Minutes of actions taken by the Board of Governors of the Federal Reserve System on Friday, September 11, 1953. The Board met in the Board Room at 10:00 a.m.

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

Mr. Sherman, Assistant Secretary
Mr. Kenyon, Assistant Secretary
Mr. Vest, General Counsel

Mr. Vest referred to the telegram dated August 25, 1953, which the Board received from Mr. Wilbur, Chairman of the Federal Reserve Bank of San Francisco, regarding participation by Bank of America National Trust and Savings Association, San Francisco, California, in the forthcoming nomination and election of a Class A and a Class B director of the San Francisco Bank. He then referred to the discussion of that telegram at the meeting of the Board on August 26 and to his subsequent telephone conversation with Mr. Earhart, President of the San Francisco Reserve Bank, during which, as he had stated at the meeting on August 28, he advised Mr. Earhart of the view of the Board that no nomination blank should be sent to Bank of America National Trust and Savings Association and that the question of the member bank's right to participate in the forthcoming elections should not be raised at this time.

Mr. Vest said that he had now received a telephone call from President Earhart, who reported that the following letter dated September 8, 1953, and addressed to Chairman Wilbur, had been received from

Mr. S. C. Beise, Senior Vice President of Bank of America National Trust and Savings Association:

> I acknowledge receipt with thanks of your printed letter, dated August 28, 1953 (Election of Directors Letter A), and your printed letter of August 31, 1953 on the same subject, both letters being addressed "To the Member Banks of the Twelfth Federal Reserve District."
>
> It may be that the Board of Directors of our bank would like to avail itself of its legal right to nominate a candidate for Class B Director, and for that purpose I request that we be furnished with a form of designation.

Mr. Vest said that President Earhart proposed sending the following reply to Mr. Beise over the signature of Mr. Wallace, Deputy Chairman of the Reserve Bank, in the absence of Chairman Wilbur:

> We have received your letter of September 8, in which you advise the receipt of our circular letter of August 28, 1953, regarding the election of directors, without a nomination certificate and request that the nomination form be furnished to you.
>
> No nomination certificate was enclosed with our circular, as Transamerica Corporation, as a holding company affiliate, has designated the First National Bank of Nevada, Reno, Nevada, as the affiliated bank which will participate in the nomination and election of Class A and Class B directors by banks classified under Group 1. This designation is in accordance with the provisions of Section 4 of the Federal Reserve Act, as amended, which is quoted in part in the election circular.

Mr. Vest said he agreed with President Earhart that the effect of the proposed reply merely would be to put the next move up to Bank of America, since the letter would not take up the issue on

the merits at this time. President Earhart felt, Mr. Vest said, that it was possible that the bank might litigate the matter, although he did not explain how. Mr. Vest thought the member bank conceivably might bring suit against the Chairman of the San Francisco Reserve Bank, as the statutory officer in charge of the elections, for a declaratory judgment or that it might sue for a mandatory injunction that it be allowed to participate in the elections.

Mr. Vest then discussed the position taken by the Board of Governors in 1952 when Bank of America raised the same question. He felt that if the Clayton Act proceeding against Transamerica Corporation were not in the picture any longer, the question on the merits would be a difficult one since it would be hard to say, with no common directors and with no stock ownership, whether other considerations would be sufficient to constitute control of Bank of America by Transamerica Corporation. However, he pointed out that the Clayton Act proceeding was still not finally settled and that the Board had taken a position last year on the same question in the light of a situation where the facts were essentially the same as at present.

There was a discussion of the matter in relation to the pending decision of the Attorney General whether to petition the Supreme Court for a writ of certiorari in the Transamerica case and Mr. Vest stated, in response to questions by members of the Board, that advice

of the Attorney General's decision might well put the question raised by Bank of America in a different light and give the Board cause to consider whether it should take a position different from that which it adopted in 1952.

At the close of the discussion, it was agreed unanimously that Mr. Vest should advise President Earhart by telephone that the Board would have no objection to the Reserve Bank's proceeding along the lines that had been proposed.

In the course of the foregoing discussion, Governor Mills called attention to the Board's letter of July 6, 1953, to Bank of America, New York, New York, in which the Board stated that it would not be warranted in approving Bank of America's serving in New York as fiscal agent for the Republic of Costa Rica in connection with certain bonds outstanding in the United States. He noted that the Board's examination of First of Boston International Corporation, New York, New York, made as of May 22, 1953, disclosed that similar activities were being conducted by that Corporation.

