks" so that the excess funds really represent largely funds of out-of-town banks and the pressure to put these funds to work rests not alone on the New York and Chicago banks but on the banks generally throughout the country. The excess



Excess Reserves and Amounts Due to Banks and Due from Banks
of Weekly Reporting Banks in New York City, Chicago, and Other Centers

of reserves is thus widespread in its influence.

(2) Time. The experience of the past summarized in a previous chart indicates that the effectiveness of excess reserves depends in part on the length of time they are held. In previous periods of depression it has frequently taken six months to a year for very large amounts of excess reserves to find reflection in business.

(3) Assurance of Continuance. The use of reserves depends in part on the confidence the banks feel in their continuance. In the pre-war days it was believed that excess reserves would continue until they were used; there was no mechanism for absorbing them. In recent months there has been uncertainty as to the effects on excess reserves of Federal reserve policy or possible demands upon the banks.

Foreign Influence.

During the year influences from abroad have been important and at times dominating. Early in the year gold withdrawals were disturbing. When the gold movement turned, strengthening our position but weakening the European position, depreciating exchanges became a depressing influence on world prices as noted above. The debt uncertainties were a disturbing influence second only to the political campaign.

Debts, Prices, and Recovery.

While the financial and business situation shows now a considerable improvement from the position of mid-summer the improvement is not sufficient and the direction of movement is not sufficiently well established to assure a solution to the major economic problem which confronts this country and other countries as well. That problem is whether the economic structure must be readjusted to conform to something like the present price level and volume of business or whether we may expect in a reasonable period of time sufficient advance from

the present price level and sufficient resumption of business activity so that a general readjustment of debts will not be necessary.

The condition of panic which prevailed last spring has been checked but the critical problem of prices and debts remains. It is clear that a continuance of the present price level and the present volume of business activity would involve a vast readjustment of the entire debt structure, including readjustment of a number of banking situations. The question arises whether the grinding process of deflation of recent months must continue or whether it would be preferable to move decisively either for a more rapid deflation or for some measure of inflation. The improvement which took place from mid-summer into the autumn gave some reason to hope that recovery might go far enough and rapidly enough to relieve greatly the weight of debts. The question now is whether that recovery can be resumed or not. The question is complicated by widespread public and political interest both in this country and abroad so that every decision in the field becomes in some sense a political question.

January 3, 1933
R.& S.
Cr. 3

CONFIDENTIAL

BUSINESS AND CREDIT CONDITIONS

Some of the factors in the business and credit situation to be considered in deciding on an open-market program are discussed in the following paragraphs.

Business activity

Business activity, after increasing substantially between July and September, has been relatively stable since that time, except for seasonal movements. Industrial production, as measured by the Board's seasonally adjusted index, has continued through December at about 66 per cent of the 1923-1925 average as compared with 58 per cent in July, and factory employment and payrolls have also been maintained in recent months at a relatively higher level. The value of construction contracts which increased in the third quarter, contrary to seasonal tendency, declined considerably in the fourth quarter; residential building continued to be an unusually small part of the total, while the proportion of public works was unusually large. Distribution of commodities by rail has continued at a relatively higher level since September. The value of commodities sold by department stores, however, showed considerably less than the usual increases at the Christmas season and was smaller than a year ago, reflecting in large part lower prices.

Wholesale commodity prices, after reaching a low level in June, increased during July, August, and early September, but since that time have declined by an amount slightly larger than the previous advance. The summer advance in wholesale prices was largely in farm products, foods, hides, and textiles; the subsequent decline has also been in prices of these commodities, particularly grains and livestock, and has reflected in part seasonal factors. Prices of cotton and other textile raw materials, which showed a substantial increase,

have declined considerably, but are still somewhat above the low levels of early summer.

In general, the increase in industrial production this fall has been concentrated in industries producing non-durable goods, such as textiles and shoes. During recent months, however, there has been a marked increase in production of bituminous coal, and in December output of automobiles increased substantially in connection with the introduction of new models. Activity at textile mills continued at a relatively high rate in December, according to preliminary reports, and was at about the same level as in the corresponding months of the two preceding years. Output of steel, however, was considerably smaller in December than in the preceding month, or than a year ago.

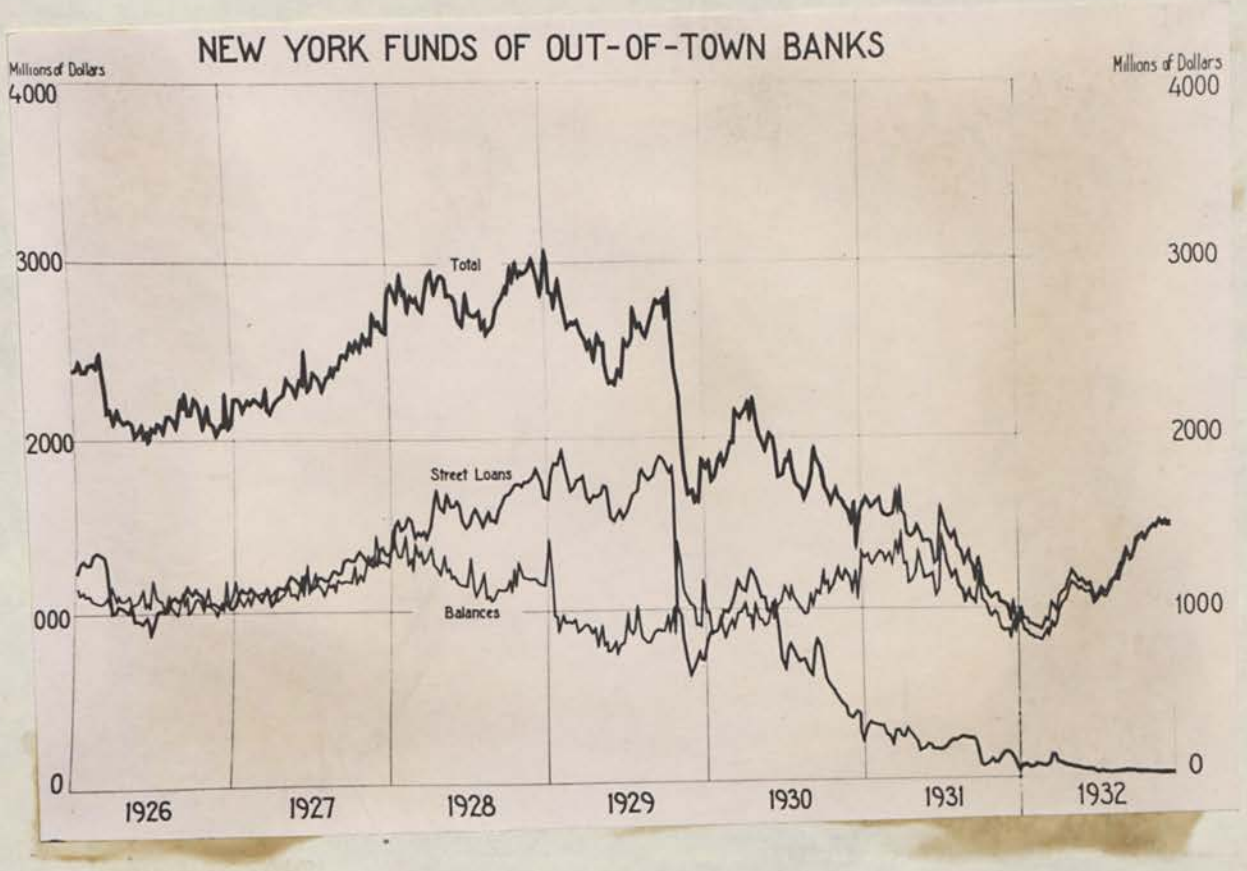
Member bank credit

Volume of member bank credit, as indicated by weekly statements of reporting member banks in leading cities, declined by $250,000,000 between the middle of October and the middle of December. This decline represented a further contraction of loans, both on securities and other, with little change in the volume of the banks' investments. At banks in New York City there was a slight increase in loans and a larger increase in investments, while at banks outside of New York City both loans and investments were reduced.

