Minutes of actions taken by the Board of Governors of the Federal Reserve System on Wednesday, February 27, 1952.

PRESENT: Mr. Martin, Chairman
Mr. Szymczak
Mr. Evans
Mr. Powell
Mr. Mills
Mr. Robertson

Mr. Carpenter, Secretary
Mr. Sherman, Assistant Secretary
Mr. Kenyon, Assistant Secretary

Minutes of actions taken by the Board of Governors of the Federal Reserve System on February 26, 1952, were approved unanimously.

Memorandum dated February 25, 1952, from Mr. Marget, Director, Division of International Finance, recommending an increase in the basic salary of Gordon B. Grimwood, Economist in that Division, from $4,330 to $4,455 per annum, effective March 2, 1952.

Approved unanimously.

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

"Reference is made to your letter of February 20, 1952, recommending the appointment of Thomas R. Conner as an examiner for the Federal Reserve Bank of Cleveland.

"It is understood that Mr. Conner is indebted to a State member bank, secured by a mortgage on his home, but that this obligation could very easily be placed with a nonmember institution.

"The Board approves the appointment of Thomas R. Connor as an examiner for the Federal Reserve Bank of Cleveland with the understanding that he will not be authorized to participate in any examination of a member bank to which he may be indebted.

"Please advise us of the date upon which the appointment becomes effective and also of the salary rate."

Approved unanimously.

Letter to Mr. Gidney, President, Federal Reserve Bank of Cleveland, reading as follows:

"The Board of Governors approves the appointments of Messrs. Sam W. Emerson, H. P. Ladds, John P. McWilliams, Herman R. Neff, and Arthur W. Steudel as members of the Industrial Advisory Committee for the Fourth Federal Reserve District to serve for terms of one year each, beginning March 1, 1952, in accordance with the action taken by the Board of Directors as reported in your letter of February 18, 1952."

Approved unanimously.

Memorandum dated February 21, 1952 from Messrs. Thomas, Economic Adviser to the Board, Young, Director, Division of Research and Statistics, and Marget, Director, Division of International Finance, reading as follows:

"At the 1949 meeting of Technicians of Central Banks of the American Continent in Santiago, Chile, both Cuba and Colombia extended invitations to the delegates to hold the next meeting in their countries. It was finally agreed that the 1952 meeting would be in Cuba. It is quite likely, therefore, that the delegates will be invited to Colombia for the next meeting. However, there is a bare possibility that a majority of the delegates will feel that the Federal Reserve System as one of the original sponsors of the meetings should serve as host next time. In our view, the American delegation should not extend an invitation to the delegates to come to Washington for their next or fourth meeting, probably in 1954, unless it should prove to be very embarrassing to avoid extending such an invitation. In view of the constructive purposes served by these conferences, however, we feel that they should not be discontinued just because an invitation to hold the next meeting has not been forthcoming from any of the participating

"countries. It is recommended, therefore, that the head of the American delegation be authorized to extend to the delegates an invitation from the Federal Reserve System to come to Washington for their next meeting.

"If it should become necessary to extend such an invitation, it is expected that the Federal Reserve Bank of New York and perhaps some of the other Federal Reserve Banks would want to participate in the meetings. It might be desirable to hold the last few days of the two-week conference (say from Wednesday through Sunday) at the Federal Reserve Bank of New York, and in this case the New York Bank would bear the expenses of this portion of the conference. The International Monetary Fund and World Bank may also want to participate in this as in previous conferences.

"It is impossible, of course, to forecast the exact cost to the Board of a conference of this nature, since it will be held two years hence. The attached memorandum and letter give only some rough figures as to the probable cost to the Board of conducting the conference."

Approved unanimously, together with a telegram to Mr. Young, in care of Hotel National, Havana, Cuba, reading as follows:

"Board has approved recommendation that you be authorized in event you think it desirable to extend invitation for meeting of technicians of central banks in 1954. Have been in touch with Knoke in New York. Understand matter will be presented to directors as to their participation and Bank will wire Rozell tomorrow. Should you decide that extension of invitation is desirable, understand that upon receipt of New York wire you will extend invitation on behalf of Board and New York Bank."

Telegram to Mr. Olson, Vice President, Federal Reserve Bank of Chicago, reading as follows:

"Reurtel February 26. We concur in your view that a trust company which is a Registrant must comply with Regulation X in selling 'new construction' as an executor under powers of sale in will or court order even though the estate

"itself is not a Registrant."

Approved unanimously.