During a discussion which followed, Mr. Vest reviewed the progress being made in the study of activities of Edge Act corporations which are appropriate or inappropriate in the United States, and he indicated that when the Board considered this whole question, it should of course consider what position should be taken with respect

to the activities of First of Boston International Corporation mentioned by Governor Mills so that there would be no basis for a charge of discrimination against Bank of America.

At this point Mr. Riefler, Assistant to the Chairman, entered the room.

There were presented telegrams to the Federal Reserve Banks of New York, Cleveland, Richmond, Atlanta, St. Louis, Minneapolis, Kansas City, Dallas, and San Francisco stating that the Board approves the establishment without change by the Federal Reserve Bank of San Francisco on September 8, and by the Federal Reserve Banks of New York, Cleveland, Richmond, Atlanta, St. Louis, Minneapolis, Kansas City, and Dallas on September 10, 1953, of the rates of discount and purchase in their existing schedules.

Approved unanimously.

The meeting then adjourned. During the day the following additional actions were taken by the Board with all of the members except Governor Vardaman present:

Minutes of actions taken by the Board of Governors of the Federal Reserve System on September 10, 1953, were approved unanimously.

Memoranda from appropriate individuals concerned recommending personnel actions as follows:

Appointment, effective upon the date of assuming duties

Name and title	Division	Type of appointment	Basic annual salary
Frances M. Callahan, Assistant Manager, Cafeteria	Administrative Services	Temporary indefinite	$3,410

Changes in status of appointments

Jacquelyn Haas, File Clerk, Office of the Secretary. From temporary (six months) to temporary indefinite, with no change in her basic annual salary at the rate of $2,950, effective September 11, 1953.

Mary Ann Nichols, Clerk-Typist, Division of Research and Statistics. From temporary (three months) to temporary indefinite, with no change in her basic annual salary at the rate of $2,830, effective at the expiration of her present appointment.

Salary increases, effective September 13, 1953

Name and title	Division	Basic annual salary From	Basic annual salary To
	Research and Statistics		
Philip M. Webster, Economist		$5,310	$5,435
Ruby S. Andrews, Editorial Clerk		3,655	3,785
Charlotte J. Hodges, Clerk-Typist		2,830	2,950
Josephine M. McCue, Clerk-Stenographer		3,110	3,255
Joan R. Winter, Clerk		3,030	3,175
	International Finance		
Dorothy L. Helprin, Economist		4,455	4,580
	Bank Operations		
Dorothy F. Burton, Clerk-Stenographer		3,255	3,335

Salary increases, effective September 13, 1953 (Continued)

Name and title	Division	Basic annual salary From	To
	Administrative Services		
Mary E. Sanders, Secretary		$4,170	$4,295
Alene D. Carroll, Charwoman		2,630	2,700
Thomas G. Cook, Assistant Foreman of Laborers		3,310	3,454
	Office of the Controller		
F. Allison Kramer, Accounting Clerk		4,545	4,705

Resignation

Name and title	Division	Effective date
Jean T. Powell, Statistical Clerk	Bank Operations	September 30, 1953

Approved unanimously.

Letter to Mr. Latham, Vice President, Federal Reserve Bank of Boston, reading as follows:

> In accordance with the request contained in your letter of September 3, 1953, the Board approves the appointment of Louis Leon Ouellette as an assistant examiner for the Federal Reserve Bank of Boston.
>
> Please advise as to the date upon which the appointment is made effective.

Approved unanimously.

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

In accordance with the request contained in your letter of August 24, 1953, the Board of Governors approves the payment of salaries to guardsmen at a rate not to exceed $3,600 and to sergeants at a rate not to exceed $3,850 per annum with the understanding that this authorization to pay above-maximum salaries will terminate upon approval of the new salary structure or March 1, 1954, whichever is earlier.

The above approval is given because of the acute situation existing at the Buffalo Branch for this group of employees and because, in the opinion of the Branch officers, it is not desirable to wait until the results of the current community survey are known. Since you indicate the problem will in all probability be corrected when the new salary structure is approved and since the continuation of such an arrangement for an indefinite period would appear to violate the principles of good salary administration, the Board's authorization for the payment of above-maximum salaries is limited to a temporary period.

Approved unanimously.

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

Reference is made to your letter of September 1, 1953, submitting the request of the Cicero State Bank, Cicero, New York, for a further extension of time within which it may accomplish admission to membership. In this connection it is noted that in order to meet the requirements of Condition of Membership No. 3, set forth in the Board's letter dated June 4, 1953, a special meeting of the bank's stockholders will be held on September 24, 1953, for the purpose of considering a plan to sell additional common stock and, since the rights to subscribe to the new stock will not expire until October 13, 1953, it will not be possible for the bank to effect the capital increase within the period allowed by the Board for completion of membership, which was extended to October 2, 1953.

