Minutes of actions taken by the Board of Governors of the Federal Reserve System on Tuesday, February 8, 1955. The Board met in the Board Room at 10:00 a.m.

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

Mr. Carpenter, Secretary
Mr. Sherman, Assistant Secretary
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:

Memoranda from appropriate individuals concerned recommending that the basic annual salaries of the following employees be increased in the amounts indicated, effective February 13, 1955:

Name and title	Division	Basic annual salary From	To
	International Finance		
Ernest C. Olson, Economist		$8,560	$8,760
	Administrative Services		
John H. Battle, Laborer		2,872	2,952
Benjamin L. Dinkins, Mail Clerk		3,150	3,230
Everett Jones, Laborer		3,032	3,112
James E. Love, Laborer		2,872	2,952
Ethelyn M. Palmer, Secretary		3,910	4,035
William R. Smith, Laborer		2,872	2,952

Approved unanimously.

Memorandum dated February 2, 1955, from Mr. Thomas, Economic Adviser to the Board, requesting that the Board approve his addressing a dinner meeting of the Baltimore and Washington Chapters of the Robert Morris Associates on March 8, 1955, on the subject of "The Changing Course of Credit".

Approved unanimously.

Letter to The First National Bank of Gainesville, Gainesville, Georgia, reading as follows:

> The Board of Governors of the Federal Reserve System has given consideration to your application for fiduciary powers and grants you authority to act, when not in contravention of State or local law, as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other ficudiary capacity in which State banks, trust companies or other corporations which come into competition with national banks are permitted to act under the laws of the State of Georgia, the exercise of all such rights to be subject to the provisions of the Federal Reserve Act and the regulations of the Board of Governors of the Federal Reserve System.
>
> A formal certificate indicating the fiduciary powers which The First National Bank of Gainesville is now authorized to exercise will be forwarded to you in due course.

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

Letter to Mr. Peterson, Vice President, Federal Reserve Bank of St. Louis, reading as follows:

> Reference is made to your letter of January 21, 1955, submitting with a favorable recommendation the request of the Tipton Farmers Bank, Tipton, Missouri, for permission under the provision of section 24A of the Federal Reserve Act to invest not exceeding $85,000, including the cost of land and custom-made fixtures, in the construction of a new bank building on a site which has been acquired for that purpose.

The Board has given consideration to the asset condition, management, earnings, capital structure, and physical needs of the Tipton Farmers Bank and approves the investment of not to exceed $85,000 in the proposed banking premises with the understanding the proceeds derived from the sale of the present banking house and that portion of the recently purchased real estate which is not used by the bank will be applied to reduce the carrying value of bank premises. Please advise the bank accordingly.

Approved unanimously.

Letter to Mr. Clyde T. Warren, Attorney, Consolidated Gas Electric Light and Power Company of Baltimore, Baltimore, Maryland, reading as follows:

This refers to your letter of January 24, 1955, concerning whether loans by a bank which would be willing to participate in your Company's proposed "Employees' Stock Purchase Plan of 1955", would be loans "secured directly or indirectly by any stock" and, therefore, subject to the Board's Regulation U. A draft of the plan and related documents were enclosed with your letter.

Briefly, it appears that the plan is designed to foster employee interest in the Company by affording them the opportunity to purchase directly from the Company at a discount, shares of its registered common stock. An employee eligible under the plan to participate therein would be entitled to purchase such shares of such stock, within a determinable maximum amount, upon payment to the Company by the lending bank of the proceeds of an installment loan granted the employee for the purpose of making such purchase. Such a loan would be in an amount equal to the cost of the shares purchased under the plan by the employee, and would be made pursuant to a contract entered into by the Company and the bank at the outset of the plan. Each employee participating in the plan would be required to execute an authorization for payroll deductions in the necessary amounts which the Company would agree to remit monthly to the bank as installment payments on the employee's loan. While any such bank loan would bear no interest, the Company would agree to compensate the bank for its service, and also to pay for group life insurance obtained by the bank for application against any employee's unpaid loan balance in the event of his death.

It appears further that, pending full payment of any such bank loan, the shares purchased by the employee either would be issued to and held by the Company's Treasurer, as its nominee; or would be issued to the employee but held by such nominee, together with a power of sale executed by the employee. Although the employee would have the right to control the voting of the shares so held, the Company would agree to remit to the bank any dividends thereon for reduction of the employee's unpaid loan balance.

