

A meeting of the Board of Governors of the Federal Reserve System was held in Washington on Tuesday, December 14, 1943, at 10:30 a.m.

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

Mr. Morrill, Secretary
Mr. Bethea, Assistant Secretary
Mr. Clayton, Assistant to the Chairman
Mr. Thurston, Special Assistant to the Chairman
Mr. Smead, Chief of the Division of Bank Operations
Mr. Dreibelbis, General Attorney
Mr. Vest, Assistant General Attorney
Mr. Chase, Attorney
Mr. Brown, Administrative Assistant in the Division of Security Loans

Mr. Ransom presented for consideration a request contained in a letter dated December 10, 1943, from Mr. Dillard, Vice President of the Federal Reserve Bank of Chicago, that the Board issue an order for a hearing to determine whether the license of Consumers Home Equipment Co., Detroit, Michigan, under Regulation W should be suspended. Mr. Ransom said that he and Mr. Dreibelbis had been in touch with officers of the Reserve Bank in an effort to determine an appropriate course of action to be taken as a result of what had been reported to be repeated violations by the company of the provisions of Regulation W, that the Reserve Bank was exploring the possibility of getting the company to

12/14/43

-2-

agree to a "consent closing", that the Bank had in mind a prohibition against sales by the company for a period of 30 days, but that thus far officials of the company had not reacted favorably and had indicated such a prohibition would be disastrous. Mr. Ransom stated that, notwithstanding its rank as the second largest house of its type in the United States, it appeared that the company had been operating from the beginning on a financial "shoestring" and that, while it felt it could not survive a 30-day closing, officials of the company had agreed to consider the matter with representatives of its finance company, the American Business Credit Corporation of New York City, with whom it had pledged approximately \$900,000 of receivables. He said it had been agreed that officials of the registrant would give their answer in person to the Reserve Bank tomorrow, December 15, at 10:00 a.m., at which time, if they did not agree to the "consent closing", the Reserve Bank wished to have in its possession an order from the Board of which a copy could be handed to the president of the company.

Mr. Ransom went on to say that investigators for the Reserve Bank had reported numerous violations, and that the company conducted its operations in about seven States and in five Federal Reserve districts, namely, New York, Philadelphia, Cleveland, Chicago, and St. Louis. Mr. Dillard, in his letter of December 10, reported that the company had operated certain of its branches for an unknown period of time without that fact having been registered with or reported to

12/14/43

-3-

the Reserve Bank, that it was engaged in the business of selling on an instalment basis merchandise such as silverware, dinnerware, blankets, and other home specialty items solely through personal solicitation of customers by outside salesmen, that it had followed the practice of extending credit on instalment sales of such merchandise prior to the effective date of Regulation W with either no money down, or a nominal amount required of customers as a deposit, and with terms as low as 50 cents or less per week, and that, in addition to salesmen, the company had employed individuals called "verifiers" whose duties were to check orders with customers, obtain signatures of the latter on conditional sales contracts, deliver merchandise so purchased to customers, and make weekly collections from customers. The Chicago Reserve Bank had received a number of complaints from competitors of the Consumers Home Equipment Co. to the effect that the company was pursuing a general policy involving complete failure to comply with the requirements of Regulation W, and the Bank had held a number of disciplinary conferences with officials of the company and had exchanged voluminous correspondence with them on company practices. Despite repeated assurances by the president of the company that violations would be discontinued, that official had evidenced an attitude of reluctance and frequently asked questions regarding merchandising procedures reflecting a disposition to avoid the requirements of the Regulation. Mr. Ransom stated further that Mr. Dillard had reported a number of

12/14/43

-4-

individual violations in his letter and had concluded by indicating that all of the letters, conferences, investigations, and warnings indicated clearly that further disciplinary conferences with officials of the Consumers Home Equipment Co. would not result in obtaining its full compliance with the requirements of Regulation W, and that, therefore, in conformity with the last warning given to the company, he requested that a hearing be held for the purpose of determining whether the license issued to the company should be revoked or suspended and that after said hearing such license be revoked or suspended for a designated or an indefinite time.

Mr. Ransom continued substantially as follows: The Board has not yet issued an order of this kind and there is still a small possibility that it will not be necessary since the registrant has until 10:00 o'clock tomorrow morning to say whether it will agree to a "consent closing", which is the procedure which the Board adopted in the two previous cases where a license was suspended under Regulation W. The form of order was worked out by Mr. Dreibelbis and a committee of counsel for the Reserve Banks in August 1942. One of the principal objectives which they had in mind was to afford the registrant a fair hearing in accordance with the due process requirements of the Constitution. The Reserve Bank acts as a complaining witness and prosecutor. The hearing would be conducted by a "hearing officer" who is charged with presiding at the trial, receiving all relevant evidence that may

12/14/43

-5-

be offered, preparing a transcript of the record, and preparing findings of fact, all of which are transmitted to the Board for its consideration and decision. His duties are set forth in detail in the order which has been drawn up by counsel.

Mr. Ransom had been inclined to feel that the hearing officer should not be an employee of the Board or a Reserve Bank or be connected in any other way with the Federal Reserve System. However, counsel for the Board felt that the registrant in this case had shown some ingenuity in devising ways of violating the regulation and that, therefore, it would seem that a hearing officer who understood the regulation would be in a better position to know what evidence was relevant to the issues. Balancing the two factors in the light of the Board's policy heretofore established, and of the fact that the hearing officer did not decide the case, the draft of order which had been prepared named Walter Wyatt, the Board's General Counsel, as the hearing officer.

Following a discussion, the Board, upon motion by Mr. Ransom, and by unanimous vote, approved the issuance of the following order:

"BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, DISTRICT OF COLUMBIA

"In the matter of
Consumers Home Equipment Co.,
Detroit, Michigan.

"Order for Hearing to Determine Whether License
Under Regulation W Should Be Suspended

12/14/43

-6-

"J. H. Dillard, Vice President of the Federal Reserve Bank of Chicago, having requested that a hearing be held for the purpose of determining whether the license issued under Regulation W to Consumers Home Equipment Co., Detroit, Michigan (hereinafter called the 'Registrant') should be suspended, and it appearing to this Board that such request should be granted:

"It is ordered that a hearing for such purpose be held beginning at 10 A. M., January 11, 1944, at the Detroit Branch of the Federal Reserve Bank of Chicago, 160 Fort Street, West, Detroit, Michigan, and that notice of such hearing, together with a copy of the above request, be sent to the said Registrant by registered mail.

"It is further ordered that Mr. Walter Wyatt, of Washington, D. C., (hereinafter called the 'hearing officer') be and he is hereby commissioned as an officer of the Board to administer oaths, to receive all of the testimony taken in such hearing and to report the same completely to the Board, including therewith any statement, motions, exceptions, argument or brief which may be made or filed in accordance with this order. In such capacity the hearing officer shall preside at such hearing and he shall, with all convenient speed, receive the evidence and report the same to the Board.