The decrease of $250,000,000 in loans and investments of these banks during the past two months followed upon an increase of nearly $800,000,000 between July and October, so that the volume of credit in December was still $550,000,000 above its low level in mid-summer.

Notwithstanding the decline in loans and investments, deposits of the reporting banks continued to increase. Time deposits increased by $155,000,000 between July and October and then declined by $50,000,000 to December 21; demand

deposits increased by $650,000,000 between July and October, and by an additional $345,000,000 since that time. This increase has been largely the result of a transfer of funds from Government to private account, and an increase in the volume of balances re-deposited by country banks with their city correspondents. The following chart shows the volume of funds of out-of-town banks

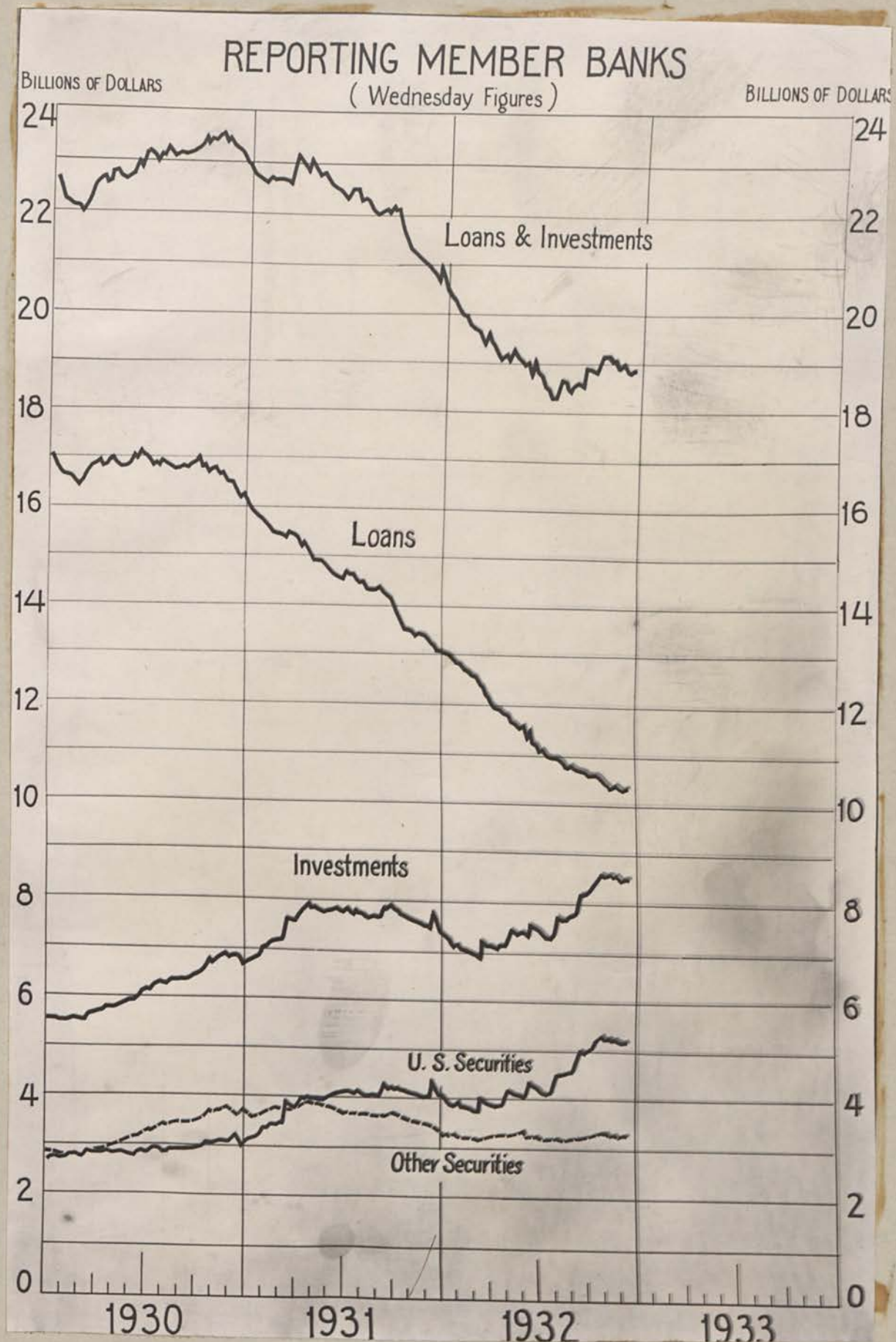


in New York City. These funds ordinarily consist of street loans and balances with correspondents. At the present time street loans for out-of-town banks are negligible and the total volume of $1,470,000,000 of out-of-town bank funds in New York consists of balances held there by correspondent banks. This amount, which represents largely the re-deposit of surplus funds of interior banks with their city correspondents, has increased by about $650,000,000 since

last February. The increase in these balances since February has been about twice as large as the excess reserves of the banks in New York City.

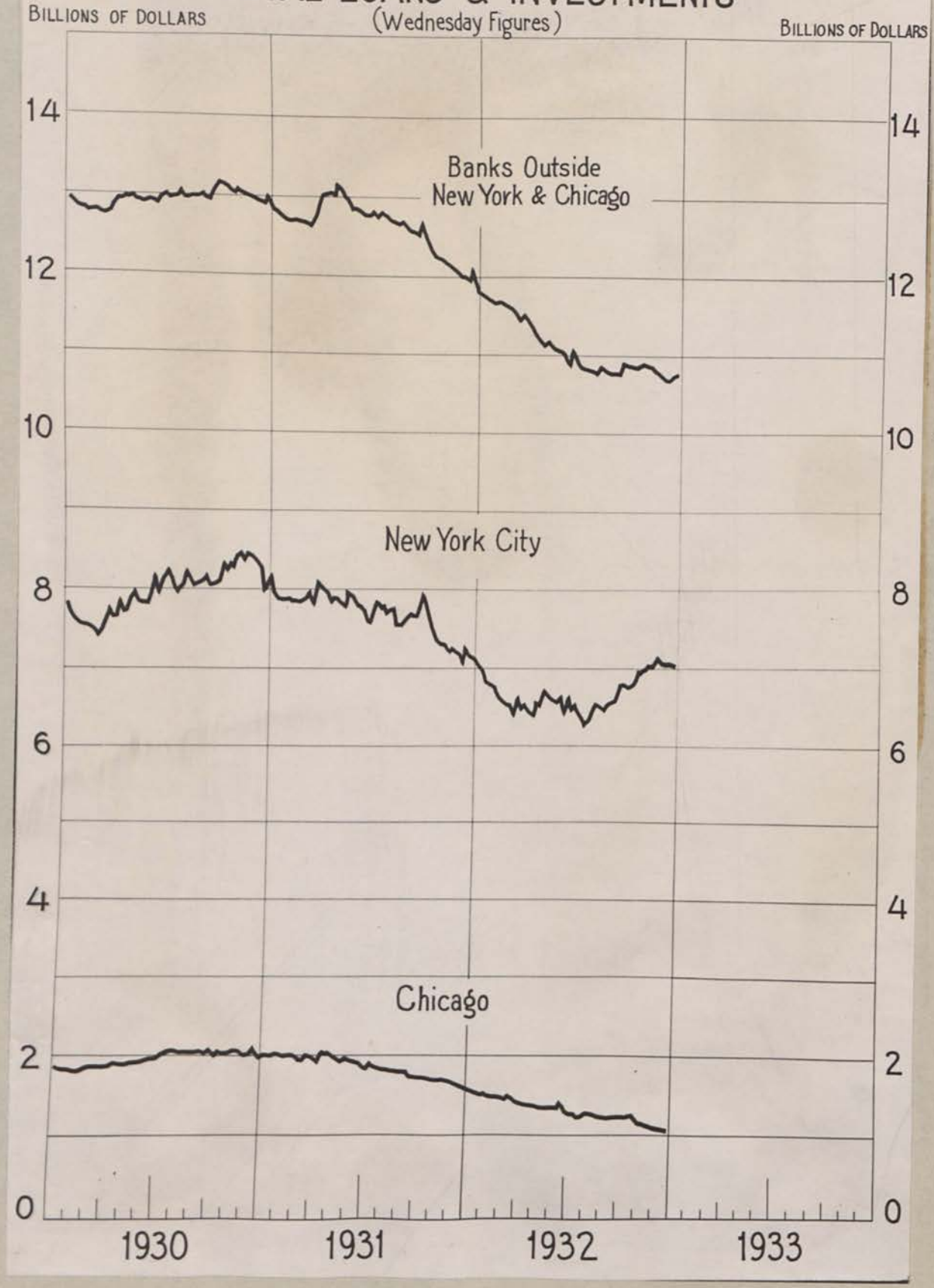
Increases in the volume of deposits since the middle of 1932 have been accompanied by further declines in the rate of turnover of deposits; the growth in the means of payment has not been accompanied by an increase in the volume of payments. The rate of turnover of deposits, or their velocity, was 45 times per year in 1929, decreased to 26 by the last quarter of 1930, and to 16 by the last three months of 1932.