Your Company's draft of the proposed contract between it and the bank contains, among other things, provisions apparently intended as limitations on the bank's recourse in the event of default by a borrowing employee. Such provisions include statements to the effect that the Company does not guarantee any loan under the plan; that the bank's remedy would be solely against the employee; and that the holding by the Company of the shares purchased by an employee, and its agreement to pay any dividends thereon to the bank, would not give the bank any rights directly or indirectly in such shares or dividends.

However, if the pay of a participating employee should be decreased below the amount necessary for his payroll deductions or if he should be separated from service, so that he would become in default on his loan, it appears that the Company, in its discretion, could sell the shares of the employee held by it and apply the proceeds to his unpaid loan balance at the bank; or, upon separation from service, the employee would have the right, prior to the time at which the Company could sell his shares in its discretion, to request that his shares held by the Company be sold and that the proceeds be applied against his loan. Also, in the event of the employee's financial distress or, apparently, a decrease in the value of the shares below a certain level, provision is made for him to request the Company to sell the stock and apply the proceeds against his loan. Following any such sale, the employee would be entitled to receive from the Company any excess of the proceeds over his unpaid loan balance.

Any bank willing to participate in the plan, of course, would be fully aware of all aspects thereof, including the holding of the shares by the Company pending

payment of the employee's loan and the use by the Company of the proceeds of any sale of the shares by it to pay off such loan. While it is recognized that the provisions of the plan for withholding the shares purchased thereunder may serve other important purposes as well, such withholding, together with the Company's obligation to use the proceeds of any sale by it of the shares withheld in payment of the employee's bank loan as provided in the plan, at least would clearly serve advantages very much the same as those which would exist if the shares were, in fact, pledged directly with the bank.

Therefore, in the circumstances and on the basis of the Board's understanding of the proposed plan as submitted, it is the view of the Board that the bank loans contemplated by the proposed plan would be "secured directly or indirectly" by stock within the meaning and for the purposes of Regulation U; that such loans would not be covered by any exception in the regulation; and that, accordingly, the bank could loan to each employee participating in the plan no more than the prescribed maximum loan value of the registered stock purchased by him.

The Board, of course, will be glad to consider the matter again on the basis of any revisions which your Company might see fit to make in the proposed plan.

Approved unanimously, with a copy to the Federal Reserve Bank of Richmond.

There was presented a request from Mr. Masters, Assistant Director, Division of Examinations, for authority to travel to Boca Raton, Florida, during the period March 20-27, 1955, to address the annual convention of the Trust Division of the Florida Bankers Association on the subject of trust examinations.

Approved unanimously.

Mr. Shay withdrew from the meeting at this point and Messrs. Sloan, Director, and Nelson, Assistant Director, Division of Examinations,

and Hackley and Chase, Assistants General Counsel, entered the room.

Before this meeting there had been circulated a draft of letter to the Board of Directors of the American Trust Company, San Francisco, California, reading as follows, to which Governor Vardaman had attached a note stating that he did not agree with the proposed action:

> The Board of Governors of the Federal Reserve System has received your request, submitted through the Federal Reserve Bank of San Francisco, for permission to establish a branch in the Stanford Shopping Center, Palo Alto, California.
>
> After considering all of the information submitted, you are advised the Board of Governors has concluded the application should not be approved. This conclusion is based principally upon the following considerations:
>
> (a) The Comptroller of the Currency has approved the establishment of a branch in the immediate area by each of two national banks;
>
> (b) It does not appear sufficient business will be generated in the shopping center to permit three branch operations to attain an adequate volume of business to warrant their establishment; hence approval would not be in the public interest;
>
> (c) Lack of volume will probably preclude profitable operations and, therefore, establishment of the proposed branch would not serve the interests of stockholders of your bank or those of prospective competing institutions.

In response to a question by Governor Vardaman, Governor Robertson stated that at a recent meeting of the Interagency Committee of representatives of Federal and State bank supervisory agencies there was a preliminary agreement on a policy with respect to matters of this kind which would provide that if the application is for the establishment of an office in a one-bank territory, the first application filed should be

approved and the second denied except that (1) if any supervisory office followed a policy of permitting applications to be filed with the understanding that they would be held by the office as a means of preempting the area the priority rule would not be followed, and (2) if all of the factors involved in the competing applications are not substantially equal the application of the bank which is in the strongest position to serve the banking needs of the area would be approved. Governor Robertson also said that following the Interagency Committee meeting Mr. Sparling, Superintendent of Banks of California who attended the meeting as the representative of the State Bank Supervisors, discussed with him the application of the American Trust Company for permission to establish the branch above referred to and stated that in the light of the agreement of the Interagency Committee he would be under obligation not to approve the application if it were being submitted now for the first time and that if the applications for the establishment of branches had been approved for one national bank and one State bank in the same circumstances he would be obliged to object to the establishment of a branch by a second national bank. It was Governor Robertson's view that supervisory agencies should not permit the establishment of branches by large banking institutions even if they were in a position to carry the expense when the area already had adequate banking facilities and the establishment of an additional office would mean that all offices in the area would have to operate at a loss.