"1. If the said Registrant shall fail to appear in response to this order, the hearing officer shall report such fact to the Board which, after such further hearing as it may require, may treat such failure as an admission of the truth of the allegations contained in the above request upon which this order is issued and will proceed with its consideration and disposition of the matter in the light thereof. Otherwise he shall proceed with the hearing, but he is authorized, prior to the taking of testimony, to initiate, conduct, or participate in pre-hearing proceedings looking towards (a) the simplification of the issues; (b) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; and (c) such other matters as may aid in the disposition of the controversy; and if, in connection with such proceedings, a satisfactory disposition of the matter appears probable to him, he is authorized to adjourn the hearing for such period as may be necessary to submit the proposed disposition to the Board for its consideration. He shall preside at the taking of the testimony and he is authorized to adjourn the hearing during the course thereof from time to time as may be necessary for the orderly and convenient taking of the testimony. He shall fix the time

12/14/43

-7-

"and places where he will take the testimony at any adjournments of the hearing.

"2. He shall receive all reliable, probative and relevant evidence, and the rules of evidence prevailing in courts of law or equity shall not be controlling. He shall reject all evidence which is clearly inadmissible under the foregoing test and injurious or confusing to the orderly progress of the hearing, but if any evidence proffered by the said Registrant is rejected on such grounds, the said Registrant may, not later than the end of the business day following such rejection or within such further time as the hearing officer may allow, file a written exception setting out the nature of the evidence which was rejected, the facts he expected to prove thereby, and the ground upon which he claims it should have been received. Such exception shall be filed with the hearing officer and included in the Transcript of the Record, provision for which is hereinafter made in this order, and if, upon consideration, the Board deems the exception to be well taken, it will either regard the facts as having been established or reopen the hearing for evidence on that issue.

"3. He shall at the expense of the Board employ stenographers to take the testimony and transcribe the same and otherwise to assist in taking the evidence and reporting the same. Upon the completion of the taking of testimony, the hearing, for that purpose, shall be closed, and, except as may be otherwise expressly directed by the Board, no further proceedings shall be had other than the making or filing of arguments, briefs, exceptions, motions, or statements.

"4. Four copies shall be made of all testimony and proceedings, of which the original and one copy shall be for the use of the Board, one copy shall be for the use of the said Registrant, and one copy shall be for the use of the Federal Reserve Bank. Promptly after the hearing is closed for the purpose of taking testimony, the hearing officer, from the evidence so transcribed shall prepare Recommended Findings of Fact which shall set out clearly and succinctly the pertinent facts which he deems have been established by the evidence. A copy of the transcribed evidence and a copy of the Recommended Findings of Fact shall be forwarded promptly by regular mail to the said Registrant, and he shall have 30 calendar days

12/14/43

-8-

"from the date of their deposit in the post office in which to file with the hearing officer any exceptions to any of the Recommended Findings of Fact, any motion for additional findings of fact, and any arguments, briefs, or other statements for the consideration of the Board.

"5. For the Board's use in making its findings of fact, entering its final order, or otherwise disposing of the matter, the hearing officer, at the expiration of the 30 calendar days provided for in the preceding paragraph 4, shall, at the expense of the Board, promptly prepare a Transcript of the Record in triplicate, the original of which shall contain the originals of (1) the transcribed evidence; (2) his Recommended Findings of Fact; and (3) the originals of all exceptions, motions, arguments, briefs, or statements which the said Registrant or the Federal Reserve Bank has filed; and the copies of which shall contain copies of all such papers. The hearing officer shall promptly file the original and one copy of the Transcript of the Record with the Board, and shall furnish the other copy to the Federal Reserve Bank.

"By order of the Board of Governors of the Federal Reserve System made this fourteenth day of December, A. D. 1943.

(Signed) Chester Morrill
Secretary"

(Seal)

In connection with the foregoing, the Board authorized the Secretary to transmit the order to Mr. Dillard, Vice President of the Federal Reserve Bank of Chicago, with an air mail, special delivery letter reading as follows:

"In response to your letter of December 10, 1943, there is enclosed an Order for Hearing to determine whether the license issued to Consumers Home Equipment Co., Detroit, Michigan, under Regulation W should be suspended.

"The Order is in duplicate in order that you may deliver a copy personally to the President of the Company if convenient as well as mailing one to the Company by registered mail in accordance with the second paragraph of the Order. An additional copy will be sent you later, and a copy will be furnished to the Hearing Officer.

"In the event that the Registrant consents to an Order suspending his license, or if for any other reason you decide that the Order should not be issued at this time, you are authorized to hold it. Please advise the Board promptly whether you have delivered it or held it."

12/14/43

-9-

At this point Messrs. Chase and Brown withdrew from the meeting.

There was then presented a memorandum dated November 29, 1943, from Mr. Szymczak to which was attached a draft of a letter to the Presidents of the Federal Reserve Banks, with copies to the Chairmen, enclosing copies of Mr. Vest's opinion as to the legality of the plan proposed by the Insurance Committee of the Federal Reserve Banks for the sharing of losses on registered mail and express shipments. The memorandum and its attachments had been circulated to the members of the Board prior to this meeting. The memorandum pointed out that the letter stated that the Board concurred in the views expressed in counsel's opinion and that it was hoped that the directors of the Banks would give the matter early favorable consideration and that the Insurance Committee would fix an early date for placing the plan into effect. The memorandum also stated that Mr. Szymczak did not believe the Board should at this time further urge the Banks to drop purchased insurance covering blanket-bond and other risks, except the registered-mail and express, because the saving that might be effected by dropping registered-mail and express insurance was several times larger than the saving that could be effected by dropping all other types of insurance. The memorandum concluded with a statement that the important thing now was to concentrate on the important items and to leave the others for later consideration.

12/14/43

-10-

The letter to the Presidents of all the Federal Reserve Banks referred to above was approved unanimously in the following form:

"The minutes of the Conference of Presidents held on October 15-17, 1943, state that a majority of the members of the Conference voted in favor of adopting the plan submitted by the Insurance Committee of the Federal Reserve Banks for insuring registered mail provided certain conditions were fulfilled. One of these conditions was that the Board of Governors give an unqualified opinion as to the legality of the plan under both Federal and State laws. This matter has had the consideration of the Board's legal division and there is enclosed for your information a copy of an opinion rendered by Mr. Vest and approved by Mr. Dreibelbis. The Board concurs in the views expressed in Mr. Vest's opinion.

"It is understood that Mr. Leach has taken up with the Insurance Committee the questions raised by the Conference regarding the method of distributing losses and the absorption of losses in excess of \$25,000.

"It is assumed that these matters will have the prompt consideration of the Insurance Committee and that as soon as that Committee submits its report the recommendation of the Presidents' Conference will be presented to the boards of directors of the respective Banks for their approval. The Board hopes that this matter will have the favorable consideration of all Federal Reserve Banks and that the Insurance Committee will recommend that the plan be placed in operation at an early date."