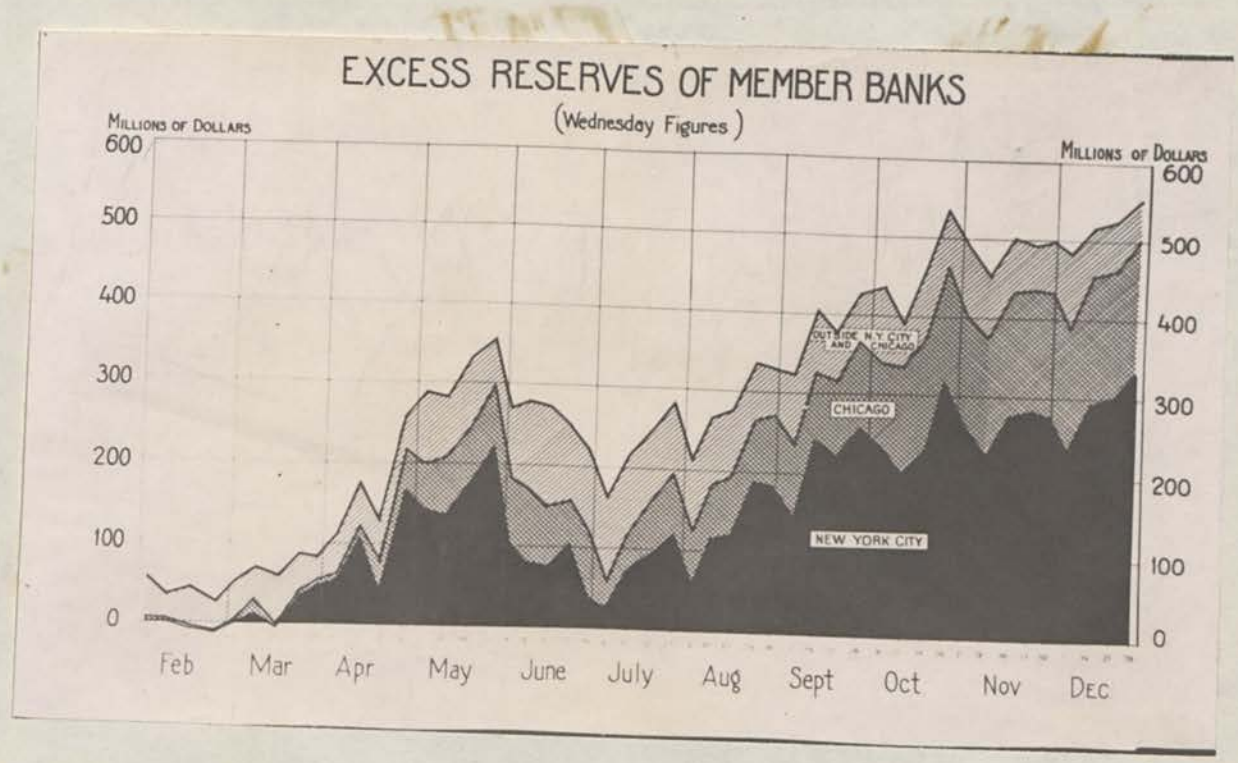
Two charts are shown, giving the course of the principal items in the reporting member bank statement, and the course of loans and investments at banks in New York City, Chicago, and other cities. Another chart shows the volume and distribution of the excess reserves of member banks.



REPORTING MEMBER BANKS
TOTAL LOANS & INVESTMENTS

(Wednesday Figures)





Gold movements

Since the middle of June, this country's stock of monetary gold has increased by $596,000,000, of which $105,000,000 was imported, $459,000,000 released from earmark, and $31,000,000 represented domestic production and other minor items. This addition of $596,000,000 to the stock of gold represents a recovery of more than one-half of the gold lost by this country during the nine months preceding last June. The table shows the countries to which the gold was lost during the nine months and from which it was received in the following six months.