Governor Vardaman agreed that if it were a question of granting a charter to a new independent bank in such circumstances, the application should be denied because the bank could not stay in business. He felt, however, that large banks might well be permitted to establish branches even if they were operated at a loss but were effective in carrying banking facilities to the public. He added that if a bank had strong management, was in good condition, and was following sound policies, and if the directors of the bank in the exercise of their judgment decided that they should establish a branch in a location as a means of advertising the services of the bank or for any other legitimate purpose, he would approve the application.

In a discussion of the extent to which strong banks should be permitted to establish branches even if they were operated at a loss, Governor Robertson stated that in the case now before the Board if the territory proposed to be served grew large enough to support three branches, American Trust Company could then apply for authority to establish a branch which would be granted. Governor Vardaman felt that the State bank apparently wished to establish the branch now so that it could grow with the branches of the two national banks and thus obtain a share of the business in the area. He said he would go along with the proposed action on the application of the American Trust Company but felt that such a decision would be a mistake.

In a further discussion it was suggested by other members of the Board that the problem was a difficult one but they agreed that if strong

banks were permitted to preempt the favorable sites for branches, particularly in new or growing areas, because they could afford to operate them for a considerable time at a loss, it would be extremely difficult for independent banking units to get a start, and that in fact the problem was whether additional offices should be permitted in a community which already has adequate banking facilities since such action might influence the kind of credit and other services rendered to the public by the banking system.

It was agreed by all of the members of the Board that this matter should continue to be studied.

At the conclusion of the discussion, the letter to the American Trust Company referred to above was approved unanimously, for transmittal through the Federal Reserve Bank of San Francisco.

Messrs. Sloan and Nelson withdrew from the meeting at this point.

Before this meeting there had been circulated among the members of the Board at the request of Governor Robertson a memorandum dated January 14, 1955, relating to the existing problem resulting from the absorption of exchange charges by banks. After discussing the background of the problem, the existing situation, and suggestions for action, the memorandum concluded with the statement that in the circumstances it appeared that short of legislation on the subject the only fully effective and satisfactory solution of the problem would be the adoption of a uniform position by the Board and the Federal Deposit Insurance Corporation.

Governor Robertson stated that if agreeable to the other members of the Board he would like to give a copy of the memorandum to the Chairman of the Federal Deposit Insurance Corporation with a letter urging that the Corporation reconsider its position in an effort to reach a solution. If such a solution should turn out not to be possible, he said, he would recommend to the Board that the Federal Reserve Banks be asked to have representatives get in touch with the member banks which are collecting nonpar checks through arrangements with an insured nonmember bank under which the latter absorbs exchange charges, in the hope that the member banks can be persuaded voluntarily to discontinue the arrangements. While this would lessen the size of the problem, the only final solution would be a change in the present policy of the Federal Deposit Insurance Corporation, passage by Congress of corrective legislation, or diminution of the problem with time as the number of banks which charge exchange declines.

Following a comment by Governor Szymczak that if an adequate solution is not forthcoming during the coming year the matter might be discussed in the next Annual Report of the Board, the procedure outlined by Governor Robertson was approved.

Messrs. Hackley and Chase withdrew from the meeting at this point.

There was then presented a draft of letter for the signature of Chairman Martin to Mr. John B. Hollister, Executive Director of the Commission on Organization of the Executive Branch of the Government (the

Hoover Commission), prepared in response to his letter of February 1 asking for the Board's comments on an enclosed revision of the Administrative Procedure Act.

During a discussion, the draft of reply was revised to change the last sentence of the next-to-last paragraph to carry out a suggestion by Governor Balderston and was approved unanimously in the following form:

Receipt is acknowledged of your letter of February 1, 1955 enclosing a draft of a proposed revision of the Administrative Procedure Act and asking for the Board's comments. In the limited time available, in view of your request that the comments reach you by noon of February 8, it has not been possible to give the matter the full and careful consideration which it deserves. However, on the basis of a somewhat hurried examination of the proposal, the following comments are offered for your consideration.