A letter to the Chairmen of all the Federal Reserve Banks reading as follows was also approved unanimously:

"Referring to my letter of November 13, 1943, there is enclosed a copy of a letter written to the Presidents of the Federal Reserve Banks with respect to the substitution of a loss sharing agreement among the Federal Reserve Banks for purchased insurance covering registered mail and express shipments."

Chairman Eccles said that the sending out of the opinion of the

12/14/43

-11-

Board's counsel was a step in the right direction and that he hoped the directors of the several Reserve Banks would give the other aspects of the matter prompt attention. He expressed the view that there should be no delay in pressing for an extension of the plan for sharing losses although it seemed doubtful that much could be accomplished prior to the next Presidents' Conference. At that time he thought the Board should ask for a further expansion of the self-insurance program, and he suggested that in the meantime it should be considering the type of program it would propose. He said that, in the event the Presidents were not disposed to go along with the self-insurance program to the extent the Board deemed advisable, it might be necessary to fix a deadline beyond which the Board would not approve the payment of insurance premiums by the Reserve Banks.

Mr. Szymczak said that it was helpful to discuss the matter at this time because one or more of the Presidents might disagree and others might say they would not want to put the program into effect until after the war.

Chairman Eccles said that in his opinion the blanket-bond insurance carried by the Reserve Banks was the next largest item which should be covered under the self-insurance plan. He said that he would like to make a record that he had personally done all he could do to save the money which was being paid out by the Reserve Banks for insurance premiums.

12/14/43

-12-

Mr. Szymczak said that he did not think the matter need be brought up for specific discussion at the next Presidents' Conference. He thought it would avoid controversy if the Presidents' Conference were permitted to submit its report on the matter and the Board took action on the report following the meeting with the Presidents. He said that the Board's action could then be communicated to the Presidents by letter.

Chairman Eccles said that he would not object to the procedure suggested by Mr. Szymczak but he thought the Board should be prepared to take the position that it could not wait any longer for the Reserve Banks to put into effect the program for sharing losses on registered mail and express shipments, that it would disapprove payments for insurance premiums after a specified date, and that, if the Reserve Banks questioned the Board's authority to take such action, the Board would ask Congress to define the scope of its authority under its statutory powers to exercise general supervision over the Reserve Banks.

Mr. McKee expressed the opinion that the Banks would come along to the extent of discontinuing purchased insurance covering risks in connection with registered mail and express, but he said he would like to have a detailed study made with respect to blanket-bond insurance. He referred to the valuable services rendered to the Banks by the insurance companies in making investigations and defending suits. He added that there was also the question of whether the Banks would

12/14/43

-13-

not have to hire additional guards and incur other hidden expenses in substantial amounts if they did not carry blanket bonds.

Mr. Szymczak mentioned that considerable data on this subject had already been distributed to the members of the Board. However, he indicated that the matter could be gone into further.

Mr. Smead stated that he did not have sufficient information to answer Mr. McKee's question and he suggested that, if the Reserve Banks discontinued purchased insurance on registered mail and express, the Board ask the Insurance Committee of the Presidents' Conference to make a detailed study such as Mr. McKee had in mind.

There was then presented and read a memorandum dated December 8, 1943, from Mr. Szymczak submitting drafts of a revised Regulation N and procedure letter X-9774 relating to foreign accounts of Federal Reserve Banks, a statement of the background in connection with these revisions having been discussed in Mr. Dreibelbis' memorandum to the Board dated March 27, 1943. The memorandum stated that Regulation N had been changed in the following respects:

- "1. References are made to a foreign State in order to conform to existing provisions of law.
- "2. In connection with conferences and negotiations with foreign banks, bankers or States, it is provided that the Board may itself designate the time and place of any such negotiations.
- "3. Section 1 has also been rephrased in connection with references to provisions of law which are authority for the issuance of the regulation in order to conform to changes made in the law since Regulation N was adopted."

12/14/43

-14-

The memorandum also stated that the following changes had been made in the procedure letter X-9774:

"1. The reference to fiscal agency operations of Federal Reserve Banks is omitted in the revised draft.

"2. Existing X-9774 contains blanket permission to Federal Reserve Banks to establish and open one-way accounts for foreign central banks; to purchase and sell gold directly from or to a foreign bank or banker; and to earmark gold or silver for account of a foreign bank or banker. Existing X-9774 also enumerates certain transactions for which Federal Reserve Banks are required to obtain prior specific permission from the Board. The revised draft of X-9774 revokes the blanket permission referred to above and also eliminates the specification of transactions for which Federal Reserve Banks are required to obtain prior permission from the Board. In lieu thereof, section 2 of the revised draft provides in substance that no Federal Reserve Bank shall enter into any agreement, contract or understanding with a foreign bank or banker or any foreign State without first obtaining the permission of the Board. After a foreign account has been opened with the approval of the Board, however, transactions can be effected in accordance with the terms of the account without the specific prior approval of the Board subject to the limitations hereafter referred to on purchases of acceptances and Government securities.

"3. Section 3 of the revised draft is new and relates to participations of Federal Reserve Banks in foreign accounts. Under existing procedure, the Board's approval is required for Federal Reserve Banks to participate in foreign accounts. The revised draft, however, grants blanket authority to Federal Reserve Banks to participate in foreign accounts on a voluntary basis. This section outlines in detail the legal relationship between the Federal Reserve Banks, the basis upon which participation percentages are to be determined, the conditions under which a Reserve Bank may withdraw from participation, and the reporting and accounting procedure to be followed in participated accounts."

Mr. Szymczak also pointed out in his memorandum that the standard form of letter approved by the Board in 1937, which became the

12/14/43

-15-

contract between the Federal Reserve Bank and the foreign bank opening the account, contained provisions under which the Reserve Bank undertook to earmark gold or silver in this country which was the property of such foreign bank or the property of its Government, and that in such cases it would not be necessary for the Federal Reserve Bank to obtain the prior approval of the Board each time it was requested to earmark gold or silver in accordance with the terms of such standard form of letter. There was a considerable discussion, during which the position that had been taken by the Board on the question of permitting participation by Federal Reserve Banks in an approved account to be on a voluntary basis was reviewed, and the conclusion was reached that that question should be deferred until some future time.

Thereupon, the following resolution was adopted by unanimous vote:

Resolved, That Regulation N, Relations with Foreign Banks and Bankers, and the statement of procedure with respect to foreign relationships of Federal Reserve Banks be amended to read as follows, effective January 1, 1944, with the understanding that the Board would print and distribute copies thereof to the Federal Reserve Banks.

"REGULATION N

"Revised effective January 1, 1944

"Relations with Foreign Banks and Bankers

"SECTION 1. AUTHORITY

"Pursuant to the authority conferred upon it by section 14 of the Federal Reserve Act, as amended, and by other provisions of law, the Board of Governors of the Federal Reserve System prescribes the following regulations

12/14/43 .