In the circumstances and in accordance with your recommendation, the Board of Governors extends to November 2, 1953, the time within which the Cicero State Bank, Cicero, New York, may accomplish admission to membership.

Approved unanimously.

Letter to the Comptroller of the Currency, Treasury Department, Washington, D. C., (Attention: Mr. W. M. Taylor, Deputy Comptroller of the Currency) reading as follows:

Reference is made to a letter from your office dated June 2, 1953, enclosing photostatic copies of an application to organize a national bank at Miami Beach, Florida, and requesting a recommendation as to whether or not the application should be approved.

The Board has received a report of investigation of the application made by a representative of the Federal Reserve Bank of Atlanta, covering the factors usually considered in connection with such applications. While the report indicates that the proposed capital structure of the bank would be adequate, the prospects for future earnings of the institution are not attractive, the general character of the management is not entirely satisfactory, and, from the information available, it is not apparent that a pressing need exists for additional banking facilities in the area. After careful consideration of the situation and the factors set forth in your letter, the Board of Governors is of the opinion that the application should not be approved.

The Board's Division of Examinations will be glad to discuss any aspects of this case with representatives of your office, if you so desire.

Approved unanimously.

Letter to the Comptroller of the Currency, Treasury Department, Washington, D. C., (Attention: Mr. W. M. Taylor, Deputy Comptroller of the Currency) reading as follows:

Reference is made to a letter from your office dated July 8, 1953, enclosing photostatic copies of an application to organize a national bank at Homewood, Illinois, and requesting a recommendation as to whether or not the application should be approved.

The Board has received a report of an investigation of the application made by a representative of the Federal Reserve Bank of Chicago, covering the factors usually considered in connection with such applications. While there is some evidence that the present banking facilities in Homewood are not adequately meeting the needs of the community, the establishment of another bank might well create an undesirable situation. In this connection, it appears that the organizers have been negotiating for the purchase of the existing bank in Homewood and that the application for a national charter may be a move to help achieve that purpose. The sponsors of this bank, with one exception, have no banking experience, and definite arrangements for competent management have not been made. In the light of these unfavorable factors, the Board of Governors is of the opinion that the application should not be approved.

The Board's Division of Examinations will be glad to discuss any aspects of this case with representatives of your office, if you so desire.

Approved unanimously.

Memorandum from Governor Vardaman dated August 11, 1953, submitted in accordance with the statement made by Governor Vardaman at the meeting of the Board on August 6, 1953, and reading as follows:

To: Board of Governors, Federal Reserve System
(Copies to the Attorney General and to the
Acting Solicitor General)
From: Governor Vardaman
Re: Transamerica Corporation v. Board of
Governors of the Federal Reserve System.
Docket No. 10,768, United States Court of
Appeals of the Third Circuit.

There are set forth below some of the reasons for my action in dissenting from the majority decision of the Board of Governors to request the Acting Solicitor General to petition the Supreme Court of the United States to grant a writ of certiorari to review the decision of the Court of Appeals in the above-entitled case:

Application for certiorari in this case would not, in my opinion, be in the public interest and would be prejudicial to the respondent corporation. I believe such action would also detract further from the dignity of the Board of

Governors of the Federal Reserve System, which has in the Court of Appeals, Third Circuit, been reproved for acting contrary to rules of logic and law, in addition to rejecting testimony that might have answered its charges against respondent and, further, for failing to seek and consider evidence essential to support its own complaint and conclusion.

The respondent corporation must be bound by the laws of the United States and so should the Board of Governors of the Federal Reserve System act only in accordance with such laws, and particularly in accordance with the act of the Congress, as amended, which created it an administrative agency with quasi-judicial functions; and, in accordance with the Constitution, the common law and the traditions of our republic. In my opinion, this Board cannot and should not attempt to exercise the functions of a grand jury, which accuses after hearing only evidence which constitutes a prima-facie case, and then proceed as if the defendant were guilty prior to a review of the case by a higher court. In the case of a grand jury--after that body has acted, a defendant is presumed innocent until proved guilty beyond a reasonable doubt, following a full opportunity to be heard, to subpoena witnesses, to cross-examine and to confront witnesses and to present evidence in contradiction, rebuttal and defense before a petit jury and, most important, in the presiding presence of a member of the judiciary, and according to established rules of evidence.

