Minutes of actions taken by the Board of Governors of the Federal Reserve System on Tuesday, April 22, 1952. The Board met in the Board Room at 10:00 a.m.

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

Mr. Thurston, Assistant to the Board
Mr. Townsend, Solicitor
Mr. Solomon, Assistant General Counsel

Following this meeting, the Secretary was informed that it was called to consider whether the Solicitor should be instructed to file a petition forthwith, the effect of which would be to seek to have the Circuit Court of Appeals determine the validity of the order issued by the Board on March 27, 1952, in the Clayton Act proceeding against Transamerica Corporation.

At Chairman Martin's request, Mr. Townsend made a statement as to the reasons why he felt such a petition should be filed.

Following discussion, which was resumed when the Board reconvened at 2:00 p.m., with the same attendance, Governor Evans moved that the Board instruct its Solicitor to prepare at once the legal documents necessary to submit the case to the court, and that the Board write a letter to Transamerica stating it viewed the announcements of its president

and general counsel, respectively, as indicating an intention not to comply with the Board's order, and that therefore the Board intended, on May 12, 1952, to ask the Court of Appeals for a determination of the validity of the divestment order, provided Transamerica did not take similar action prior to that time.

In the absence of a second, the motion was not voted upon.

Governor Szymczak stated his position as follows:

> An early adjudication by the courts of the Board's order to the Transamerica Corporation to divest is definitely in the public interest, because it would resolve the question whether the Corporation or any other similar corporation, in a similar status, tends toward a banking monopoly. Even if Transamerica should comply, there would be no court decision on which to base any future judgment or action by this Board.
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> However, the Board's decision allowed the Transamerica Corporation ninety days within which to indicate compliance, and two years thereafter in which to complete the divestment. This, apparently, is customary procedure in administrative law.
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> Even though the president of Transamerica Corporation indicated in a press statement that the decision of the Board was not binding and that they would therefore now proceed to the courts, we have had no official notification from the officials of the Transamerica Corporation to that effect. In fact, they have not gone to court and they have not notified the Board officially as to their intentions. Thirty days have elapsed since the order was issued and, under the circumstances, it seems consistent with the order of the Board based on accepted procedure that we wait until we've had some indication from Transamerica Corporation within the ninety days before taking any further action.

Governor Evans requested and was granted permission to have entered in the record a statement of the reasons why he felt the petition should

be filed. His statement follows:

I believe the Board should now file a petition for affirmance of its order of divestment issued against Transamerica on March 27, 1952. My reasons for this belief are as follows:

When the Board issued its order on March 27, it directed Transamerica to initiate action to bring about such divestment within ninety days and that such divestment be completed within two years and ninety days. If Transamerica had not yet made any response to the Board's order, my opinion would be that the Board should wait either until a response is given or the ninety days have elapsed before bringing action to have the order reviewed. But Transamerica has responded to the Board's order in a most definite and decisive way. Through its president, Mr. Husbands, it announced to all the world that it has no intention of complying with the Board's order unless and until the order is affirmed by a court of appeals. Mr. Husbands' statement was as follows:

> "With two members of the Board not participating and two others voting in our favor, we have the amazing spectacle of an adverse decision by a minority of three . . . If this is administrative procedure, I am glad we are through with it. Fortunately, the order of the Board has no effect whatsoever until it has been reviewed by a United States Court of Appeals. At long last we can go into court and have a fair hearing."

This statement was carried on the news tickers and by most of the important eastern newspapers the day following the entry of the Board's order. Mr. Stewart, Transamerica's general counsel and vice president of the Bank of America, also issued a statement, saying in effect that during the five-year period Transamerica had been under investigation by the Federal Reserve System for alleged violation of the Clayton Anti-Trust Law, the corporation had repeatedly stated it would fight an adverse decision through the courts -- to the Supreme Court if necessary. There have since gone over my desk literally hundreds of clippings from newspapers

located throughout the western states containing excerpts from or comments upon the statements of Mr. Husbands and Mr. Stewart.

