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Harding, also in  
A meeting of the Board of Governors of the Federal Reserve System was held in Washington on Tuesday, September 22, 1942, at 11:00 a.m.

PRESENT: Mr. Ransom, Vice Chairman  
Mr. Szymczak  
Mr. Draper  
Mr. Evans

Mr. Morrill, 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:

The minutes of the meeting of the Board of Governors of the Federal Reserve System held on September 21, 1942, were approved unanimously.

Memorandum dated September 19, 1942, from Mr. Goldenweiser, Director of the Division of Research and Statistics, recommending that Ben S. Lichtash be appointed as an economic assistant in that Division on a temporary basis for a period of not to exceed one year, with salary at the rate of \$2,000 per annum, effective as of the date upon which he enters upon the performance of his duties after having passed satisfactorily the usual physical examination.

Approved unanimously.

Memoranda dated September 17, 1942, from Mr. Paulger, Chief of the Division of Examinations, recommending (1) that Mrs. Marie Ann

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Harding, who has been employed in that Division as a stenographer on a temporary basis at a salary of \$5.00 per day, be appointed on a permanent basis, with salary at the rate of \$1,620 per annum, effective as of October 1, 1942, and (2) that Miss Lillian H. Schiller be appointed as a stenographer in that Division, with salary at the rate of \$1,620 per annum, effective as of the date upon which she enters upon the performance of her duties after having passed satisfactorily the usual physical examination.

Approved unanimously.

Letter to the Chairmen of all the Federal Reserve Banks, reading as follows:

"Your attention is directed to the modification of the Board's policy with respect to the reappointment of Class C directors who have completed six years of continuous service, except in the case of the Chairmen of the Federal Reserve Banks, copy of which is enclosed for your ready reference. This statement was published in the Federal Reserve Bulletin for September 1942 on page 881."

Approved, Mr. Draper voting "no".

Letter to Mr. Gilbert, President of the Federal Reserve Bank of Dallas, reading as follows:

"In view of the circumstances stated in your letter of September 11, the Board will interpose no objection to your waiving the penalties incurred by member banks in your district as a result of deficiencies in reserves during the first half of August if, after investigation, you are satisfied that such deficiencies were caused by misinterpretation of your circular letter dated July 24, 1942, and the printed matter on the cover of the reprinted Regulation D.

"It will be appreciated if you will advise the Board of penalties thus waived."

Approved unanimously.

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Letter to the Presidents of all the Federal Reserve Banks,  
reading as follows:

"In its letter of March 6, 1942, the Board advised you that it had decided not to amend Regulation R so as to permit interlocking relationships between member banks and open-end investment companies. Accordingly, in administering the Regulation, it will be necessary to determine from time to time whether particular open-end investment companies are 'primarily engaged' in the issue or distribution of their own stock (see 1941 Federal Reserve Bulletin, page 399; letter of May 26, 1941, S-269, F.R.L.S. #7610; and letter of October 26, 1934, X-8097).

"An open-end investment company is defined in section 5(a)(1) of the Investment Company Act of 1940 as a company 'which is offering for sale or has outstanding any redeemable security of which it is the issuer.' Section 2(a)(31) of said Act provides that a 'redeemable security' means 'any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.'

"It is customary for such companies to have but one class of securities, namely, capital stock, and it is apparent that the more or less continued process of redemption of the stock issued by such a company would restrict and contract its activities if it did not continue to issue its stock. Thus, the issuance and sale of its stock is essential to the maintenance of the company's size and to the continuance of operations without substantial contraction, and therefore the issue and sale of its stock constitutes one of the primary activities of such a company.

"Accordingly, it is the opinion of the Board that if such a company is issuing or offering its redeemable stock for sale, it is 'primarily engaged in the issue\*\*\*public sale, or distribution,\*\*\* of securities' and that section 32 of the Banking Act of 1933, as amended, prohibits an officer, director or employee of any such company from serving at the same time as an officer, director or employee of any member bank. It is the Board's view that this is true even though the shares are sold to the public through independent organizations with the result that the investment company does not derive any direct profit from the sales.

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"If, however, the company has ceased to issue or offer any of its stock for sale, the company would not be engaged in the issue or distribution of its stock and, therefore, the prohibition contained in section 32 would be inapplicable unless the company were primarily engaged in the underwriting, public sale or distribution of securities other than its own stock."

Approved unanimously.

Letter to Mr. Turman, Counsel of the Federal Reserve Bank of Atlanta, reading as follows:

"Your letter of September 1 regarding the effect of Regulation W on 'The Board of Managers of the City of Birmingham, General Employees Pension and Relief Fund' raises a question which is very similar to one which was raised last year in connection with the Municipal Pension and Retirement Board of the City of Minneapolis.

"In that case, the Board of Governors wrote a letter to Mr. Swanson discussing the matter at some length. A copy of that letter is enclosed. Mr. Hodgson had some personal contact with the representatives of the Pension Board and felt that the remaining negotiations could best be handled in that way. Also, he felt that the Pension Board was ready to cooperate but wanted a letter from the Board to bolster its position. Therefore, it was contemplated that the cooperation of the Pension Board would be obtained on a voluntary basis, and the question of compulsion or legal action was not even considered. Accordingly, the type of letter which was written to Mr. Swanson may be entirely inappropriate in the present situation.

