

Minutes of actions taken by the Board of Governors of the Federal Reserve System on Monday, January 17, 1955. The Board met in the Board Room at 10:00 a.m.

PRESENT: Mr. Martin, Chairman
Mr. Szymczak
Mr. Robertson
Mr. Balderston

Mr. Carpenter, Secretary
Mr. Sherman, Assistant Secretary
Mr. Kenyon, Assistant Secretary
Mr. Riefler, Assistant to the Chairman
Mr. Thomas, Economic Adviser to the Board
Mr. Vest, General Counsel
Mr. Shay, Assistant Counsel

The following matters, which had been circulated among the members of the Board, were presented for consideration and the action taken in each instance was as indicated:

Letter to Mr. Smith, Federal Reserve Agent, Federal Reserve Bank of Dallas, reading as follows:

In accordance with the request contained in your letter received on January 7, the Board of Governors approves the appointment of Mr. Spencer Garrett as an Alternate Assistant Federal Reserve Agent.

This approval is given with the understanding that Mr. Garrett will be placed upon the Federal Reserve Agent's pay roll and will be solely responsible to him or, during a vacancy in the office of the Agent, to the Assistant Federal Reserve Agent, and to the Board of Governors, for the proper performance of his duties. When not engaged in the performance of his duties as Alternate Assistant Federal Reserve Agent he may, with the approval of the Federal Reserve Agent or, during a vacancy in the office of the Federal Reserve Agent, of the Assistant Federal Reserve Agent, and the President, perform such work for the Bank as will not be inconsistent with his duties as Alternate Assistant Federal Reserve Agent.

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The Board of Governors also approves the appointment of Mr. George A. Garrison as a Federal Reserve Agent's Representative at the El Paso Branch to succeed Mr. Travis J. Johnson.

This approval is given with the understanding that Mr. Garrison will be placed upon the Federal Reserve Agent's pay roll and will be solely responsible to him or, during a vacancy in the office of the Federal Reserve Agent, to the Assistant Federal Reserve Agent, and to the Board of Governors for the proper performance of his duties. When not engaged in the performance of his duties as Federal Reserve Agent's Representative he may, with the approval of the Federal Reserve Agent or, in his absence, of the Assistant Federal Reserve Agent, and the Vice President in charge of the El Paso Branch, perform such work for the Branch as will not be inconsistent with his duties as Federal Reserve Agent's Representative.

It is noted from your letter that, upon the receipt of advice of approval of the Board of Governors of the appointments of Messrs. Garrett and Garrison, they will execute the usual oath of office which will be forwarded to the Board of Governors with advice of the effective dates of the appointments. It is noted further that Mr. Garrett is being appointed at this time in anticipation of the retirement of Mr. Ashley later this year. Please advise the Board of Governors when Mr. Ashley retires.

Approved unanimously.

Letters to the Comptroller of the Currency, Treasury Department, Washington, D. C., (Attention: Mr. L. A. Jennings, Deputy Comptroller of the Currency), reading as follows:

Reference is made to a letter from your office dated August 26, 1954, enclosing photostatic copies of an application to organize a national bank at Greenhills, Ohio, and requesting a recommendation as to whether or not the application should be approved.

A report of investigation of the application, made by a representative of the Federal Reserve Bank of Cleveland and covering the factors usually considered in connection with such applications, indicates that the proposed capital structure of the bank would be adequate. However, it appears that the prospects for future earnings of the institution are not attractive; that the proposed management does not appear to possess the ability or experience to operate

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the bank successfully; and that it is questionable whether sufficient business exists in the community to justify the establishment of an independent banking institution. In view 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.

Reference is made to a letter from your office dated October 18, 1954, enclosing photostatic copies of an application to organize a national bank at Kosciusko, Mississippi, and requesting a recommendation as to whether or not the application should be approved.

Information contained in a report of investigation of the application, made by an examiner for the Federal Reserve Bank of St. Louis, discloses generally favorable findings with respect to the factors usually considered in connection with such proposals. The Board of Governors, therefore, recommends approval of the application.

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 for the signature of the Chairman to Mr. Hugh Bullock, Chairman, Federal Reserve Committee of the National Association of Investment Companies, 61 Broadway, New York, New York, reading as follows:

This is in further reference to your letter of November 17, 1954, and its enclosure, with respect to the Board's interpretation published in the June 1951 Federal Reserve Bulletin, page 645, concerning the application of the prohibition in section 32 of the Banking Act of 1933, as amended, to interlocking relationships between open-end investment companies and member banks of the Federal Reserve System, and with respect to the earlier, related interpretation of the Board published in the May 1941 Federal Reserve Bulletin, page 399.

By the above correspondence you requested that the interpretation just mentioned be rescinded, except as to the few open-end companies which act as the distributors of their own shares.

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As you know, the question of the applicability of the statute to interlocking relationships between open-end investment companies and member banks is one which the Board has considered on a number of occasions in the past. Nevertheless, the Board has carefully reviewed the entire matter in the light of your request and of the information and arguments submitted by your letter of November 17, 1954, and also your earlier correspondence dated January 20, 1954.