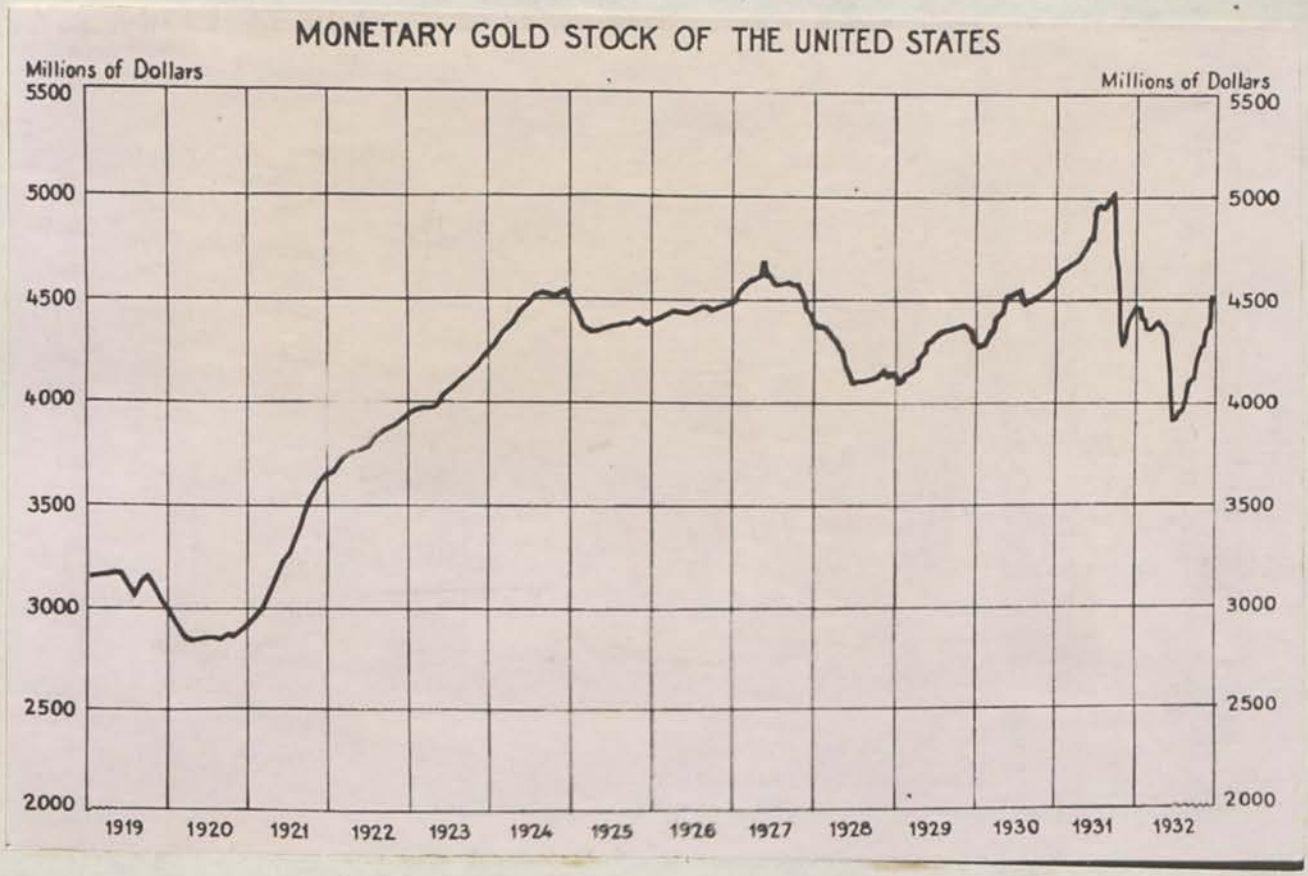
CHANGES IN UNITED STATES GOLD STOCK

September 16, 1931 to December 28, 1932
(In thousands of dollars)

	Sept. 16, 1931 to June 15, 1932	June 16, 1932 to Dec. 28, 1932	Sept. 16, 1931 to Dec. 28, 1932
Change in gold stock.....	-1,107,507	+595,738	-511,769
Net import (+) or export (-)....	- 777,105	+105,528	-671,577
Earmarking operations.....	- 358,514	+459,141	+100,627
Domestic production, etc.	+ 28,112	+ 31,069	+ 59,181
Gains from (+) or losses to (-):			
France.....	-1,003,423	+194,141	-809,282
Netherlands.....	- 165,288	+ 17,785	-147,503
Switzerland.....	- 112,979	+ 9,791	-103,188
Belgium.....	- 121,334	+ 23,157	- 98,177
Siam.....	- 14,649	...	- 14,649
Germany.....	- 12,860	+ 7,467	- 5,393
Japan.....	+ 205,753	+ 10,681	+216,434
England.....	- 45,467	+160,798	+115,331
Canada.....	+ 56,386	+ 30,105	+ 86,491
China.....	+ 20,662	+ 26,686	+ 47,348
India.....	+ 15,557	+ 17,928	+ 33,485
Mexico.....	+ 13,112	+ 9,372	+ 22,484
Czechoslovakia.....	- 9,008	+ 19,518	+ 10,510
Other countries.....	+ 37,919	+ 37,240	+ 75,159

Taking the period as a whole there was a loss of gold to France of $809,000,000, to Netherlands of $148,000,000, and to Switzerland of $103,000,000, while receipts were $216,000,000 from Japan, $115,000,000 from England, $86,000,000 from Canada, $47,000,000 from China, $33,000,000 from India, and $22,000,000 from Mexico. Indications are that the gold inflow will continue in the next few months both as a result of this country receiving a considerable part of the new gold mined and of continued imports from Canada, Mexico, and the Far East.

The chart shows the total monetary gold stock of the United States from 1919 to date and brings out particularly the fact that losses of gold by this



country in 1925, 1927-1928, and 1931-1932 have in each case been followed by a return flow of gold. The losses were in all cases due to special circumstances like the Dawes loan in 1925, the easy money and large volume of foreign loans in 1927, and the withdrawal of central bank balances in 1931-1932. The inflow of gold, on the other hand, has lasted over longer periods and has reflected in general the favorable position of the United States in its balance of international payments.

Gold position of the Federal reserve banks

As is indicated by the table below, the reserve ratio of the Federal reserve banks on December 28 was 62.7 per cent, the ratio varying from 49.3 per cent in Minneapolis to 71.7 per cent in Boston. On that date the system had $1,330,000,000 of excess reserves, the largest amount, $432,000,000, being shown by the Chicago bank, and the smallest, $11,000,000, by the Dallas bank. The table shows also the amount of United States securities pledged as collateral for Federal reserve notes by the different Federal reserve banks and the extent to which they would be deficient in their gold position if the authority to pledge Government securities were withdrawn. For the system as a whole this deficiency would amount to $335,000,000. This deficiency could be made up to the extent of $264,000,000 if some arrangement were devised by which the banks would hold none of their own Federal reserve notes in vault. But even in that case there would still be a deficiency of $70,000,000, indicating the great importance of having the provisions of the Glass-Steagall Act continued.

GOLD POSITION OF THE FEDERAL RESERVE BANKS

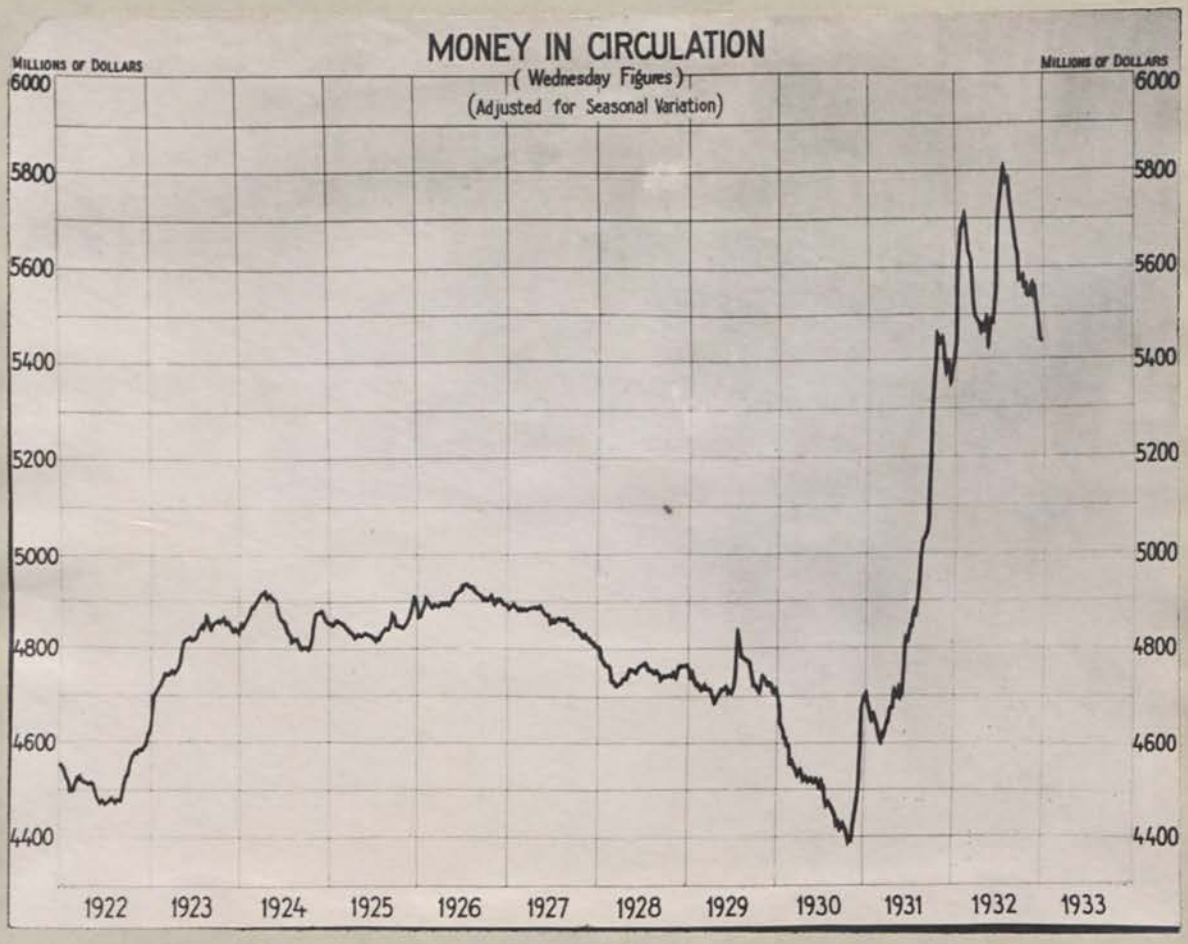
(Amounts in thousands of dollars)

