A meeting of the Board of Governors of the Federal Reserve System was held in Washington on Wednesday, November 16, 1938, at 11:30 a. m.

PRESENT: Mr. Eccles, Chairman
Mr. Szymczak
Mr. Draper

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

The action stated with respect to each of the matters hereinafter referred to was taken by the Board:

Letter dated November 15, 1938, from Miss Elizabeth A. DuKiet tendering her resignation as a stenographer in the Office of the Secretary, effective at the close of business on November 15, 1938.

Approved unanimously.

Letter to Mr. Day, President of the Federal Reserve Bank of San Francisco, reading as follows:

"There is attached a copy of a letter received by the Board from Mr. Thos. W. Paul, Vice President of the First National Bank of Everett, Everett, Washington, inquiring as to whether member banks may borrow at the Federal Reserve banks to the full par value of such Government securities as they may pledge as collateral. As will be noted from the attached copy of our reply, Mr. Paul has been advised that his inquiry has been referred to you with the request that you communicate with him regarding this matter.

"In replying to Mr. Paul's letter, it is suggested that you advise him not only as to the present policy of your bank, which it is understood is to lend ordinarily the full par value of Government securities pledged by member banks as collateral for advances, but also that under the provisions of Regulation 'A' of the Board of

"Governors, which became effective October 1, 1937, it is necessary for any Federal Reserve Bank to report to the Board the facts and circumstances of any case in which the amount of an advance on a member bank's promissory note secured by direct obligations of the United States or obligations which are guaranteed both as to principal and interest by the United States is less than the face amount of such obligations; and that since Regulation 'A' became effective there has been no case reported to the Board of Governors in which the Federal Reserve Bank required that the advance be secured by Government obligations having a face value in excess of the amount of the advance."

Approved unanimously.

Letter to Mr. James K. McCoy, Secretary-Manager, Little Business of California, Inc., San Francisco, California, reading as follows:

"Reference is made to your letter of November 5, 1938, addressed to the United States Information Service, Washington, D. C., regarding a statement to the effect that a report is being prepared by the Board of Governors of the Federal Reserve System recommending better Government facilities for making small business loans.

"Continuous study is given by the Board and its staff to various provisions of the law affecting the Federal Reserve System, including section 13b of the Federal Reserve Act, and from time to time recommendations to Congress are made regarding their amendment. However, the Board of Governors has not made any such recommendation concerning an amendment to section 13b of the Federal Reserve Act and has not prepared a report such as you refer to in your letter.

"At the present time, the Reconstruction Finance Corporation and the Federal Reserve banks have authority to make loans to business enterprises either direct or in cooperation with financing institutions. Section 5d of the R.F.C. Act was further amended by an Act of Congress approved in April, 1938, giving that Corporation very broad authority in granting such credit.

"If you are not familiar with the provisions of the

"amended R.F.C. Act, it is suggested that you communicate with the Corporation's loan agency located in San Francisco for any information you may desire. The Federal Reserve Bank of San Francisco will, of course, be glad to give you any information you desire regarding advances and commitments under section 13b of the Federal Reserve Act as amended."

Approved unanimously.

Letter to Mr. G. J. Schaller, President of the Federal Reserve Bank of Chicago, reading as follows:

"Receipt is acknowledged of your letter of October 14, 1938, regarding a number of directors and officers of member banks who are serving other banks and who will be required by the provisions of the Clayton Act to resign from all but one of the institutions which they are now serving.

"You state that several of the banks in the outlying districts of Chicago have asked you to rule whether a director or officer of a member bank may serve at the same time as a member of the Advisory Committee of another bank located in the same city. You say, 'Such members of the Advisory Committee would be elected by the stockholders at their annual meeting and would serve without pay and would not be in any sense officers or directors.'

"As you point out, a ruling regarding the status of members of an advisory committee was published in 1917 (1917 Federal Reserve Bulletin, page 118), and since that time the Board has considered similar questions on a number of occasions. The principal point of difference between the cases which have previously been considered by the Board and the proposal discussed in your letter is that the members of the Advisory Committees will be elected by the stockholders. The Board has not undertaken to determine whether stockholders in particular institutions could, as a matter of law, elect such a committee, but assuming that they could, the question whether a member thereof would be a 'director, officer or employee' of the institution so as to come within the prohibitions of the Clayton Act would depend upon the considerations discussed in the Board's ruling referred to above.

"They would evidently not be 'employees' in view of the fact that they would receive no pay, and also because their services would apparently not be subject to the direction or control of the bank but would involve the use of independent judgment on their part.

"You state that they 'would not be in any sense officers' and it is assumed you have made this statement in the light of the discussion in the Board's ruling, referred to above, on the ground that they would not have authority to pass on loans or to act for the bank or any officer thereof in the performance of any duty usually performed by an officer, or to bind the bank in any way.