-16-

"governing relationships and transactions between Federal Reserve Banks and foreign banks or bankers or groups of foreign banks or bankers or a foreign State as defined in section 25(b) of the Federal Reserve Act.

"SECTION 2. INFORMATION TO BE FURNISHED
TO THE BOARD

"In order that the Board of Governors of the Federal Reserve System may perform its statutory duty of exercising special supervision over all relationships and transactions of any kind entered into by any Federal Reserve Bank with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State, each Federal Reserve Bank shall promptly submit to the Board of Governors of the Federal Reserve System in writing full information concerning all existing relationships and transactions of any kind heretofore entered into by such Federal Reserve Bank with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State and copies of all written agreements between it and any foreign bank or banker or any group of foreign banks or bankers or any foreign State which are now in force, unless copies have heretofore been furnished to the Board. Each Federal Reserve Bank shall also keep the Board of Governors of the Federal Reserve System promptly and fully advised of all transactions with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State, except transactions of a routine character.

"SECTION 3. CONFERENCES AND NEGOTIATIONS WITH
FOREIGN BANKS, BANKERS OR STATES

"(a) Without first obtaining the permission of the Board of Governors of the Federal Reserve System, no officer or other representative of any Federal Reserve Bank shall conduct negotiations of any kind with the officers or representatives of any foreign bank or banker or any group of foreign banks or bankers or any foreign State, except communications in the ordinary course of business in connection with transactions pursuant to agreements previously approved by the Board of Governors of the Federal Reserve System. Any request for the Board's permission to conduct any such negotiations shall be submitted in writing and shall include a full statement of the occasion and objects of the proposed negotiations.

"(b) The Board of Governors of the Federal Reserve System reserves the right, in its discretion, to be represented by such representatives as it may designate in any

12/14/43

-17-

"negotiations between any officer or other representative of any Federal Reserve Bank and any officers or representatives of any foreign bank or banker or any group of foreign banks or bankers or any foreign State; and the Board shall be given reasonable notice in advance of the time and place of any such negotiations; and may itself designate the time and place of any such negotiations.

"(c) A full report of all such conferences or negotiations and all understandings or agreements arrived at or transactions agreed upon and all other material facts appertaining to such conferences or negotiations shall be filed with the Board of Governors of the Federal Reserve System in writing by a duly authorized officer of each Federal Reserve Bank which shall have participated in such conferences or negotiations, including copies of all correspondence appertaining thereto.

"SECTION 4. AGREEMENTS WITH FOREIGN BANKS, BANKERS,
OR STATES, AND PARTICIPATION IN FOREIGN
ACCOUNTS

"(a) No Federal Reserve Bank shall enter into any agreement, contract, or understanding with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State without first obtaining the permission of the Board of Governors of the Federal Reserve System.

"(b) When any Federal Reserve Bank, with the approval of the Board of Governors of the Federal Reserve System, has opened an account for any foreign bank or banker or group of foreign banks or bankers or for any foreign State, or has entered into any agreement, contract, or understanding with reference to opening or maintaining such an account, or with reference to any other matter or matters, any other Federal Reserve Bank may participate in such account, or in such agreement, contract, or understanding, and in operations and transactions performed therein or pursuant thereto, with the approval of the Board of Governors of the Federal Reserve System.

"SECTION 5. AMENDMENTS

"The Board of Governors of the Federal Reserve System reserves the right, in its discretion, to alter, amend or repeal these regulations and to prescribe such additional regulations, conditions, and limitations as it may deem desirable respecting relationships and transactions of any kind entered into by any Federal Reserve Bank with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State."

12/14/43

-18-

The revised statement of procedure was in the following form:

"The Board of Governors has a wide range of responsibility for monetary developments in this country in addition to its duty to exercise special supervision over foreign relationships of Federal Reserve Banks. To meet its responsibilities it must of necessity, among other things, have complete and current information as early as available with respect to all foreign relationships of Federal Reserve Banks which may eventuate in some action. Such action may take the form of establishing an account at a Reserve Bank or the appointment of a correspondent or the establishment of an agency in a foreign country by a Federal Reserve Bank; of handling a fund for a foreign correspondent; of a loan on gold, or of an agreement to purchase bills in foreign countries; or of other transactions that need not be enumerated.

"Thus, the Board's duties involve broader questions than mere technical compliance with particular provisions of law. Supervision by the Board of the foreign relationships of the Federal Reserve Banks involves close cooperation by the Banks with the Board with constant recognition of the responsibilities of the Board. The question in each case should not be decided upon narrow grounds such as, for example, whether a certain act does or does not amount to a negotiation and consequently requires prior permission of the Board, but rather whether knowledge of all the facts and circumstances with respect to the particular act or correspondence would be helpful to the Board in the discharge of its responsibilities. Full understanding and cooperation between the Board and the Banks upon the basis of this broad principle is essential in the public interest.

Specific situations.

"With the broad principle stated in the introduction to this memorandum as a guide, careful consideration has been given to the question of working out a proper and satisfactory procedure in connection with the establishment and maintenance of foreign relationships by Federal Reserve Banks with a view to enabling the Board to meet its responsibilities fully and at the same time interfere as little as possible with the normal operations of Federal Reserve Banks. Accordingly, the following course of procedure has been adopted.

"1. Foreign visitors.

"The difficulty in attempting always to anticipate the nature of a forthcoming discussion or conference with a visitor from a foreign country is understood.

12/14/43

-19-

"It is recognized that a discussion or conference which had been expected to be wholly general in its nature may turn into one contemplating eventual action of some sort, and that awkwardness may result if officers of Federal Reserve Banks in the midst of a discussion find that they must obtain permission of the Board before proceeding further. This difficulty should be avoided if foreign banks and bankers have a clear understanding of the relationships between, and the responsibilities of, the Federal Reserve Banks and the Board of Governors.

"Before arranging a conference which may involve an agreement, understanding, or negotiations with a person who may represent a foreign bank, banker or Government permission should be obtained from the Board; and as soon as a Federal Reserve Bank learns that such a person is planning to visit the Bank it should notify the Board and give it as much information as it can obtain as to the occasion and purposes of the visit. Unless it is known that the visitor has been informed as to the relations of the Federal Reserve Banks and the Board the Federal Reserve Bank should advise him as soon as practicable after learning of his proposed visit.

"If a visit from such a person may involve discussions leading to an agreement or commitment with respect to a particular transaction on the part of a Federal Reserve Bank, or if in its progress it so develops, permission of the Board should be obtained before proceeding further to conduct such negotiations, unless such negotiations are covered by permission previously granted.

"As soon as possible such Federal Reserve Bank should file a full report in writing, in accordance with the general principle outlined above.