District	Reserve ratio	Excess reserves	Federal reserve notes outstanding	Collateral			Deficiency in gold (1)	Own Federal reserve notes
				Eligible paper	United States securities	Gold		
	(Per cent)							
Boston.....	71.7	107,511	218,931	13,360	21,400	205,571	- 19,606	21,127
New York.....	57.0	378,981	666,654	57,389	9,000	609,265	- 1,669	87,944
Philadelphia.	56.7	67,028	255,800	49,561	52,000	206,239	- 45,839	16,176
Cleveland....	59.2	90,881	301,546	26,111	85,000	275,435	- 70,642	13,501
Richmond.....	62.2	37,502	110,490	17,192	18,000	93,298	- 15,500	7,602
Atlanta.....	55.6	27,643	115,861	25,590	32,000	90,271	- 24,822	18,145
Chicago.....	77.3	432,446	730,773	16,801	27,000	713,972	- 6,002	39,863
St. Louis....	58.8	33,633	111,778	6,827	36,200	104,951	- 30,362	8,535
Minneapolis..	49.3	13,404	84,407	8,128	34,900	76,279	- 30,883	3,412
Kansas City..	58.3	32,497	99,767	11,136	29,000	88,631	- 20,239	8,636
Dallas.....	50.1	11,474	44,096	5,065	16,000	39,031	- 12,199	5,069
San Francisco	63.9	97,536	259,614	15,144	68,000	244,470	- 57,545	34,249
Total...	62.7	1,330,537	2,999,717	252,304	428,500	2,747,413	-335,308	264,259

(1) If no United States Government securities were pledged as collateral.

Currency movements

Return flow of currency from hoards was resumed in December, after a period of two months in which there was little change in hoarded money. The chart shows the volume of money in circulation, after adjustment for seasonal variations, for the period from 1922 to 1932.



On the basis of available information, it may be roughly estimated that, barring unforeseen contingencies, the return flow of currency from the Christmas peak to the end of January will be about $200,000,000.

National bank notes

Issues of new national bank notes amounted to less than $1,000,000 during the week ending December 28. The rate of new issues reached a peak late

in August of $19,000,000 for the week ending August 31, and has been declining since then. It averaged $12,000,000 per week in September, $8,000,000 per week in October, $4,000,000 per week in November, and $2,000,000 per week in December. One large bank in New York City has retired its notes.

Total new issues of national bank notes since passage of the Federal Home Loan Bank Bill amount to $164,000,000. These issues were distributed by Federal reserve districts as follows:

NEW NATIONAL BANK NOTES ISSUED AGAINST BONDS: JULY 22 TO DECEMBER 28, 1932, INCLUSIVE

(In thousands of dollars)

Boston	3,228
New York	19,822
Philadelphia	8,962
Cleveland	8,357
Richmond	5,205
Atlanta	8,304
Chicago	24,481
St. Louis	4,793
Minneapolis	6,313
Kansas City	16,021
Dallas	5,280
San Francisco	52,765
Total	163,533
National bank notes retired--including redemptions against which new issues have not yet been made (partly estimated) July 22 to December 28, 1932, inclusive	17,062
Increase in national bank notes outstanding July 22 to December 28, 1932, inclusive	146,471
National bank notes outstanding, December 28, 1932	880,825

Position of the public debt

The table below shows the volume and composition of the public debt on December 31, 1930, and November 30, 1932. During this period the total gross

debt increased from $16,000,000 to $21,000,000, all classes of obligations showing an increase:

PUBLIC DEBT

(In millions of dollars)

	Bonds	Notes	Certificates	Bills	Non-interest-bearing debt	Total gross debt
Outstanding on:						
Dec. 31, 1930...	12,113	2,342	1,192	127	252	16,026
Nov. 30, 1932...	14,257	3,539	2,038	642	330	20,806
Increase from Dec. 31, 1930 to Nov. 30, 1932.....	2,144	1,197	846	515	78	4,780

December financing resulted in an increase of $15,000,000 in the public debt.

The cost of Government borrowing on different kinds of paper in the last two years is shown below; it indicates that financing in December, 1932, was at the lowest cost on record.

	High	(Month)	Low	(Month)
Bonds	3 3/8%	(Mar. 1931)	3 %	(Sept. 1931)
Notes	3 1/4	(Dec. 1931 and Sept. 1931)	2 1/8	(Aug. 1932)
Certificates	3 3/4	(Feb. and Mar. 1932)	3/4	(Dec. 1932)
Bills	3 1/4	(Dec. 1931)	0.09	(Dec. 1932)

Form No. 131

Office Correspondence

FEDERAL RESERVE BOARD

Sec Bu

Date January 7, 1933

To: Mr. Hamlin

Subject:

From Mr. Goldenweiser

WFG 2-8495

I transmit herewith a memorandum on blocked accounts prepared by Mr. Gardner of this division. The last paragraph discusses briefly your own suggestion in the matter.

VOLUME 236
PAGE 113

Form No. 131

Office Correspondence

FEDERAL RESERVE BOARD

Date December 29, 1932

To Mr. Goldenweiser

Subject: Possible use of blocked accounts for war debt payments

From Mr. Gardner W.R.G.

2—8495

You have asked me to prepare a brief memorandum on the possible use of blocked accounts in connection with debt payments of foreign governments to the United States. I have done so on the rather doubtful assumption that these payments are to continue.

The blocked account. -- A blocked account is designed to avoid difficulties involved in transferring funds abroad. Payments due abroad are paid by agreement in the currency of the debtor; and the account into which they are paid is "blocked" -- i.e., it can be employed only in certain ways specified in the agreement. In general such accounts take the form of deposits with banks in the debtor country. The banks are free to lend the funds out again as they do the proceeds of other deposits; but the creditors may draw upon their deposits only for specified purposes such as the purchase of internal securities which in turn must be deposited in the blocked account. In particular foreign creditors cannot use blocked deposits to purchase their own currencies and thus transfer their funds home.

Although the blocked account avoids the transfer problem, it leaves the debtor under full obligation to pay in his domestic currency. No relief is afforded on that score. All that happens is that a foreign debt is transferred into a domestic debt.

Blocked account and war debts. -- It has been suggested that use of the blocked account might enable foreign governments to pay their annuities to the government of the United States, notwithstanding the diffi-

culties created by the depression. Such an account would not relieve the budgets of the debtor governments; for the annuities would still have to be paid in local currencies. It would, however, remove pressure from their currencies on the exchanges.