I felt, and still feel, that the statements issued by responsible representatives of Transamerica indicate plainly an intention not to comply with the Board's order and that waiting ninety days before filing a petition for enforcement is wholly unnecessary. I discussed the matter with our solicitor, Mr. Townsend, and asked that it be brought to the Board's attention because I considered it involved a very important policy question. Mr. Townsend reported to me the result of his examination of the authorities, which seemed clearly to support the Board's right to move at once to have this controversial decision reviewed by the court. At my direction he brought these authorities to the attention of the Chairman and Governor Szymczak. In addition, also at my direction, he discussed them with Mr. Dawkins of the Federal Trade Commission and Chester Morrill. He reported fully on these mattersto the Board.

Apart from my desire, and I should think that of every member of the Board who voted for or against the divestment order, to have the merits of this case judicially determined at the earliest possible date, I am convinced that there are other compelling reasons which also support this position. This is the first case to be tried under the Clayton Act so far as it relates to banks. The entire banking world, and the public generally, are very much interested in and affected by its outcome. In my opinion, all interested parties have a right to expect the Board to do everything possible to get a prompt court ruling on the questions involved. Under these circumstances it follows very logically, at least to me, that the Board has the responsibility to look at the realities of the situation and to act accordingly. No one believes that Transamerica intends to comply with this order. Yet no petition has been filed by Transamerica and it is now a month since the order was entered. Transamerica has played the game of delay from the very inception of this case. It was bad enough to put up with these tactics while the hearing was in progress but it seems completely unnecessary to do so now that the decision has been rendered. For

all of these reasons I made my motion. I added the provision in my motion respecting the letter to Transamerica because it had been suggested by another member of the Board and seemingly concurred in by at least a third member.

At 2:35 p.m. the following members of the staff were called into the meeting:

Mr. Carpenter, Secretary
Mr. Sherman, Assistant Secretary
Mr. Riefler, Assistant to the Chairman
Mr. Thomas, Economic Adviser to the Board
Mr. Young, Director, Division of Research and Statistics
Mr. Noyes, Director, Division of Selective Credit Regulation
Mr. Swan, Acting Assistant Director, Division of Selective Credit Regulation
Mr. Jones, Chief, Consumer Credit and Finances Section, Division of Research and Statistics

Chairman Martin stated that there would be a meeting of the Defense Mobilization Board tomorrow morning at 11:00 o'clock which he would attend, that the purpose of the meeting was to review the controls in effect under the Defense Production Act, and that he had called this meeting for the purpose of discussing the economic situation and the possible desirability of a change in the terms of Regulation W, Consumer Credit.

Governor Powell stated that at the last meeting of the Voluntary Credit Restraint Committee members of the Committee took the position that if the consumer credit regulation were to be relaxed or suspended the Voluntary Credit Restraint Program should also be suspended

since it would not be fair or appropriate to continue that program when other credit restraint measures had been eliminated. Governor Powell added that it was the feeling of a majority of the Committee that, in the absence of action by the Board on Regulation W, it would be preferable to continue the Voluntary Credit Restraint program for the present and to review it again in another 30 or 60 days.

Governor Powell then withdrew from the meeting.

In response to a request from Chairman Martin, members of the staff commented on the economic situation and the possible desirability of changes in Regulation W. There followed a general discussion, at the conclusion of which it was understood that further consideration would be given to the matter after the meeting of the Defense Mobilization Board which Chairman Martin was to attend tomorrow morning.

At this point all of the members of the staff with the exception of Messrs. Carpenter and Sherman withdrew, and the action stated with respect to each of the matters hereinafter referred to was taken by the Board:

Minutes of actions taken by the Board of Governors of the Federal Reserve System on April 21, 1952, were approved unanimously.

Letter to Mr. Wiltse, Vice President, Federal Reserve Bank of New York, reading as follows:

"In accordance with the request contained in your letter of April 17, 1952, the Board approves the appointment of John P. Armbruster as an assistant bank examiner for the Federal Reserve Bank of New York.

"It is understood that the effective date of his appointment was April 17, 1952."

Approved unanimously.

Letter to Mr. T. L. Tolan, Jr., Counselor at Law, Security Building, Milwaukee, Wisconsin, reading as follows:

"We are glad to note from your letter of April 14, 1952 that our letter of April 11 concerning certain questions under Regulation T was helpful to you.