"2. Specific permission from Board required in connection with agreements with foreign banks, bankers or States

"No Federal Reserve Bank shall enter into any agreement, contract or understanding with any foreign bank or banker or with any group of foreign banks or bankers or with any foreign State without first obtaining the permission of the Board of Governors.* Any agreement, contract,

* The Board reserves the right to limit from time to time the aggregate amount of bankers acceptances and United States Government securities which may be purchased by a Federal Reserve Bank in this country for the account of a foreign bank or banker or foreign State with an agreement by the Reserve Bank to repurchase or with a guarantee, endorsement or other liability of such Federal Reserve Bank.

12/14/43

-20-

"or understanding which the operating bank has the right to terminate, in whole or in part, shall likewise be so terminable at the request of the Board of Governors.

"3. Participations of Federal Reserve Banks in foreign accounts, operations and transactions.

"When any Federal Reserve Bank, in accordance with Regulation N, as amended, and this letter, has opened on its books an account (hereinafter referred to as 'foreign account') for a foreign bank or banker (hereinafter referred to as 'foreign bank'), or a foreign State as defined in section 25(b) of the Federal Reserve Act (hereinafter referred to as 'foreign government'), or has entered into an agreement, contract, or understanding with reference to opening or maintaining a foreign account, other Federal Reserve Banks may participate in such foreign account, and in operations and transactions therein, on the understanding and agreement described below, which understanding and agreement is hereby approved by the Board of Governors of the Federal Reserve System.

"It will be understood and agreed between the participating Federal Reserve Banks* with respect to each such participated foreign account, and the operations and transactions therein, as follows:

"(A) The operating bank* is principal as to its own participation. The other participating banks* are also principals, and the operating bank is agent for them, as to their respective participations. The other participating banks are 'undisclosed' principals, and, in accordance with the law of 'undisclosed' agency, each of the participating banks is responsible as principal with

* As used in this section, the term 'operating Federal Reserve Bank' or 'operating bank' means the Federal Reserve Bank on the books of which the foreign account is maintained; the term 'participating Federal Reserve Banks' or 'participating banks' means all Federal Reserve Banks, including the operating Federal Reserve Bank, participating in the foreign account; and the term 'other participating Federal Reserve Banks' or 'other participating banks' means all participating Federal Reserve Banks except the operating Federal Reserve Bank.

12/14/43

-21-

"respect to its participation, and the operating bank as an agent acting for such undisclosed principals also has responsibility, corresponding to that of such 'undisclosed' principals.

- "(B) The standard form of letter approved in 1937 by the Board of Governors of the Federal Reserve System and all Federal Reserve Banks (a copy of which is attached hereto) with inapplicable provisions deleted in order to conform to the particular account shall be used wherever possible and the letter so used will set forth the terms and conditions governing the foreign account.
- "(C) The form of letter so used from the operating bank to the foreign bank or foreign government shall constitute the contract of the operating bank and of the other participating banks with the foreign bank or foreign government; and the character of the obligations of the participating banks to the foreign bank or foreign government shall be determined with reference to such letter.
- "(D) Such standard form of letter indicates the scope of the participations of the participating banks other than the operating bank in such foreign account (that is to say, such other participating banks shall participate in all operations and transactions in such foreign account which come within the scope of such standard form of letter, including the making and execution of any arrangements which are incidental to the operation of such an account, but shall not participate in operations and transactions which the operating bank may execute with or for the foreign bank or foreign government, with the approval of the Board of Governors of the Federal Reserve System, outside the scope of such standard form of letter, unless participations in such operations and transactions are specifically offered to and accepted by such other participating banks).

12/14/43

-22-

- "(E) In connection with subdivisions (B), (C), and (D) of this section, it is understood that such standard form of letter will not normally be used in connection with accounts for foreign governments but that when such standard form of letter is not used the terms and conditions which expressly or impliedly govern the foreign account will be substantially the same as the corresponding terms and conditions set forth in such standard form of letter.
- "(F) The rights and obligations as between the participating banks with respect to expenses, losses, and income incident to such foreign account, are as follows:
- (1) The net expenses of operating such foreign account (after deducting any amounts received in reimbursement of out-of-pocket expenses, including labor costs in connection with the handling of gold) shall be shared by all participating banks, the other participating banks reimbursing the operating bank for their respective pro rata shares calculated on the basis of their participation percentages determined as hereinafter described in (G)(1).
 - (2) When income is received from the operation of such foreign account (for example, from the guarantee of payment of bankers acceptances purchased for account of the foreign bank or foreign government), such income shall be distributed on the same pro rata basis among all participating banks.
 - (3) Any losses shall also be shared on the same pro rata basis by all participating banks, except that the operating bank shall bear the entire amount of any such loss which is due to its negligence.
- "(G) The following operating and accounting procedures shall be followed with respect to such foreign account and all other participated foreign accounts:
- (1) Basis for determining participation percentages
The practice heretofore followed with

12/14/43

-23-

"respect to participated foreign accounts shall be continued; that is, it shall be determined, as of the first of each year, what percentage the capital and surplus of each participating bank bears to the total capital and surplus of all participating banks, and the participation percentage thus determined for each participating bank shall represent its pro rata share of all participated foreign accounts throughout the year; except to the extent that such participation percentage may be varied by reason of withdrawal from participation or refusal to participate in new accounts, and except that each participating bank's share of each participated foreign account shall at all times be the amount actually shown on its books, which shall be adjusted from time to time as nearly as may be practicable to the participation percentage determined as above.

(2) Withdrawal from participation

Withdrawal from participation by a participating bank shall be conditional upon the withdrawing bank's giving written notice to the Board of Governors of the Federal Reserve System, the operating bank, and each of the other participating banks, that it intends to withdraw from participation in all participated accounts effective on a date specified in such notice. Such notice must be received by the operating bank at least thirty days prior to such effective date of withdrawal, and such withdrawal shall constitute withdrawal by the withdrawing bank from participation in all participated foreign accounts conducted by such operating bank, but shall not terminate the withdrawing bank's responsibility for expenses and losses incurred in connection with, or resulting from, transactions

12/14/43

-24-

"completed or in process of completion in the participated accounts prior to withdrawal. When such withdrawal is effective the withdrawing bank's participation in all participated foreign accounts at such operating bank shall be automatically assumed by the other participating banks and a new computation made of the participation percentages of the participating banks.

(3) Refusal to participate in new account

A Federal Reserve Bank may refuse to participate in a new account in which case it shall promptly communicate such refusal to the Board, the operating bank and each of the other Federal Reserve Banks. Refusal to participate in a new foreign account shall not require withdrawal from participations in other participated foreign accounts. In the event of the refusal by a Federal Reserve Bank to participate in a new foreign account, the participation refused by such bank shall be automatically assumed by the other Federal Reserve Banks participating or agreeing to participate in such account.