The chief country to which this method might be applied is England. England pays nearly two-thirds of the annuities, her international reserves are not large in view of the deficit in her international income, and her currency is unstable on the exchanges. France, on the other hand, the second largest debtor, has a budget problem but no transfer problem; and hence a blocked account would be of no use to her. Other countries would find their situations eased by the use of blocked accounts, but their payments to the United States are of relatively small importance.

The English case. -- Even in the case of England it is doubtful whether all pressure on sterling from the American debt should be removed. A discount on sterling is one of the essential instruments for altering the British balance of payments in such wise as to make eventual transfer of the debt payments possible. Not only does such a discount promote exports of commodities and retard imports, but it has hitherto been successful in stimulating debt repayments by foreigners and repatriation of British capital held abroad. Unless the debt payments are never to be transferred, the corrective of a depreciated sterling exchange must be allowed to act. But two types of temporary blocked accounts that might be justified are dealt with in succeeding paragraphs.

Use of blocked account between payment dates. -- The blocked account might be used to spread over a half-year period payments which, if concentrated on a single day, might lead to collapse of the currency and chaotic conditions. The corrective to the balance of payments can best be supplied by orderly pressure on sterling exchange, not irregular thrusts. Had the British Treasury entered the exchange market in connection with its recent payment and endeavored to purchase $95,000,000 in the course of a few days, the effect on sterling would have been catastrophic. In fact it transferred to us a substantial fraction of the gold reserves of the Bank of England. As an alternative to either of these methods the Treasury might have been given the option of paying immediately into a blocked sterling account. -- the proceeds of this account to be subsequently transferred into dollars at the discretion of the British authorities, subject to the condition that the whole transfer should be effected by June 15, 1933. This would spread the transfer of the payment over six months and accommodate it to the irregularities of other elements in England's balance of international payments. It would leave sterling under full pressure from the debt payments but it would distribute the pressure evenly.

It would seem to be a sensible way of handling the situation if it were not for one fact. There is no reason why the British Treasury should not accumulate its $95,000,000 in the half year preceding December 15 rather than in the half year following. As a matter of fact, this is exactly what it did during the years when it was regularly making payment; and it would have done

so again had it regarded the resumption of the annuities as settled. Even though taken somewhat by surprise the British Treasury and the Bank of England had foreign balances on December 15 just about sufficient to cover the annuity payment. In addition there were about $678,000,000 of gold in the issue department of the Bank of England and an unknown amount of gold in the Equalization Fund. As a means for distributing the transfers throughout the year, therefore, the blocked account system appears to be hardly necessary, though it might be called into play in occasional emergencies.

Use of blocked account over a possible transition period.-- The other argument for the use of the blocked account in England is based on the possibility that England's international position is in process of improvement. There are grounds for believing that the present depreciation of sterling has not yet had its full effect upon the British balance of trade. British exporters still have a price advantage in world markets and importers are handicapped. Even without further decline in sterling it is quite possible that for the next year or two the excess of merchandise imports will continue to shrink. Furthermore as soon as world recovery sets in, the flow of income from British investments abroad and from shipping and financial services will build up. Assuming these developments, the restoration of England's net international income might make it possible for her in the course of two or three years to transfer the entire proceeds of a blocked account and to resume the transfer of current payments. If it were considered desirable to gamble on this outcome, permission might be given the British Treasury to

accumulate payments in a blocked sterling account for a limited term of years. And if the British authorities held sterling at its present level through purchases of foreign currencies whenever there was a tendency for sterling to rise, they might acquire very substantial amounts of dollars before the end of the period.

This pegging of sterling against a rise would be one of the curious features of the program; but it would be quite essential as the means of obtaining the maximum of dollars. Formally or informally, it would have to be part of the understanding on which permission to use a blocked account was granted. It might well prove to be the first step in the de facto stabilization of sterling.

Whether or not the accumulation, at the outset, of a large blocked account waiting to be transferred would leave sterling too vulnerable on the downward side is an open question. It would have to be clearly understood by the public that no transfers would be effected except as sterling developed strength. At best there would be something abnormal about the whole situation. But if an attempt is to be made to keep the British war debt alive for an indefinite period of time, this use of the blocked account would perhaps be one of the most flexible means of accomplishing the end.

Note on countries other than England. -- It has already been noted that France has no need of the particular kind of aid that is given by a blocked account. The gold and foreign exchange holdings of the Bank of France are ample to transfer any sums the French Government may see fit to provide in its budget. The other countries in debt to our government,

however, will find difficulty sooner or later in making the transfer -- with the possible exception of Belgium.

There is some question as to how useful the blocked account would be in connection with these other countries. With few exceptions they are attempting to support their currencies by restrictions of an emergency character on international trade and capital transactions. They have not permitted the corrective action of depreciated exchange on their international position to have full sway; and there is not in their cases the same ground for hoping for a marked improvement in their balance of payments in the next few years such as might reasonably be anticipated for England. These countries are relatively unimportant, however, and it might be well to extend to them upon request any privilege granted to England. It is just possible that some use might be made of such occasions to alter their exchange policies for the better.

Use of blocked account to finance American exports. It has also been suggested that the blocked account might be used to further American exports. English importers, for instance, might be permitted to borrow from the account on advantageous terms to finance their purchases in this country. Since the account would be in sterling the importers would have to borrow sterling; but with the proceeds they could buy dollars on the exchange market. If their demand for commodities were merely transferred from other countries to the United States, there would be no additional pressure on sterling exchange from these transactions. The chances are, however, that there would be some tendency for a net increase of British imports and that the demands of importers for foreign currencies would render even more difficult the transfer of the war debt

payments to the American Treasury. It may be that this will not be looked upon as a vital objection to the plan, which in its essence appears a proposal that the British Government should finance British imports from the United States on advantageous terms -- and as a reward be relieved temporarily of making payment to the American Government.

113

Form No. 131

Office Correspondence

FEDERAL RESERVE BOARD

Sec Bd

Date January 11, 1933

To Mr. Hamlin

Subject:

From Mr. Goldenweiser

2—8495

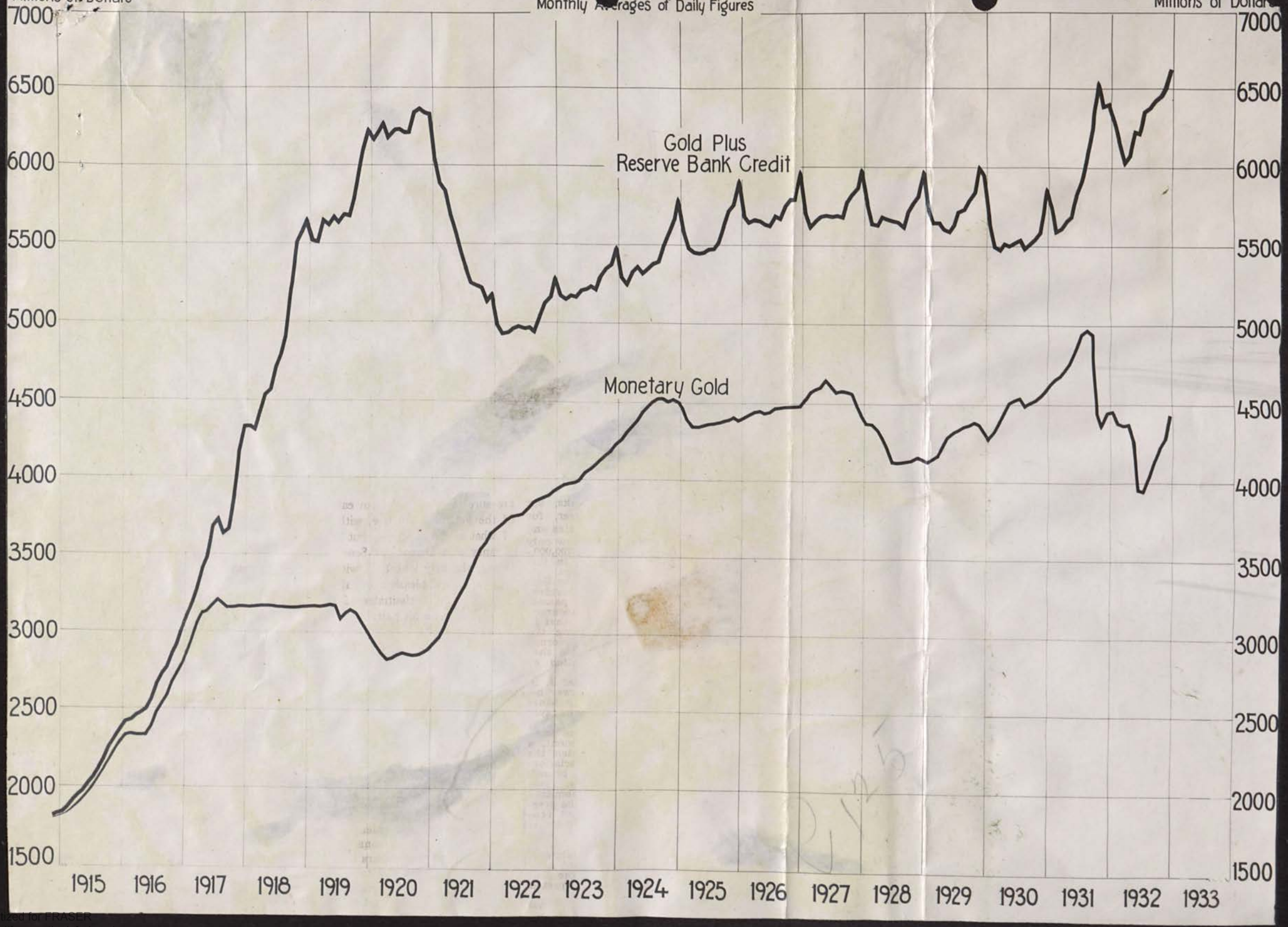
I am attaching a copy of the chart on gold and reserve bank credit which you requested at the time of the Open-Market policy conference.

VOLUME 236
PAGE 125

C 125

GOLD AND RESERVE BANK CREDIT

Monthly Averages of Daily Figures



FEDERAL RESERVE BANK

OF NEW YORK

January 11, 1933.

Dear Mr. Hamlin:

When I was in Washington recently you mentioned the possible desirability of some definite rule restricting borrowings by officers and employees of Federal Reserve Banks, and I said I would send you a copy of the printed rules of this bank covering this and other subjects.

I am therefore sending you a copy of the "General Rules and Regulations for the Employees of the Federal Reserve Bank of New York", which have been in effect since 1926. You will note that these rules contain the following provisions with reference to borrowing:

> "2. Any employee of the bank who incurs any debt or other liability for the purpose of dealing in stocks, bonds, securities, commodities, or real estate for a speculative profit, or who, without the approval of the Governor of the bank, gives his or her indorsement upon any note or bill, or signs or agrees to act as surety or guarantor on any note, bond or contract, shall be subject to immediate dismissal.
>
> "3. Any borrowing made from any bank by an employee of this bank must be on such a basis that there shall be neither in fact nor in appearance any securing of credit by such employee on terms more favorable than his account in the lending bank would justify."

While these printed rules in terms apply only to employees of the bank, it has always been recognized that the officers as well as the employees should be governed by the two rules quoted above, as well as by rule 4 relating to outside business

VOLUME 236
PAGE 131

activities. In fact, shortly after these rules were promulgated Governor Strong addressed a memorandum to all officers referring to rules 2, 3 and 4 and stating that the officers were expected to be governed by them. I enclose a copy of this memorandum, which is dated April 2, 1926.

If there is any further information you would like from us I hope you will not hesitate to ask me for it.

Yours faithfully,

George L. Harrison

George L. Harrison,
Governor.

Encls.

Honorable Charles S. Hamlin,
Federal Reserve Board,
Washington, D. C.

P.S.-In considering this subject you may be interested to read pages 306 to 327 of the stenographic record of the November 1925 Governors Conference, and pages 155 to 158 of the stenographic record of the March 1926 Governors Conference.

G.L.H.

EMP-19-3-1M-3-29

GENERAL RULES AND REGULATIONS

FOR THE

EMPLOYEES

OF THE

FEDERAL RESERVE BANK

OF NEW YORK

To the Employees:

Attention of all employees is especially directed to the absolutely confidential nature of all their relations with this bank; their acceptance of which is a condition of their employment and of the continuance of such employment.

1. In view of the ultra-confidential character of the work of the personnel of the Federal Reserve Bank and in view of the sometimes exaggerated importance attached even to informal or personal comments or statements made by Federal Reserve Bank employees concerning general banking matters, no employee of the Federal Reserve Bank shall, except so far as is necessary in the regular course of business, in any way disclose to anyone, within or without the bank, any information obtained in the course of his or her work, which in any way relates to the bank or its affairs and in particular to its relations with the United States Treasury, the Federal Reserve Board, the Federal Reserve Banks, member banks and foreign correspondents of this bank. Anyone guilty of a breach of this rule will be subject to instant dismissal.

2. Any employee of the bank who incurs any debt or other liability for the purpose of dealing in stocks, bonds, securities, commodities, or real estate for a speculative profit, or who, without the approval of the Governor of the bank, gives his or her indorsement upon any note or bill, or signs or agrees to act as surety or guarantor on any note, bond or contract, shall be subject to immediate dismissal.

3. Any borrowing made from any bank by an employee of this bank must be on such a basis that there shall be neither in fact nor in appearance any securing of credit by such employee on terms more favorable than his account in the lending bank would justify.

4. No employee of the bank shall engage in any outside business activities which would in any way interfere with his giving full time and service to the bank. Any employee desiring to engage in any other outside business activity may do so only upon condition that he or she has first obtained the approval of the Governor of the bank.

5. Telephone communications, no matter how trivial or exasperating should be given the most careful attention. Always answer your telephone promptly, giving first the name of the department and then the name of the person speaking. For example, "Securities Department—Mr. Smith speaking."

6. No loitering will be permitted within or in the immediate vicinity of the bank.

7. Personal telephone calls will not be permitted until after 5 p. m., except that such calls may be permitted in the discretion of chiefs of divisions in emergency cases.

8. All employees must enter and leave the bank by employees' entrance, No. 44 Maiden Lane. An identification card, which must be shown to the protection officer upon request, will be supplied to each employee. Bundles, bags, handgrips, valises or baggage shall be checked in the Check Room on "A" level.

9. No employee will be allowed to leave the bank during business hours, except by permission of his chief. Passes will be issued by chiefs to employees authorized to go out, and no employee will be allowed to leave the bank without such pass during business hours. No pass will be required, however, for employees leaving the bank during lunch period, between 11:00 a. m. and 1:30 p. m.

10. No employee shall smoke in any part of the bank before 3:30 p. m. on any business day and not before 1:00 p. m. on Saturdays, except in the Men's Cafeteria and Rest Room during the luncheon period.

11. In the event of absence, the Investigating Section of the Administration Department should be notified as early as possible on the day of absence.

12. The Service Division should be immediately notified of any change of home address or personnel (marriage, change in dependents, deaths, etc.)

GEORGE L. HARRISON,
Governor.

COPY

FEDERAL RESERVE BANK
OF NEW YORK

OFFICE CORRESPONDENCE

DATE April 2, 1926. 192

TO All Officers.

SUBJECT:

FROM Governor Strong.

