

A meeting of the Board of Governors of the Federal Reserve System was held in Washington on Thursday, October 7, 1937, at 11:30 a. m.

PRESENT: Mr. Ransom, Vice Chairman
Mr. Szymczak
Mr. McKee
Mr. Davis

Mr. Morrill, Secretary
Mr. Bethea, Assistant Secretary
Mr. Clayton, Assistant to the Chairman

Consideration was given to each of the matters hereinafter referred to and the action stated with respect thereto was taken by the Board:

The minutes of the meeting of the Board of Governors of the Federal Reserve System held on October 6, 1937, were approved unanimously.

Telegrams to Mr. Leach, President of the Federal Reserve Bank of Richmond, Mr. Stewart, Secretary of the Federal Reserve Bank of St. Louis, Mr. Thomas, Chairman of the Federal Reserve Bank of Kansas City, and Mr. Sargent, Secretary of the Federal Reserve Bank of San Francisco, stating that the Board approves the establishment without change by the St. Louis bank on October 6, 1937, and by the Richmond, Kansas City and San Francisco banks today, of the rates of discount and purchase in their existing schedules.

Approved unanimously.

Letter to Mr. Fleming, President of the Federal Reserve Bank of Cleveland, prepared in accordance with the action taken at the

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meeting of the Board on October 5, 1937, and reading as follows:

"A discussion of the preliminary application of the organizers of 'The Union Bank of Commerce Company', Cleveland, Ohio, for membership in the Federal Reserve System has developed the fact that the Board will need certain additional information before it takes any action on the application.

"The Board recognizes that the duty of protecting the interests of the depositors and other creditors of The Union Trust Company rests upon the Superintendent of Banks of the State of Ohio, and the Board has no disposition to assume that duty or any share in it. However, the Board does have a definite responsibility with respect to the admission of the applicant bank to the Federal Reserve System and is required by law in acting upon such application to consider the financial history and condition of the applying bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank and whether or not its corporate powers are consistent with the purposes of the Federal Reserve Act.

"The financial condition of a bank, the adequacy of its capital structure and its future earnings prospects would be adversely affected if there were a cloud on the title to the assets which it is proposed that the new bank shall acquire from the Superintendent of Banks.

"Such study as has been given up to the present time to the plan under which it is proposed that the applicant bank will be organized indicates that there are two possible grounds upon which the validity of the transaction might be subject to attack after consummation of the plan:

(1) It might be contended that the transaction is one which may not be lawfully entered into by the Superintendent of Banks under the provisions of Section 710-95 of the General Code of Ohio and that, therefore, even if consummated, it might be subject to subsequent attack on the ground that the Superintendent and the Court which approved the plan exceeded their authority and the entire transaction is null and void.

(2) It might be contended even by persons assenting to the plan that the statement proposed to be sent to the depositors and other creditors for the purpose of inducing them to assent to the plan represents that by agreeing to the plan they will fare better than they would under continued liquidation by the Superintendent; that this statement is inaccurate; and that the entire transaction should

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"be set aside on the ground that their assent was procured through misrepresentation of material facts.

"In order that the Board may consider whether either of these possibilities is of sufficient substance to jeopardize the future of the applicant bank, it is requested that, before the Board takes any action on the application, you obtain and forward to the Board the following information in writing:

(1) From the Superintendent of Banks of Ohio;

(a) A current detailed financial statement of the entire trust, showing the book value of all classes of assets.

(b) A current detailed financial statement of the entire trust showing the estimated liquidating value of all classes of assets, the amount of allowed claims against the trust, including accrued interest thereon, the amount of all other recognized obligations of the trust and the amount, nature and purpose of all reserves.

(c) A statement in detail of the earnings and expenses of the trust from June 15, 1933 to October 15, 1937 and an estimate of the earnings and expenses for the period of six months commencing October 15, 1937, without deductions for losses.

(d) The amount of cash now on hand available for distribution as dividends on allowed claims.

(e) His estimate of the maximum additional amount realizable in cash from assets of the trust within six months from October 15, 1937:

(i) By liquidation of such assets as are marketable or otherwise subject to prompt conversion into cash, and

(ii) By borrowing the maximum amount obtainable on the security of all other assets.