(4) Transfers through Interdistrict Settlement Fund to adjust deposit liability of participating Federal Reserve Banks in connection with participated accounts

Transactions in participated dollar deposit accounts will be effected without any immediate change in the foreign deposit liability of the participating banks other than the operating bank; and, in order periodically to adjust the foreign deposit liability of the respective participating banks as nearly as may be practicable to their participation percentages computed as provided in (G)(1) above, transfers shall be made through the Interdistrict Settlement Fund between the operating bank and the other participating banks on Wednesday of each week, and more frequently whenever there is a net change (since the

12/14/43

-25-

"last adjustment) of \$10,000,000 or more in the aggregate of the dollar deposit liabilities of all participating banks in all participated foreign accounts, unless it is anticipated that such change will be offset by further transactions before the next weekly adjustment.

- (5) Weekly mail reports from operating bank to other participating banks
 The operating bank shall send to each of the other participating banks by mail weekly, as of the close of business on each Wednesday, a statement including the following information:
- (a) The amount due to each foreign depositor in a participated dollar deposit account, and each participating bank's share, adjusted as described in (G) (4) above, in the total foreign deposit liability in all participated accounts.
 - (b) The amount of the contingent liability, if any, for the guarantee of bankers acceptances purchased for each participated foreign account, and each participating bank's pro rata share in the total thereof.
 - (c) The amounts of earmarked gold and securities held by the operating bank in custody in the respective participated foreign accounts.
 - (d) The amounts of the deposits 'Due from' foreign banks, gold abroad, investments abroad, and outstanding foreign loans; and such participating bank's pro rata share in the totals thereof.
- (6) Weekly telegraphic reports from the operating bank to other participating banks
 The operating bank shall inform each participating bank by telegraph each Wednesday, as of the close of business on that day, of the following: Provided, however, that when there has been no change during the week with respect to the amounts referred to below,

12/14/43

-26-

"such fact may be reported, instead of stating the amounts, in such telegraphic report.

- (a) The amount¹ of such participating bank's share in the total deposit liability referred to in (G)(5)(a) above.²
- (b) The amount¹ of such participating bank's share in the total contingent liability referred to in (G)(5)(b) above.³
- (c) The amount¹ of such participating bank's share in the totals of the respective assets referred to in (G)(5)(d) above.
- (d) The aggregate amount of earmarked gold, and the aggregate amount of securities, held by the operating bank in custody in all participated foreign accounts, as referred to in (G)(5)(c) above.⁴

"1 Since these figures appear in the weekly published statement of each Federal Reserve Bank they will, in most instances, have to be estimates telegraphed prior to the close of business of the operating bank.

"2 The amount so telegraphed to each other participating bank as its share in the total deposit liability should be shown on its books and in its published statement; and, as provided in (G)(1)(4) above, the amount so shown shall constitute its actual deposit liability in participated foreign accounts until further adjusted.

"3 The amount so telegraphed to each other participating bank as its share in the total contingent liability should be shown on its books and in its published statement; and, as provided in (G)(1) above, the amount so shown shall constitute its actual contingent liability until further adjusted.

"4 Since these are not statement figures, the operating bank shall telegraph this information as soon after its close of business as the exact amounts are ascertained.

12/14/43

-27-

"Deposit accounts 'Due from' foreign banks, the holding of gold and investments abroad, and outstanding foreign loans and any agreements with respect thereto, which have been or may be entered into by a Federal Reserve Bank, with the approval of the Board of Governors, may be participated in by other Federal Reserve Banks in accordance with arrangements between the Federal Reserve Banks, subject to the applicable provisions of (A) relating to the obligations of participating and operating Federal Reserve Banks, (F)(1), (2) and (3) relating to the distribution of net expenses, income, and losses, (G)(1) relating to the computation of participation percentages, and (G)(5) and (6) relating to reports. Withdrawals from such participations may be made by agreement between the Federal Reserve Banks concerned, subject to the approval of the Board of Governors. The Federal Reserve Bank operating such an account shall from time to time as new accounts or transactions are opened notify the Board and the participating banks which of the Federal Reserve Banks are participating in such accounts or transactions."

In connection with the above action, unanimous approval was also given to the following letter to the Presidents of all the Federal Reserve Banks:

"There are enclosed revised copies of the Board's Regulation N and Statement of Procedure relating to foreign accounts of Federal Reserve Banks which have been approved by the Board. Printed copies of Regulation N as revised will be sent you as soon as they are available.

"In connection with the Statement of Procedure, your particular attention is invited to the fact that the blanket permission to Federal Reserve Banks to establish and open one-way accounts for foreign central banks; to purchase and sell gold directly from or to a foreign bank or banker; and to earmark gold or silver for account of a foreign bank or banker has been withdrawn and in the future it is provided that no Federal Reserve Bank shall enter into any agreement, contract or understanding with a foreign bank or foreign State without first obtaining the permission of the Board. In this connection, it is made clear that the Board reserves the right to limit from time to time

12/14/43

-28-

"the aggregate amount of acceptances or securities which a Federal Reserve Bank may purchase in this country for the account of a foreign bank or banker or foreign State, with an agreement by the Reserve Bank to repurchase or with a guarantee, endorsement or other liability of such Federal Reserve Bank. In separate communications the Board has authorized the Federal Reserve Bank of New York (1) to purchase bankers acceptances in accordance with the terms and conditions specified in the standard form of letter provided the aggregate amount of the liability assumed by the Federal Reserve Banks shall not exceed \$25,000,000, and (2) to purchase United States Government securities in accordance with the terms and conditions specified in such standard form of letter provided the aggregate amount of liability assumed by the Federal Reserve Banks in connection with such purchases shall not exceed at any one time the sum of \$750,000,000.

"It is not the intention of the Board that the revocation of the blanket permission to earmark gold and silver shall affect earmarkings carried out under the terms of existing agreements or agreements entered into with the approval of the Board in the future covering foreign accounts, and, therefore, these transactions may be effected without obtaining the prior permission of the Board.

"It is recognized that it is necessary on occasion for your Bank to take up with the Treasury or some other department of the Government matters affecting foreign accounts or other foreign relationships involving your Bank. In order that the Board may discharge its responsibilities under the law in cases of this kind and also be represented in such matter if it so desires, it is suggested that when such a question arises in the future your Bank communicate with the Board by letter or telegram advising in such detail as the circumstances may require. This suggestion, however, does not apply to purely routine matters or to matters in connection with certifications under section 25(b) of the Federal Reserve Act but it will be appreciated if your Bank will keep the Board advised of such matters as in the past."

In response to an inquiry by Mr. McKee as to the results disclosed by the notices of election of retirement plans filed with the Secretary's Office since November 2, 1943, Mr. Morrill reported that

12/14/43

-29-

as of the close of business yesterday, December 13, 1943, 280 employees, or 71.6 per cent of those eligible at that time to make a choice, had elected to become participants in the Board of Governors plan and that 16 employees, or 4.1 per cent, had decided not to participate in the Board plan. He added that returns had not been received up to that time from 95 employees who were eligible to make a choice and that doubtless before the close of business December 15, 1943, many of these remaining employees would choose the Board plan.