In the instant case, the Board had before it a respondent corporation, not a defendant. For the purpose of fair and proper regulatory action, it was essential that the respondent be accorded full and ample opportunity to present by documents and witnesses under oath all proper and relevant evidence in answer to the charges enumerated in the Board's complaint, if the Board's order was to become legally effective. The Board's order should have followed from a logical conclusion drawn from adequate, accurate findings based on evidence given under oath and by sworn admissible documents at a fair hearing.

The integrity of the conclusion is in direct ratio to the impartiality of findings of fact adduced from proper

and sufficient evidence presented by complainant and respondent, during hearings conducted in a calm and judicial atmosphere wherein emphasis has been on fairness and thoroughness and with an earnest desire for truth and justice and to disclose all pertinent facts, whether they be favorable or unfavorable to the complainant or to the respondent, or both. Such a hearing cannot in fairness be an ex parte proceeding in any respect. On the contrary, if the interest of the public is to be safeguarded, the hearing officer is under a duty to receive all relevant testimony and evidence offered by the respondent as well as the complainant.

Peremptory rejection of relevant evidence by the hearing officer in such proceedings usually and justifiably results in unfavorable comment from an appeals court, as in the opinion recently filed in this case. This is an illustrative extract:

> "In the present case the Board has made no findings with respect to either present or possible future competition between the individual acquired banks in the communities in which they operate. Indeed,it rejected evidence on this subject offered by Transamerica".

Careful study of the record of this hearing from its inception to date, and later rereading some parts of it, causes me to be quite firm in my belief that the respondent was denied its day in court--in a civil proceeding where every safeguard should have been provided in accordance with our laws and the best traditions of our constitutional republic in the proper exercise of the statutory powers of the Board of Governors.

Scrutiny of the court's opinion, part of which is quoted above, indicates essential weaknesses and omissions in the proceeding, which can in no way be cured by application for certiorari.

Furthermore, in this rare instance where the Board of Governors is applying for certiorari, it is incumbent upon it as an agency of record with quasi-judicial powers to forward a proper and complete record, judicious and logical findings and a legally effective order.

The members of the Board, all of whom are public servants, have a statutory duty to advance the ends of justice and the public welfare, rather than to win a legal contest. When an

injustice has been done, whether inadvertently or necessarily, as may have been true in the instant case in the Board's effort to apply the provisions of Section 7 of the Clayton Act to the operations of this corporation, it seems to me that the Board has two immediate remedies at its disposal. The first is to dismiss the complaint in view of the appellate court's decision; or, second, to remand the matter to the hearing officer for the purpose of correcting the record by taking further testimony on behalf of the complainant and respondent in line with respondent's several exceptions filed September 13, 1951, to the hearing officer's rulings on evidence and in accordance with the opinion of the United States Court of Appeals of the Third Circuit filed July 16, 1953.

It is the conviction of this member of the Board of Governors that an appeal to the Supreme Court can result only in unreasonable and unnecessary delay by further postponement of the taking of additional testimony before the hearing officer and, meanwhile, by unfairly prolonging the already too-extended period of severe restriction upon the respondent corporation. If there actually exists a condition such as that alleged in the complaint, which the Board had an unrestricted opportunity to prove during five years of hearings--but failed in the opinion of the Court of Appeals of the Third Circuit so to do--then expeditious and properly conducted hearings in the light of the court's opinion should provide the necessary basis for a logical and effective order.

On the other hand, if evidence or lack of evidence as to actual conditions indicates that the legal elements of the offense complained of are not present, then the Board is under a duty to cease restraining the respondent corporation from normal, lawful activities. In the latter instance, if there are found to be in existence and in operation certain activities or potentialities contrary to the public good, and of which the Board does not approve, but which are legally permissible under Section 7 of the Clayton Act, then the proper remedy lies not with the Board of Governors of the Federal Reserve System by administrative action, but the remedy lies solely in legislative action by the Congress.

Since June 24, 1948, and probably several years prior to that time--in all, over a period of more than five years--the respondent corporation has been in a restricted and uncertain status. To prolong this situation by a petition for certiorari, when the obvious course of taking further testimony is within the immediate control and authority of the Board as indicated in the appellate court's decision, is not, in my opinion, in the public interest.

In the opinion of this member, since the Board of Governors has decided to proceed further against Transamerica, it should do so immediately and proceed expeditiously by remanding the matter to the hearing officer for the purpose of giving a full opportunity to complainant and respondent for the proper presentation of all relevant testimony in the light of the decision of the Court of Appeals of the Third Circuit.

It is requested that this memorandum be recorded in the minutes of the Board and made a part of the official records of the Board in this case.

Assistant Secretary