"Actually, the argument which Mr. James H. Willis makes regarding the definition of the word 'person' would be strong argument even in the absence of the general definition contained in section 2 of the Trading with the Enemy Act (USCA, Title 50, page 191). However, the question whether the word 'person' includes the sovereign 'depends upon the connection in which the word is found', State of Ohio v. Helvering, 292 U.S. 360, 370, 54 S. Ct. 725 (1934). As you will see, the letter to Mr. Swanson is based on this principle, and contains an extensive review of the history and background of the provisions of section 5(b) and of the Executive Orders. In this connection, see the opening dictum and the dissenting opinion in United States v. Cooper Corporation, 312 U.S. 600, 61 S. Ct. 742 (1941).



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"However, in view of the doubtfulness of the matter and its relative unimportance from the standpoint of national credit conditions, you will probably not wish to go further than to seek voluntary cooperation on the basis mentioned above.

"The last paragraph beginning on page 3 of the letter to Mr. Swanson probably should be considered obsolete."

Approved unanimously.

Letter to the Presidents of all the Federal Reserve Banks, reading as follows:

"There is attached hereto a copy of a letter from the Commissioner of Internal Revenue dated September 9, 1942, which sets forth the requirements necessary in order to avoid the application of the first-in, first-out rule with regard to the taxation of dividends on Federal Reserve Bank stock.

"You will note that the letter suggests that the member bank in making application for cancellation of Federal Reserve Bank stock specify the shares which it desires to have cancelled. Accordingly, forms F.R. 56 and 56a (applications for adjustments in holdings of Federal Reserve Bank stock) have been amended so that the member bank may signify the shares desired to be cancelled. A copy of the draft of revised form 56 is attached, and a supply of both forms will be sent to you under separate cover.

"In order to make it clear that the intention of the member bank was carried out in the matter of surrendering Federal Reserve Bank stock, you will note that the Commissioner of Internal Revenue has suggested that the Federal Reserve Bank show on the stock certificate the number of shares issued and paid for prior to March 28, 1942, and the number of shares issued and paid for on or after that date. To meet this suggestion, Federal Reserve Bank stock certificates issued by your Bank on or after March 28, 1942, may be endorsed on the reverse side in the following manner, the endorsement to be signed preferably by one of the officers whose signature appears on the face of the certificate:

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"This certificate represents \_\_\_\_\_ shares of Federal Reserve Bank stock which were purchased and paid for prior to March 28, 1942, and \_\_\_\_\_ shares of Federal Reserve Bank stock purchased and paid for on or after March 28, 1942.

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 Signature

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 Title of Officer

If desired, arrangements will be made with the Bureau of Engraving and Printing in Washington to have this endorsement printed on the reverse side of all future issues of the Federal Reserve Bank stock certificates. Meantime, the endorsement may be applied by rubber stamp or in some other manner.

"In the next to the last paragraph of the letter from the Commissioner of Internal Revenue, he indicates that if it is feasible to have two certificates of Federal Reserve Bank stock outstanding, one representing stock purchased and paid for prior to March 28, 1942, and the other stock purchased and paid for on or after that date, it would facilitate identification for the purpose of determining taxability on shares of Federal Reserve Bank stock. In the circumstances, any Federal Reserve Bank that so desires is authorized to have not more than two certificates of stock outstanding in the case of each member bank, one to represent stock purchased and paid for prior to March 28, 1942, and the other to represent stock purchased and paid for on or after that date. This may be done without regard to the provision of Regulation I that no more than one certificate shall be outstanding in the case of any one member bank, and an appropriate revision of Regulation I will be made when that regulation is reprinted. If this procedure is adopted it will be necessary, of course, for the Federal Reserve Bank to make an appropriate endorsement on any certificate issued on or after March 28, 1942, but representing stock purchased and paid for prior to that date. This will come about, for example, if a member bank reduces its capital and surplus and, as a consequence, is required to surrender some of its Federal Reserve Bank stock. The endorsement in such cases should read 'This certificate represents shares of Federal Reserve Bank stock which were purchased and paid for prior to March 28, 1942.' No endorsement would be required, of course, on certificates representing stock purchased and paid for on or after March 28, 1942.

"The alternative procedure outlined in the preceding paragraph may be preferred by some of the Reserve Banks, if

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"they anticipate that relatively few member banks will have occasion to surrender Federal Reserve Bank stock purchased before March 28, 1942. Particular care, however, would have to be taken that the occasional endorsements on stock certificates which would be required under such a procedure are not overlooked.

"The Board will appreciate it if you will advise it, in response to this letter, whether your Bank decides (1) to have only one Federal Reserve Bank stock certificate outstanding in the case of each member bank, as outlined in the third paragraph of this letter, or (2) to have two certificates outstanding in accordance with the alternative plan outlined in the fourth paragraph.

"It is suggested that, if any circular letter is sent to the member banks on this subject, their attention be called to the subject matter of the last paragraph of the letter of the Commissioner of Internal Revenue."

Approved unanimously.

Thereupon the meeting adjourned.

Chester Noriep  
Secretary.

Approved: [Signature]  
Vice Chairman.