Mr. McKee stated, with the concurrence of the other members of the Board, that inasmuch as more than two-thirds of all employees who were eligible to vote up to this time had already elected to become participants in the Board plan, it was his understanding that the Board of Governors plan would automatically go into effect January 1, 1944, in accordance with the terms of the resolution adopted by the Board on November 2, 1943.

At this point Messrs. Thurston, Smead, Dreibelbis, and Vest withdrew from the meeting, and 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 December 13, 1943, were approved unanimously.

Memorandum dated December 11, 1943, from Mr. Morrill, recommending that Allison M. Crump, operator (duplicating devices) in the

12/14/43

-30-

Secretary's Office, be granted leave of absence without pay beginning December 17, 1943, so that he might enter active duty with the United States Navy, and that he be granted the benefits provided in the policy adopted by the Board on November 14, 1940, and amended August 20, 1941, for all employees entering military service, except the payment of one month's unearned salary since he has elected to receive payment for his accumulated and accrued annual leave.

Approved unanimously.

Memorandum dated December 6, 1943, from the Personnel Committee, submitting the name of William H. Stead, Dean of the School of Business and Public Administration and Chairman of the Department of Economics, Washington University, St. Louis, Missouri, as a Class C director of the Federal Reserve Bank of St. Louis for the term beginning January 1, 1944, and recommending (1) that the Chairman of the Federal Reserve Bank of St. Louis be requested to ascertain informally whether Mr. Stead would accept appointment and (2) that the appointment be tendered if he would accept.

Approved unanimously.

Letter to the board of directors of "The Seneca County Trust Company of Seneca Falls, N. Y.", Seneca Falls, New York, stating that, subject to conditions of membership numbered 1 to 6 contained in the Board's Regulation H, the Board approves the bank's application for membership in the Federal Reserve System and for the appropriate amount

12/14/43

-31-

of stock in the Federal Reserve Bank of New York.

Approved unanimously, together with a letter to Mr. Sproul, President of the Federal Reserve Bank of New York, reading as follows:

"The Board of Governors of the Federal Reserve System approves the application of 'The Seneca County Trust Company of Seneca Falls, N. Y.', Seneca Falls, New York, for membership in the Federal Reserve System, subject to the conditions prescribed in the enclosed letter which you are requested to forward to the Board of Directors of the institution. Two copies of such letter are also enclosed, one of which is for your files and the other of which you are requested to forward to the Superintendent of Banks for the State of New York for his information.

"Standard condition of membership numbered 6 has been prescribed in order that its provisions may be invoked at any time in the future if necessary, but as in other cases and in accordance with the general authorization previously granted by the Board, you are authorized to waive compliance with the condition until further notice insofar as the condition applies to funds which are given statutory preference in the State of New York.

"In view of your advice that the losses estimated in the report of examination for membership have been eliminated, the condition originally recommended requiring elimination of estimated losses has not been prescribed. It is assumed that you will follow the matter of the bank's reducing to within statutory limits the excessive balance in a non-member bank.

"As you know, final consideration of the bank's application has been held in abeyance for some time pending exploration of the possibility of placing ownership of control of the bank's common stock in the hands of individuals rather than the Seneca Falls Shareholders, Incorporated. It is understood that such action is not practicable at present and the application has been approved in view of the otherwise favorable factors with respect to the condition and management of the bank. However, it is felt that efforts to effect a more desirable ownership relation should be continued and it is assumed that you will keep the matter in mind for action as opportunities may develop.

12/14/43

-32-

"A letter to Seneca Falls Shareholders, Inc., Seneca Falls, N. Y., relating to its status as a holding company affiliate upon the admission of The Seneca County Trust Company of Seneca Falls, N. Y. to membership, is enclosed and is to be transmitted to that organization. Two copies of the letter are also enclosed, one of which is for your files and the other is for transmittal to The Seneca County Trust Company of Seneca Falls, N. Y."

Unanimous approval was also given to the following letter to Seneca Falls Shareholders, Inc., Seneca Falls, New York:

"This refers to the Board's approval on this date of the application of The Seneca County Trust Company of Seneca Falls, N. Y., for stock in the Federal Reserve Bank of New York, subject to certain conditions, and to the status of your organization as a holding company affiliate upon the admission of The Seneca County Trust Company of Seneca Falls, N. Y. to membership in the Federal Reserve System.

"The Board understands that your organization owns 805 of the 1,000 shares of outstanding common stock of The Seneca County Trust Company of Seneca Falls, N. Y. but does not own or control any stock of, or manage or control, any other banking institution.

"On this basis, upon The Seneca County Trust Company of Seneca Falls, N. Y. becoming a member bank, your organization clearly will become a holding company affiliate of it within the meaning of the following provisions of section 2(c) of the Banking Act of 1933:

'The term "holding company affiliate" shall include any corporation, business trust, association, or other similar organization--

'(1) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a member bank * * * .'

"However, in view of the facts above recited, the Board has determined that your organization is not engaged, directly or indirectly, as a business in holding the stock of, or managing or controlling, banks, banking associations, savings banks, or trust companies within the meaning of the following provisions of section 2(c) of the Banking Act of 1933:

12/14/43

-33-

"Notwithstanding the foregoing, the term "holding company affiliate" shall not include (except for the purposes of section 23A of the Federal Reserve Act, as amended) * * * any organization which is determined by the Board of Governors of the Federal Reserve System not to be engaged, directly or indirectly, as a business in holding the stock of, or managing or controlling, banks, banking associations, savings banks, or trust companies."

"As a result of such determination, your organization will not be a holding company affiliate for any purposes other than those of section 23A of the Federal Reserve Act. However, the Board reserves the right to make a further determination at any time on the basis of the then existing facts and, if there should be such a change in the facts as to indicate that your organization might be deemed to be engaged, directly or indirectly, as a business in holding the stock of, or managing or controlling, banks, banking associations, savings banks, or trust companies, this matter should again be submitted to the Board."

Letter to Mr. Hays, First Vice President of the Federal Reserve Bank of Cleveland, reading as follows:

"This is with further reference to your letter of November 8, 1943, enclosing a communication from the Merchants Credit Bureau of Youngstown, Ohio, relative to the possible amendment of Regulation W to permit charge account records to be closed on December 25 this year in order to facilitate billing.

"As you know, a number of merchants have wanted to employ this practice regularly throughout the year, but it has not so far seemed advisable to amend the regulation in this direction. A variety of closing dates would introduce a certain degree of confusion, and furthermore, the period at the end of the month might be used for promotional activities. In any event the amendment would be adding more days to the charge account payment period. The conclusion not to make a change has been strengthened by the fact that many merchants, perhaps a majority, are opposed to the idea.

12/14/43

-34-

"While the argument is somewhat better for permitting the early billing in December of this year only, it has not appeared to us that, in view of the controversy which would be certain to ensue, the amendment of the regulation for this one month's business would be worth while.