"You also ask a further question regarding section 6(d) of the regulation, the section which relates to the transfer of accounts, and as to which we outlined the general purposes in our previous letter.

"In the consideration of specific questions which are presented by those seeking guidance with respect to particular prospective transactions, and which are the basis for interpretations issued by the Board, the Board has not had occasion to express any opinion which would throw any further light on the relation of section 6(d) to your situation. We regret that we are therefore not in a position to refer you to any further interpretations on the subject."

Approved unanimously.

Letter to Mr. Samuel Maidman, Attorney at Law, Chapman Building, 756 South Broadway, Los Angeles, California, reading as follows:

"This is in reference to the status under Regulation W of a so-called 'Magic Pantry' sold on instalment terms by your client, Magic Pantry Company, Los Angeles, California. The matter was discussed by you on April 9, 1952, with certain members of the Board's staff and, as you know, was the

"subject of previous correspondence between the Board and the Federal Reserve Bank of San Francisco. Included in such previous correspondence was a copy of your letter of January 29, 1952 to the Los Angeles Branch of that Bank.

"From the very full and detailed information supplied by you and the Federal Reserve Bank of San Francisco, it appears, briefly, that a 'Magic Pantry' is a mechanical food freezer designed for household use which, as ordinarily installed, constitutes a permanent addition to an existing residential structure. In a typical installation, a prefabricated food freezer of 20 cubic feet capacity and measuring approximately 72"x48"x35" is recessed through an outside wall of the residential structure, such as a house or garage, and supported by a 48"x35" concrete foundation which abuts the foundation of the house or garage. 'Reach-in' access from the inside is provided by the food storage compartment doors of the freezer, the side of the freezer containing such doors being flush with the inside surface of the wall. The outside projection of the freezer is trimmed and finished to resist weather and to blend in appearance with the house. It is understood that principal components of the finished product are prefabricated by Coldew Manufacturing Company, also in Los Angeles.

"After careful consideration of all of the information presented, including the views expressed by you on April 9 and in your letter of April 10, the Board has concluded that a 'Magic Pantry' should be regarded as subject to the regulation as a listed article covered by Item 4 of Group B of the Supplement, rather than by Group D. Not only does Item 4 of the Group B list 'food freezers, mechanical, designed for household use', but the regulation includes with any such specific listing all matters covered under section 8(j)(7), such as 'accessories' and 'charges for ... installation'. Furthermore, to regard a food freezer installation of the kind in question as covered by Group D as a 'residential improvement', rather than by Group B, would overlook entirely the fact that Group D specifically excludes 'articles listed elsewhere in the Supplement'. Consequently, the provisions of the regulation applicable to Group B articles would be applicable to an instalment transaction relating

"to a 'Magic Pantry'. Section 6(d) would not apply.

"In arriving at this result the Board has noted that a 'Magic Pantry' is sold by your client under a 'Construction Agreement' containing no title retention provision. However, these matters, like local building codes, classification under FHA insurance provisions, and affixation to realty, for example, are not controlling considerations for the purposes of Regulation W.

"During the discussion on April 9 you raised an additional question concerning a 'Magic Pantry', which might incorporate also a refrigeration facility, where the recess would be of a depth sufficient to afford a 'walk-in' space. As you will recall, the facts or details submitted in regard to any such modification or possible modification of a 'Magic Pantry' were less complete than those relating to the 'reach-in' installation.

"In the Board's view the mere fact the particular facility may be sufficiently large to permit 'walk-in' access would not, alone, exclude it from 'Refrigerators and food freezers' listed in Item 4 of Group B of the Supplement, if 'designed for household use'. Consequently, on the basis of the limited information supplied, such a 'walk-in' 'Magic Pantry', whether or not incorporating also a refrigeration facility, would appear to be subject to the regulation in the same manner as indicated above for a 'Magic Pantry' not incorporating a 'walk-in' or refrigeration facility. If, however, you wish to submit further specific details in behalf of your client with regard to a 'walk-in' installation, we will be glad to give that matter further consideration."

Approved unanimously, for
transmittal through the Federal
Reserve Bank of San Francisco.

S. R. Carpenter

Secretary.