Letter to Mr. Strothman, Vice President, Federal Reserve Bank of Minneapolis, reading as follows:

"This refers to your letter of February 15, 1952, concerning an inquiry by the Investors Syndicate of America, Inc., Minneapolis, as to the applicability of Regulation X to loans made to holders of its investment certificates upon the security of and in accordance with the loan privilege provisions in such certificates. The particular certificate provision in question is Article 14, which provides that the Company will lend to the owner of the certificate at any time upon the execution and delivery of a note and on assignment and delivery of the certificate any amount not greater than the amount which the owner would then be entitled to receive in cash upon surrender of the certificate. We understand that notes evidencing such loans ordinarily have a six months' maturity and are not repaid on an instalment basis.

"We understand the Company contends that Regulation X does not apply to such loans because (1) the certificate holder had a contractual right to borrow in accordance with the certificate's terms prior to the effective date of Regulation X and that this amounts to a pre-Regulation X firm commitment, and (2) that since such loans are to be repaid within six months they should be treated under section 4(c) of the regulation as extensions of credit made by institutions similar to a bank or savings and loan association and fully secured by withdrawable shares issued by or savings accounts held with the lender.

"After reviewing the sample investment certificate enclosed with your letter, we believe it is too indefinite to constitute a firm commitment within the meaning of section 6(b) of the regulation. Because of the very nature of the certificate, it leaves unknown until a subsequent time the purpose of the loan, the borrower, the amount of the loan, and the value and location of the property involved. We note that Article 17 of the sample certificate provides for a transfer of the certificate upon request therefor in writing. Also, under Article 14 the maximum amount that the certificate

"owner may borrow is not fixed but is contingent upon other options stated in Article 5 and 12 of the certificate. Therefore, even if the certificate were considered a firm commitment within the meaning of section 6(b), in our opinion, credit extended pursuant to such modifications of the commitment would not be exempt from Regulation X under the principles stated in the Board's interpretation S-1196, (X-16).

"We assumed in the discussion above that the Company contends the certificate is a firm commitment within the meaning of section 6(b). However, if the Company's argument is merely that it is contractually obligated to extend credit to the certificate holders upon request, and that it will be liable for damages if it does not do so, you may want to call its attention to section 707 of the Defense Production Act of 1950, under authority of which Regulation X was issued. This section provides in part that 'No person shall be held liable for damages * * * resulting directly or indirectly from his compliance with a rule, regulation, or order issued pursuant to this Act, * * *.' In other words, this provision amounts to a statutory exculpation of liabilities under pre-effective date or other nonconforming contracts. The defense it furnishes is similar to the common law contractual defenses of 'legal impossibility', 'frustration of purpose', and 'supervening illegality'. If you or counsel for the Company want to pursue the applicability or effect of this provision further, an interesting note which compares the provision with similar provisions in other legislation may be found in 64 Harvard Law Review 456 (1950).

"In answer to the Company's second contention, we agree that such loans if repaid within six months are similar to and should be treated under section 4(c) as extensions of credit made by institutions similar to a bank or savings and loan association and fully secured by withdrawable shares issued by or savings accounts held with the lender. However, we believe that in answering the inquiry you should caution the Company that loans to certificate owners on the security of their certificates are not exempt from Regulation X if such loans are made for the purpose of purchasing or financing new construction, or otherwise are extensions of real estate construction credit. For example, it is likely that such loans sometimes may be for the purpose of making a down payment on new residential construction.

"Section 4(c) requires the Company, if it is a Registrant, to ascertain the nature of any credit extended by it and maintain records which reasonably demonstrate on their face whether such credit is real estate construction credit. In issuing the

"regulation, however, the Board recognized that the vast majority of such short-term secured loans are not for real estate construction credit purposes, and provided in section 4(c) that it is not necessary to comply with this requirement if the Registrant does not have actual knowledge that the credit is real estate construction credit.

"The provision was intended to ameliorate the practical difficulties of maintaining records of a vast number of small loans that would not be subject to the regulation. In some cases, the Company will know from other facts or from previous dealings with the borrower that the loan is not real estate construction credit. If the Company does not otherwise know these facts, they can be obtained by a simple inquiry of the borrower. When this is done and the Company is satisfied that the credit is not subject to the regulation, the Company may demonstrate this fact by the maintenance of any records which evidence that the credit is not subject to the regulation. Among other means, this can be done by a written endorsement placed upon any papers in connection with the credit stating that the Company is satisfied that the credit in question is not real estate construction credit.

"In summary, we believe that in answering this inquiry you may wish to advise the Company that (1) the certificate is not a firm commitment within the meaning of Regulation X, and (2) even if the Company has a contractual obligation to make the loans, it has a defense against any action for damages if it should refuse to make one because it would be a violation of Regulation X, and (3) with respect to loans having a maturity of six months or less, the Company need not comply with section 4(c) unless it has actual knowledge that the credit is real estate construction credit."

Approved unanimously.

Secretary.