(f) His estimate of the amount realizable by the two methods indicated above and the total amount which would be available for distribution to depositors at the end of six months from October 15, 1937:

(i) If the stockholders' assessments are available for distribution, and

(ii) If such assessments are not available for distribution.

(g) His estimate as to what extent any reserves set up for non-book liabilities of the trust will actually be required to satisfy such liabilities.

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"(h) His present estimate of the aggregate amount ultimately realizable from all assets of the trust and available for distribution, under orderly liquidation by the Superintendent.

(i) The earliest date when the stockholders' suit was in condition to be heard by the Court of Appeals; what efforts have been made by the Superintendent or his Counsel to expedite hearing of such case by said court; the earliest future date at which such case can be heard by said court; and an estimate of time required for disposition of such case by the Court of Appeals and review thereof or refusal to admit said case for review by the Supreme Court of Ohio.

(2) Opinion of Counsel for the Deputy Superintendent in charge of The Union Trust Company as to the probability of the Court of Appeals and the Supreme Court of Ohio affirming the decision of the Common Pleas Court in the case above referred to.

(3) Opinions of the Attorney General of Ohio and of Counsel for the proponents of the plan with respect to the following legal questions in connection with the plan:

(a) Does the proposed transfer of the assets of the trust to The Union Bank of Commerce Company and Union Properties, Inc. constitute a valid sale, exchange or disposition otherwise of the assets of said trust within the provisions of Section 710-95 of the General Code of Ohio?

(b) If so, how is the principle here involved distinguishable from the principles set forth in the Opinion of the Attorney General of Ohio No. 5918 (Department Reports of the State of Ohio, vol. 43, page 334) and in the cases of Ex parte Moore, 6 Fed. (2d) 905; Jackson v. McIntosh, 12 Fed. (2d) 676; Mobley v. Marlin, 166 Ga. 820, 144 S.E. 747; In re LaFayette Bank & Trust Company of Fayetteville, 198 N.C. 783, 153 S.E. 452; Broderick v. Betco Corporation, 267 N.Y. Supp. 139; Gockstetter v. Williams, 9 Fed. (2d) 928 (D.C. Mont.), 9 Fed. (2d) 354 (C.C.A.)? (Also see Fifer v. Williams, 5 Fed. (2d) 286.)

(c) Assuming that a question exists as to the validity of the proposed transaction, by what means can its validity be conclusively established by judicial process and what is a reasonable estimate of the time required to accomplish this purpose?

(d) What is the Ohio law with respect to the right of depositors and creditors to receive payment of in-

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"Interest upon their allowed claims against an insolvent State bank before the distribution to shareholders of any proceeds of the liquidation of the assets of such bank? If interest is allowable, what is the rate?

(4) A statement by the Superintendent of Banks as to what the practice of his office has been heretofore with respect to payment of interest upon depositors' and creditors' claims against insolvent banks organized under the laws of Ohio."

Approved unanimously.

Letter to Preston, Watt & Schoyer, Pittsburgh, Pennsylvania, reading as follows:

"Reference is made to your letter of September 30, 1937, to the Securities and Exchange Commission, which has been referred to the Board.

"The question presented in your letter is stated as follows:

'In the case of a switch from one stock to another in a restricted margin account, suppose for example, a client is long 100 shares of ABC Company stock and he sells same on September 28th. If he enters an order to buy 100 shares of XYZ Company stock (the cost of which will not increase his debit balance), is there a time limit in which he must buy this stock to complete the switch?'

"The case presented is covered by section 4(d) of Regulation T, relating to transactions in restricted accounts, which provides, in part, 'That any substitution of securities consisting of a sale of securities in the account and the purchase of other securities, if completed within a period of two successive business days, may be considered for the purposes of this section as a single transaction occurring on the day on which the purchase occurs.' In the case presented, therefore, if the customer does not purchase the XYZ stock on the day on which he sells the ABC stock, or on the next succeeding business day, the purchase may not be combined with the sale for the purposes of the regulation but must be treated as a separate transaction."

Approved unanimously.

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Thereupon the meeting adjourned.

Chester Morris
Secretary.

Approved:

Donald Anderson
Vice Chairman.