The attention of officers of the bank is especially desired regarding the following rules which have been incorporated in the rules for employees of the bank:

2. Any employee of the bank who incurs any debt or other liability for the purpose of dealing in stocks, bonds, securities, commodities, or real estate for a speculative profit, or who, without the approval of the Governor of the bank, gives his or her indorsement upon any note or bill, or signs or agrees to act as surety or guarantor on any note, bond or contract, shall be subject to immediate dismissal.

3. Any borrowing made from any bank by an employee of this bank must be on such a basis that there shall be neither in fact nor in appearance any securing of credit by such employee on terms more favorable than his account in the lending bank would justify.

4. No employee of the bank shall engage in any outside business activities which would in any way interfere with his giving full time and service to the bank. Any employee desiring to engage in any other outside business activity may do so only upon condition that he or she has first obtained the approval of the Governor of the bank.

These rules embody principles which I am sure will govern all of you in your relations with the bank, and my purpose in writing this memorandum is to express to you some of the reasons why my judgment is that it should be so.

Officers of this bank have been selected on the basis of integrity, ability and character and are in a position somewhat different from that of other bank officers, in that their position in this bank is peculiarly charged with a public trust. It is for this reason that, in my judgment, they are under unusual obligations of

FEDERAL RESERVE BANK
OF NEW YORK

OFFICE CORRESPONDENCE

DATE April 2, 1926. 192

TO All Officers SUBJECT:

FROM Governor Strong.

restrictions in their business and personal conduct. It is my belief that every one of our officers keenly appreciates the peculiar position of trust and confidence which he occupies and that he will so conduct his business and financial transactions as to run no risk of suspicion that more favorable terms have been accorded to him in business matters by reason of his connection with this bank and so that there may not be any cause of embarrassment in his official relationship with member banks.

As to the rule numbered two, I am sure it is apparent to all of you that the best interests of the bank require a complete understanding on the part of all of its officers and employees that all speculative enterprise or activity, and particularly that which involves the borrowing of money, must be scrupulously avoided. It is not possible to make an absolute definition of "speculation" as distinguished from "investment," so that the distinction must be left to the character and judgment of individuals. I have great confidence that the officers of this bank will be able to judge of this matter so that no act of theirs will in fact or in appearance be a violation of the spirit of the principle involved in the rule for employees in question.

Exactly the same considerations apply to the principle expressed in the rule numbered three of the rules for employees, and it is for the same reasons that I commend this principle to you for guidance. You will note that the principle expressed by the rule in question is a modification of the principle against borrowings of officers from member banks as expressed in the minute of the officers'

FEDERAL RESERVE BANK
OF NEW YORK

OFFICE CORRESPONDENCE

DATE April 2, 1926. 192

TO All Officers

SUBJECT:

FROM Governor Strong.

meeting of September 8, 1924.

In like manner these reasons and considerations apply to the principle embodied in the rule numbered four of the rules for employees. You will recall that on June 11, 1924, I sent to each of the officers of the bank a memorandum explaining the necessity for the rule on this subject which was at that time adopted. The rule numbered four above referred to is the same rule in substance as the one which was the subject of the memorandum of June 11, 1924. The change is only in form.

This memorandum is intended to again express my belief that you will readily appreciate the necessity for the adoption of these principles.

If observance of these requirements appears to involve sacrifices by the officers I can only say that I consider that such sacrifices are a necessary condition of our work in this bank.

Sometimes one hesitates to judge or decide doubtful points. I would like to feel that every officer of the bank has enough confidence in me promptly to express his doubts in any such case and give me an opportunity to talk it over. And this not only applies to the rules of the bank, but to any and every other matter.

FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

X-7325

January 13, 1933.

SUBJECT: Extension of Provisions of Section 10(b) and the Second Paragraph of Section 16 of Federal Reserve Act, as Amended.

Dear Sir:

For your information there is transmitted herewith copy of a letter dated January 9, 1933, addressed to the Chairman of the Senate Committee on Banking and Currency by Governor Meyer in which the Federal Reserve Board recommended the enactment at this session of the Congress of appropriate legislation extending for at least one year from March 3, 1933, the authority conferred by section 10(b) and by the second paragraph of section 16 of the Federal Reserve Act as amended by the Act of February 27, 1932, known as the Glass-Steagall Act.

A similar letter bearing the same date was addressed to the Chairman of the House Committee on Banking and Currency.

Very truly yours,

Chester Morrill,
Secretary.

Inclosure.

TO CHAIRMEN AND GOVERNORS OF ALL F. R. BANKS.

VOLUME 236
PAGE 151

B151

C O P Y

X-7325-a

Jan 9 1933

Honorable Peter Norbeck, Chairman,
Senate Committee on Banking and Currency,
United States Senate,
Washington, D. C.

Dear Mr. Chairman:

The Federal Reserve Board respectfully recommends that appropriate legislation be enacted at this session of the Congress extending for at least one year from March 3, 1933, the authority conferred by section 10(b) and by the second paragraph of section 16 of the Federal Reserve Act as amended by the Act of February 27, 1932, known as the Glass-Steagall Act.

The Glass-Steagall Act amended the Federal Reserve Act by adding thereto section 10(b), which authorizes the Federal reserve banks, until March 3, 1933, in exceptional and exigent circumstances and subject to the affirmative action of not less than five members of the Federal Reserve Board, to make advances to member banks which lack sufficient eligible and acceptable assets to enable them to obtain adequate credit accommodations from the Federal reserve banks by the customary methods. While demands upon the Federal reserve banks for accommodations under section 10(b) have not been large, the existence of the authority to extend such accommodations has been a helpful factor in the disturbed situation through which we have been passing and has enabled the Federal reserve banks to render service to individual member banks in a number of instances.

The Glass-Steagall Act amended the second paragraph of

section 16 of the Federal Reserve Act so as to provide that until March 3, 1933, should the Federal Reserve Board deem it in the public interest, it may, upon the affirmative vote of not less than a majority of its members, authorize the Federal reserve banks to offer, and the Federal reserve agents to accept, as collateral security for Federal reserve notes, direct obligations of the United States. This amendment provides that such authorization shall terminate on March 3, 1933, and such obligations shall be retired as security for Federal reserve notes. On May 5, 1932, the Federal Reserve Board authorized the Federal reserve banks to pledge direct obligations of the United States as collateral for Federal reserve notes and the procedure therefor was set out fully in the Federal Reserve Bulletin for the month of May, 1932, a copy of which is inclosed for your convenience. In the opinion of the Board, the authority granted by section 3 of the Glass-Steagall Act has served a very useful purpose.

In this connection, it may be stated that the Federal reserve agents and the Governors of the Federal reserve banks have recommended unanimously that the authority conferred by these provisions be extended for at least one year and that the Federal Advisory Council, at its meeting in Washington on November 17, 1932, adopted the following resolution:

> "It is the sense of the Federal Advisory Council that Congress be asked to extend for a period of at least one year the provisions of Section 10(b) and Section 3 of the Glass-Steagall Bill, H. R. 9203."

Honorable Peter Norbeck - (3)

While the Glass-Steagall Act was under consideration in Congress the question of the advisability of limiting to March 3, 1933, the period in which the authority conferred by the second and third sections thereof could be exercised was discussed and it was pointed out then that if experience should indicate the wisdom of extending the period, there would be ample time before its expiration for Congress to take the necessary action. The Federal Reserve Board feels that the Congress might well consider the enactment of these provisions in permanent form, with whatever safeguards may be deemed appropriate as to the exercise of the authority granted by them, but, in any event, it is the opinion of the Board that, in view of existing conditions, it would be highly desirable to extend such authority for at least one year beyond March 3, 1933.

Respectfully,

Eugene Meyer,
Governor.

Inclosure.

B-15