"It would have been helpful if we could have had some discussion of this matter at the Conference, but, as with a number of other subjects, time did not permit."

Approved unanimously.

Letter to Mr. Hays, First Vice President of the Federal Reserve Bank of Cleveland, reading as follows:

"This refers to your letter of November 29 regarding various inquiries which you have received in connection with section 10(a)(2) of Regulation W. You ask for the Board's comments as to the interpretations which your bank has given, and in this connection you also raise the question whether it might be desirable to put in the regulation a 'hardship' provision to replace or supplement those already there.

"The first inquiry read as follows:

'When a debtor files a Trusteeship in Municipal Court unsecured creditors must participate in the trusteeship but secured creditors may participate or exercise their right to take back the merchandise. If a furniture store for instance agrees to participate in the trusteeship which would pay out less than \$5.00 per month on their account and take more than 12 months to pay in full, would such a store be violating Regulation W?'

"You replied that participation in the trusteeship by an unsecured creditor would be proper, although such an arrangement would not 'cure' a default in a charge account unless the terms of repayment under the trusteeship complied with the requirements of section 5(d)(2) or 5(d)(3). With respect to a secured creditor you gave the same answer as to charge accounts, but stated that where instalment sales of listed articles are involved he might participate in the trusteeship only if the participation and the resulting obligation conformed to

12/14/43

-35-

"some part of section 10(a) or section 10(d).

"This answer is correct, but it does not discuss the question of conforming to 'some part' of section 10(a). That question is raised by the second inquiry, which was illustrated by the following example: A borrower owes one loan company \$200 payable \$20 per month; he owes a second loan company \$200 payable \$20 per month; and he owes a department store \$200 payable \$20 per month. He earns \$150 per month, and when he files a trusteeship in the Municipal Court, he is ordered to pay 20 per cent of his salary, namely \$30 per month. Another loan company makes him a loan for the total amount outstanding. Can it give him terms of \$30 per month for 20 months?

"Your reply was that since unsecured creditors must participate in the trusteeship proceedings and settlement if their claims are listed by the debtor on the schedule which he files, section 10(a)(2) authorizes them to agree to the revised terms, and in view of the second answer in S-583, the new lender could then lend enough to repay the old lender, on these terms. However, since secured creditors may elect whether to participate or whether to look to their security instead, the new lender would have to determine whether it was 'necessary' for the secured creditor to grant the longer terms in order to protect himself.

S-583 contained the following paragraph:

'The theory of section 10(a)(2) is that an adjustment with the customer should not be prevented if that is the only feasible way in which the credit can be collected. Any such adjustment must be the last resort (except, of course, litigation) and a measure to be taken only after other means of collection have been exhausted.'

"In the ordinary case, not involving court proceedings, a secured creditor would probably not be justified by section 10(a)(2) in extending terms not initially permitted, since he could readily protect himself by utilizing the security. However, in trusteeship proceedings of the kind referred to in these inquiries, where several other creditors are involved, and where the court is acting for the protection of the creditor on grounds of public policy similar to those which led to the enactment of the Federal Bankruptcy Act, it would seem that the Registrant might feel

12/14/43

-36-

"justified in participating and in feeling that such action was 'necessary in good faith' for his protection under those particular facts. In other words, Regulation W would not be construed in such a way as to prevent the Registrant from participating in a composition or other such collection proceeding established by the court or the legislature on grounds of public policy.

"The next inquiry in your letter presents a more difficult case because no court proceedings are involved. The loan company wishes to lend a prospective customer, who is on the verge of bankruptcy or a trusteeship, an amount sufficient to pay his debts, giving him the same terms (20 per cent of his monthly salary) which it anticipates that the court would give him if he should file a trusteeship. The difficulty in this case is that there have been no court proceedings. Consequently, an interpretation which would permit a loan on the above terms might open the way for easy evasion of the regulation since the Registrant would merely have to say that the customer intended to file a trusteeship. The Registrant, as you point out, is not in jeopardy.

"A similar comment may be made with respect to the last inquiry, which is: A customer is indebted to two loan companies and is delinquent to both. One of them wishes to enforce its contract by legal action, including garnishment. The other would prefer to extend the terms of its obligation, but in order to protect itself wishes to take over the debt owing to the other Registrant and consolidate them. The Board's letter S-583 stated in answer to the third inquiry that where a Registrant has 'purchased' a delinquent instalment obligation and has exercised a bona fide collection effort he may then revise the obligation under section 10(a)(2). The question therefore is whether the Registrant is permitted to make a loan to retire the obligation instead of purchasing it, and in this connection you point out that even if he purchases it he cannot immediately revise it but must first exercise a bona fide collection effort.

"The question again is one of opening the door for evasion. The provisions of section 10(a)(2) which permit a Registrant to extend any terms in a collection case under certain circumstances are rather broad. Practically the only qualification is that the Registrant shall deem the action necessary in good faith for his own protection and that there shall be a bona fide collection effort. If the Registrant is permitted to make a loan to retire an obligation which is in default with another lender, he would not

12/14/43

-37-

"be acting for his own protection. If he were permitted to purchase such a loan and revise it immediately, there would be no collection effort. It would seem that either of these would be too loose a requirement. In fact, it has been said on several occasions that section 10(a)(2), as it stands, is loose. The answer, of course, is that the regulation should not prevent a Registrant from taking anything he can get where the debtor is not able to pay the obligation according to its terms. However, the danger of using section 10(a)(2) as a means of evasion is manifest, and therefore it would seem that the answer given in S-583 goes as far as is desirable in this connection.

"Some cases of the kind described in the last inquiry might be taken care of by Statements of Necessity, and this suggests the comment that one argument against a further 'hardship' provision in the Regulation is that section 10(d) is used infrequently.

"The above comments are made in an endeavor to comply with the requests contained in your letter. However, it may well be that you will feel that further discussion of the questions is desirable, and in that event we are anxious to hear from you further."

Approved unanimously.

Letter prepared for the signature of Mr. Dreibelbis to Honorable Wendell Berge, Assistant Attorney General, reading as follows:

"This is in response to your letter of December 10th requesting access to the Board's files in connection with an investigation by the Department of Justice of the activities of the Transamerica group to determine whether violations of the antitrust laws exist. The Board is willing that members of your staff have access to its files for the purpose of determining whether they contain information which will be useful to your purpose. In this connection, when I discussed the matter informally with your Mr. Baldrige, we were in agreement that any information so obtained would be treated confidentially unless otherwise worked out between us on some mutually satisfactory basis. This is the basis upon which the Board acted when I reported the matter to it and, since I neglected to mention that fact to Mr. Baldrige when I talked to him

12/14/43

-38-

"over the telephone, I would appreciate confirmation of this portion of the understanding for the Board's files."

Approved unanimously.

Thereupon the meeting adjourned.

Chester Morrie
Secretary.

Approved:

W. Steeles
Chairman.