The question in any case arising under section 32, of course, is whether the person or organization concerned is "primarily engaged" in any activity described in the statute. Most open-end investment companies are constantly issuing or offering their redeemable shares. It is apparent that the more or less continued process of redemption of the shares issued by such a company would restrict and contract its activities if it did not continue to issue its shares. Thus, the issuance and sale of its shares is essential to the maintenance of the company's size and to the continuance of operations without substantial contraction. Accordingly, it is the opinion of the Board that in such circumstances such a company is "primarily engaged in the issue... public sale, or distribution, ... of securities" and that section 32 prohibits an officer, director or employee of such a company from serving at the same time as an officer, director or employee of any member bank. In view of the language of the statute, this is believed to be true whether the company acts as distributor of its own shares or whether its shares are distributed through an independent organization.

The foregoing reaffirms the previously published views of the Board. As early as 1935 the Board concluded that an open-end company was subject to section 32 because of its activity in issuing and selling its own shares, although it appeared that the company did not actually distribute the shares itself. And, it may be noted that in the interpretation published in May 1941, the Board indicated that the view expressed therein was "in harmony with its previous rulings in similar cases".

The enclosure with your recent letter referred to section 10(c) of the Investment Company Act of 1940 which prohibits a registered investment company from having a majority of its board of directors consist of persons who are officers or directors of any one bank. This statute and section 32, of course, by their terms do not cover the same situations. Moreover, they were enacted for different purposes, the purpose of the latter being to protect member banks and their

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customers. Therefore, the Board believes that Congress did not intend by the 1940 Act to supersede or amend the restrictive provisions of section 32 applicable to any company within its scope. The Board so advised the Chairman of the Senate Committee on Banking and Currency in December 1942 in reply to an inquiry based on correspondence of Counsel for the National Association of Investment Companies. This advice was given because of questions which arose from the Board's interpretation published in May 1941 and its later interpretation of September 22, 1942. This later interpretation was published in the June 1951 Federal Reserve Bulletin, page 645, following one of the later considerations of this matter by the Board.

A frequent argument has been made to the Board that the principal function of an open-end company is the management and investment of its assets. As you may know, however, the United States Supreme Court considered the language of section 32 in Board of Governors v. Agnew, 329 U.S. 441 (1947), and held that the test of "primarily engaged" was met if the particular activity was "substantial", although not the "chief or principal" activity of the company.

The interpretations of the Board in question do not, of course, attempt to pass upon the applicability of section 32 in situations other than those therein described, nor has the Board issued an interpretation of the statute which excludes from its provisions all issuers other than open-end companies. Whether or not any activity described in the statute would constitute a "primary" or "substantial" activity in any case necessarily would depend on all the relevant facts and circumstances of the particular case.

On the basis of the information that has been submitted by you, the Board is of the view that it would not be justified in granting your request. The considerations which led the Board to express the views stated in the interpretations in question are, in the Board's opinion, no less persuasive now than at the other times when the matter has come before the Board. The Board will, however, be glad to consider at any time any additional facts or arguments that might be presented.

Approved unanimously, for
transmittal through the Federal
Reserve Bank of New York.

Consideration was given to a memorandum from Mr. Vest dated
January 13, 1955, summarizing a draft of legislation to extend the Defense

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Production Act for two years from June 30, 1955, which was considered at a recent meeting of the Defense Mobilization Board at which Mr. Riefler was present. The memorandum, copies of which had been sent to the members of the Board, stated that at the meeting it was understood that the draft would be revised so as to include various additional provisions relating to a period of national emergency, among them authority for regulation of consumer credit and real estate credit. It also stated that counsel for the various Government agencies probably would be called together at an early date to consider drafts of the proposed legislation. In this connection, the memorandum listed questions that would arise with respect to the providing of authority for the regulation of consumer and real estate credit.

At the request of the Board, Mr. Vest commented on the points covered in his memorandum and said that the reason for bringing the matter to the Board's attention at this time was to obtain preliminary views for the guidance of the staff in the event the staff was called upon to assist in drafting the proposed legislation.

It was the consensus of the Board that consideration should be given to including authorization for a program of voluntary credit restraint in an emergency situation, and that it would be preferable to have authority for the regulation of consumer credit and real estate credit given direct to the Board rather than by delegation, although this point probably would not be particularly important under emergency conditions.

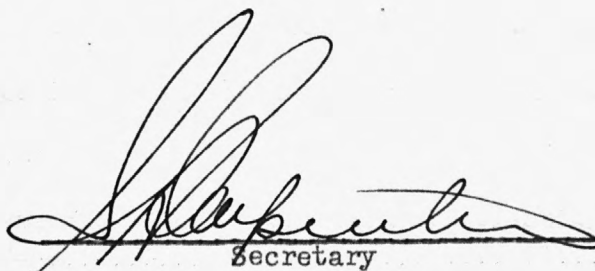
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Minutes of It was understood that Counsel for the Board, if called upon to assist in connection with the drafting of the proposed legislation, would mention these points along with such other matters as appeared desirable, and that the Board would give further attention to the problems involved when a revised draft of the legislation was available.

Minutes of actions taken by the Board of Governors of the Federal Reserve System on January 14, 1955, were approved unanimously.

The meeting then adjourned.


Secretary

Name and title

Florida Board,
Charter-Typist

Wayland Eaton,
Director of Labor

Minutes from the
the permission

To participate in the draft of the
Federal Reserve Board of
1955, 1955