Minutes for February 4, 1957

To: Members of the Board

From: Office of the Secretary

Attached is a copy of the minutes of the Board of Governors of the Federal Reserve System on the above date.

It is not proposed to include a statement with respect to any of the entries in this set of minutes in the record of policy actions required to be maintained pursuant to section 10 of the Federal Reserve Act.

Should you have any question with regard to the minutes, it will be appreciated if you will advise the Secretary's Office. Otherwise, if you were present at the meeting, please initial in column A below to indicate that you approve the minutes. If you were not present, please initial in column B below to indicate that you have seen the minutes.

	A	B
Chm. Martin	x WM	
Gov. Szymczak	x MSS	
Gov. Vardaman	x	
Gov. Mills	x	
Gov. Robertson	x R	
Gov. Balderston		x CCB
Gov. Shepardson		x [illegible]

Minutes of actions taken by the Board of Governors of the Federal Reserve System on Monday, February 4, 1957. The Board met in the Board Room at 10:00 a.m.

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

Mr. Sherman, Assistant Secretary
Mr. Kenyon, Assistant Secretary
Mr. Fauver, Assistant Secretary
Mr. Thurston, Assistant to the Board
Mr. Riefler, Assistant to the Chairman
Mr. Thomas, Economic Adviser to the Board
Mr. Vest, General Counsel
Mr. Young, Director, Division of Research and Statistics
Mr. Sloan, Director, Division of Examinations
Mr. Hexter, Assistant General Counsel
Mr. Shay, Assistant General Counsel
Mr. Goodman, Assistant Director, Division of Examinations
Mr. Molony, Special Assistant to the Board
Mr. Brill, Chief, Business Finance and Capital Markets Section, Division of Research and Statistics

There had been circulated to the members of the Board a draft of letter to Mr. Kroner, Vice President of the Federal Reserve Bank of St. Louis, reading as follows:

> Your letter of December 19, 1956, and the various attachments that accompanied it related to the question of the applicability of section 32 of the Banking Act of 1933 to Mr. Dabbs Sullivan, Chairman of the Board of the Bank of Arkansas, Little Rock, Arkansas, and Dabbs Sullivan Company, securities dealers. It is understood that Mr. Sullivan was formerly a partner of the securities company that bears his name but that proprietary and

managerial control of the firm was assumed by Mr. Sullivan's son and a college acquaintance of the son at or about the time the Bank of Arkansas was admitted to membership in January 1956.

The Board has reviewed the information you have presented and concurs in your view that, on the basis of this information, section 32 is not applicable. It is assumed, of course, that the matter will be carefully watched in future examinations of the bank.

Approved unanimously.

Mr. Shay then withdrew from the meeting.

Reference was made to a draft of proposed letter to Bank of America, New York, New York, which would constitute a response to the Bank's letter of August 22, 1956, regarding the report of examination made as of December 30, 1955, by examiners for the Board of Governors. The drafting of the reply had been delayed because of the consideration being given by the Board to the revision of Regulation K, Corporations Doing Foreign Banking or Other Foreign Financing Under the Federal Reserve Act.

When the file was in circulation to the members of the Board, Governor Balderston raised a question whether any letter was necessary. Pointing out that the comments in the proposed letter were based on an examination made over a year ago and that another examination had been commenced as of December 11, 1956, he asked whether it would not be better to discontinue discussion of the situation on the basis of the old examination and take up with Bank of America any matters disclosed by the new examination which required consideration. He indicated that he would not object, however, if it was considered necessary to write the letter to complete the record.

At the request of the Board, Mr. Goodman reviewed the matters which would be covered in the proposed letter and stated reasons for deleting one paragraph from the draft if the Board decided to send a letter. He pointed out that the current examination had not yet been completed and that some time might elapse before the report of examination could be prepared and analyzed. In response to a question, however, Mr. Goodman said he did not consider it essential that the letter be transmitted and that the principal purpose would be to complete the record.

Following a discussion, during which concurrence was expressed with the point of view taken by Governor Balderston, it was agreed unanimously not to send the proposed letter to Bank of America, with the understanding that every effort would be made to expedite the preparation and analysis of the report covering the current examination of the Bank.