Subsection 4(a) of the Administrative Procedure Act, 5 U.S.C. § 1003(a), provides that general notice of proposed rule making shall be published in the Federal Register including a statement of the time, place and nature of public rule making proceedings and the terms or substance of the proposed rule or a description of the subjects and issues involved. The subsection provides, further, that it shall not apply "in any situation in which the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The Board of Governors from time to time changes the margin requirements established in its Regulation T and Regulation U (12 C.F.R. §§ 220 and 221), but in most cases finds it imperative to avoid all advance notice of its action. The reasons, briefly, are that such notice (or public participation, or delay) would prevent the action from becoming effective as promptly as necessary, might permit speculators or others to reap unfair profits or possibly to interfere with the effectiveness of the Board's actions, and would provoke other consequences contrary to the public interest. (See 12 C.F.R. § 262.2(e)).

The provision permitting notice and public procedure to be dispensed with in certain circumstances is omitted from section 201(a) of the proposed revision enclosed with your letter. This omission would seriously interfere with the proper performance of the Board's functions. The proposed revision contains, in subsection 201(c), provisions corresponding to those contained in section 4(c) of the Administrative Procedure Act permitting the effective date to be less than thirty days after the required publication, upon a finding by the agency that this is required, but this provision apparently would not obviate the requirement for public rule making proceedings in all cases.

Section 204(c) of the revision deals with the separation of the functions of hearing and decision from the functions of investigation and prosecution. This very important feature of the Administrative Procedure Act is dealt with particularly in the third sentence of section 5(c) (5 U.S.C. § 1004). The corresponding provisions in section 204(c) of the proposed revision do not appear to state this requirement as specifically and unequivocally as does the Act, and it is felt that any lessening of the absoluteness of this requirement would be undesirable.

Section 201 of the proposal (which corresponds to section 4 of the Act) dealing with Rule Making, omits the provision in the opening sentence that the section shall not apply to matters relating to agency management and personnel. It would seem desirable to include such a provision, since public participation would not seem to be necessary or desirable in connection with those matters.

Section 203(b), which does not appear to have any exact counterpart in the existing statute, provides:

> "(b) TERMS AND CONDITIONS. - Terms, conditions, or requirements limiting any license shall be invalid to the extent that they are found by a court of competent jurisdiction not to be plainly and reasonably in the public interest or not within the purposes, scope, or stated terms of the statute pursuant to which the license is issued or required."

The purpose of this provision is not clear. If it is intended to place the burden of proof upon the agency

to convince the court that its action is "plainly and reasonably" in the public interest, it would appear to be an attempt to modify the general rule that presumptively the agency's order is correct and that unless there has been prejudicial departure from requirements of the law or abuse of the agency's discretion, the reviewing court will not intervene. It would also seem to run counter to the doctrine of National Broadcasting Company v. United States, 319 U.S. 190, 223, that the agency, in administering its regulatory powers, may take into account factors not specifically enumerated as being within the terms or purposes of the statute which it is administering.

The Board feels that it should be remembered that the existing Administrative Procedure Act was the result of long and careful study and consideration. It was not enacted until eight years after the Attorney General's Committee on Administrative Procedure began its labors. That Committee wrote a number of monographs and submitted a report to the President and Congress. Thereafter extensive hearings were held before the Congressional committees. While the Board's experience with the Act has not been such as to suggest a complete rewriting at this time, we recognize that the experience of others might well have been such as to make it clear that some changes are desirable.

The Board appreciates the opportunity to comment on this important matter.

Chairman Martin stated that Mr. Evans, a former member of the Board, would be in Washington on March 11 and that inasmuch as this would be the first time he has been in Washington since the termination of his membership on the Board, it had been suggested that the Board arrange a luncheon for him to be attended by members of the Board and the members of the official staff.

This suggestion was approved unanimously.

Governor Robertson stated that he had planned to attend the Midwinter Trust Conference of the American Bankers Association in New York but that it had developed that it would be very inconvenient for him to go and that he understood that there would be no member of the Board at the meeting. In these circumstances, he raised the question whether the Board should be represented at the luncheon being given tomorrow in connection with the conference.

It was agreed unanimously
that representation of the Board
would not be necessary.

Governor Vardaman suggested that the Board give further consideration to arrangements under which insurance companies have been selling real estate mortgages to banks, and it was agreed that at the appropriate time this matter would be taken up.

Minutes of actions taken by the Board of Governors of the Federal Reserve System on February 4, 1955, were approved unanimously.

The meeting then adjourned.

Secretary