"Similarly, your statement that they would not be 'directors' is apparently based on the fact that they would not be elected as such. If they are not elected directors it is assumed that they will not have any of the powers or duties of directors but that their functions will be merely advisory.

"The fact that they would serve without pay and that they would have a title which would indicate that they were neither directors, officers nor employees of the bank would indicate that their position would be honorary and their functions advisory. A bank can of course obtain advice from anyone, if the arrangement is mutually agreeable. The principal objection to an honorary title, generally, is that it may mislead the public into thinking that the person has official duties and responsibilities in connection with the bank. In the present case this is particularly important since the proposal is evidently designed to avoid the prohibitions of the statute. Obviously, a mere change in title is not enough, and a specific statement of the limits of their functions and responsibilities would therefore be desirable so as to make it clear to the stockholders that they were not electing merely a second group of directors.

"Of course, each case will have to be decided on its own merits. However, subject to the general principles outlined above, the Board is of the opinion that membership in such committees would not be within the prohibitions of the Clayton Act."

Approved unanimously.

Letter dated November 15, 1938, to Mr. W. H. Workman, President,

First Industrial Loan Company of California, Los Angeles, California, reading as follows:

"Receipt is acknowledged of your letter of October 27, 1938, referring to your letter of October 10, 1938, regarding the applicability of the Clayton Act to several directors of your Company who are serving member banks of the Federal Reserve System and who have been advised that they must terminate their services with one institution or the other by February 1, 1939.

"The delay in replying to your earlier letter has been due to the fact that the question which you raised was being carefully reconsidered. The question is whether your Company is a 'bank, banking association, savings bank, or trust company' within the meaning of the Clayton Act. You point out that your Company is under the supervision of the State Corporation Commission and not the State Banking Commission, that it is prohibited to use in its name any of the words, 'bank', 'bankers', 'savings', 'deposit', and that it must obtain permits from the Corporation Commission to sell its Investment Certificates, which are required to bear the words, 'this is not a certificate of deposit'. You also say that your Company is barred from membership in the Federal Reserve System because it is not a bank under your State laws. As to this last point, however, it should be noted that as far as the Federal law is concerned (section 9 of the Federal Reserve Act, first paragraph) your Company could become a member.

"Prior to the first time the Board was asked to rule whether your Company was a 'bank' within the meaning of the Clayton Act, the Board had ruled that Morris Plan companies in California should be so regarded. Subsequently, in 1934, the Board after careful study held that Morris Plan companies in Minnesota were banks within the meaning of the Clayton Act. This ruling (which was published in the March, 1934 Federal Reserve Bulletin at page 180, copy inclosed) involved a statute very similar in its essential points to that under which your Company operates. Furthermore, at various times the Board has had occasion to rule upon the question whether Morris Plan banks and Morris Plan companies in a number of other States were 'banks' within the meaning of the Clayton Act and in all these

"cases found that they should be so considered.

"The Board is cognizant of the fact that a general rule laid down by Congress which is applicable to all situations of a certain kind throughout the United States may in some instances affect cases which do not necessarily involve the evil which the rule was designed to correct. However, the only question presented to the Board for decision in your case is the question whether or not your Company is a 'bank' within the meaning of the Clayton Act. The Board's ruling on that question was based on reasons similar to those on which all the other rulings referred to above were based, and since those reasons appear to be correct, I trust that you will understand that the Board could not justifiably rule that your Company is not a bank within the meaning of the statute.

"Formerly the Board had authority to issue individual permits, but by the Banking Act of 1935 Congress repealed this authority, and under the present law the Board's power to authorize interlocking relationships, within the limitations specified in the statute, is confined to the issuance of general regulations applicable to everyone similarly situated throughout the United States. Consequently the Board is without authority to make exceptions in individual cases.

"Since your last letter was received, the Board has further amended its Regulation L so as to provide that any director, officer, or employee of a member bank of the Federal Reserve System who is lawfully serving as a director, officer, or employee of a Morris Plan bank or similar institution on January 31, 1939, may continue such service until August 1, 1939. Accordingly, assuming that the directors of your Company to whom you refer in your letter are now lawfully serving, they may continue such service, under the amended regulation, until August 1, 1939. In connection with this amendment to its regulation, the Board issued a statement to the press, a copy of which is inclosed, explaining its reasons therefor."

Approved unanimously.

Memorandum dated November 3, 1938, from Mr. Morrill submitting for approval by the Board drafts of entries for the policy record required by Section 10 of the Federal Reserve Act to be kept by the

Board, covering actions taken by the Federal Open Market Committee on August 2 and September 21, 1938.

Approved unanimously.

Thereupon the meeting adjourned.

Chester Morrill
Secretary.

Approved:

M S Eccles
Chairman.