With a memorandum from Mr. Hexter dated January 31, 1957, there had been sent to the members of the Board copies of a draft of letter to the House Committee on the Judiciary, prepared in response to the Committee's request for the Board's views on H.R. 264 and H.R. 2143. Both of these bills would extend section 7 of the Clayton Act to cover acquisitions of bank assets as well as bank stock and would require, with certain exceptions, that proposed acquisitions of such stock or assets be the subject of prior notification to the Attorney General and the

Board of Governors. The proposed reply would maintain the position of recent statements by the Board on the subject, including the position taken by Chairman Martin in testimony before the House Judiciary Committee in May 1956 and by Governor Balderston in testimony before the Senate Banking and Currency Committee in June 1956.

Following a discussion of the draft of letter, during which certain changes were suggested by Governors Mills and Robertson in the interest of clarification of the Board's position, unanimous approval was given to a letter for the signature of Chairman Martin to The Honorable Emanuel Celler, Chairman, House Committee on the Judiciary, in the following form, with the understanding that a copy would be sent to the Bureau of the Budget:

This is in response to your letters of January 22, 1957, requesting the views of the Board of Governors on two bills (H.R. 264 and H.R. 2143) to amend sections 7 and 15 of the Clayton Act. The Federal Reserve is directly concerned with these bills only to the extent that they apply to banks.

Under the present provisions of section 7, a corporation is prohibited from acquiring the stock of one or more corporations engaged in commerce where the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly. As amended by the Celler-Kefauver Act of 1950, section 7 contains a similar prohibition with respect to the acquisition of assets, but that provision is not applicable to banks. One purpose of H.R. 264 and H.R. 2143 is to make section 7 applicable to acquisitions of bank assets (whether through merger, consolidation, or purchase) as well as to acquisitions of bank stock. In addition, these bills would require that where the combined capital accounts of "the acquiring and the acquired corporations" exceed $10 million, notice of a proposed acquisition of bank stock or assets would

have to be given to the Attorney General and to the Board of Governors, either 60 days (H.R. 2143) or 90 days (H.R. 264) before acquisition is to take effect.

The Board of Governors is in favor of the basic objective of these bills, which is to achieve more effective prevention of acquisitions of bank stock and bank assets that would result in undesirable lessening of competition. However, the Board questions whether the approach embodied in these bills constitutes the most desirable method of achieving that objective.

Apart from the Clayton Act, the Board has other functions under present law that involve consideration of the competitive aspects of banking and possible tendencies toward monopoly in the banking field. Under the Bank Holding Company Act of 1956, every bank holding company that proposes to acquire additional banks must first obtain the Board's consent, and in determining whether to give its consent the Board is required to consider certain factors, including the effect of the proposed acquisition upon the preservation of competition in the field of banking. In many cases involving bank stock acquisitions, enactment of the notification provisions of H.R. 264 or H.R. 2143 would cause a single proposed acquisition to be submitted to the Board of Governors under both section 7 of the Clayton Act and section 3 of the Bank Holding Company Act, which would seem to involve unnecessary and burdensome duplication.

Other provisions of existing law that vest limited authority in this general field in the Federal bank supervisory agencies are those of section 18(c) of the Federal Deposit Insurance Act and sections 33, 34a and 34b of Title 12 of the United States Code. Under section 18(c) the Comptroller of the Currency, the Board of Governors, and the Federal Deposit Insurance Corporation, in their respective areas of authority, are required to pass in advance upon some bank absorptions, but only in cases in which the capital stock or surplus of the resulting bank will be less than the aggregate capital stock or aggregate surplus, respectively, of the banks involved. Section 18(c) also vests in the Federal Deposit Insurance Corporation authority over mergers, consolidations, or assumptions of liabilities involving an insured bank and a noninsured bank. Under sections 33, 34a, and 34b of Title 12 of the United States

Code, the approval of the Comptroller of the Currency is required with respect to all mergers and consolidations of national banks or of a State bank and a national bank under a national bank charter. However, a relatively large proportion of bank absorptions are not covered by these statutes, and consequently the Federal supervisory agencies have no direct authority in those cases.

As mentioned above, H.R. 264 and H.R. 2143, in addition to bringing bank mergers and other asset acquisitions within the purview of section 7 of the Clayton Act, would require the giving of advance notice (as distinguished from approval) to the Board of Governors and the Attorney General either 60 or 90 days prior to consummation of a corporation's acquisition of bank stock or bank assets, with specified exceptions. Without expressing any view on the advisability of such notification procedure in the case of other corporations, it is the opinion of the Board that, in the case of banks, advance notice would not be as desirable or as effective as a requirement of advance approval in all cases where a national bank, member State bank, or nonmember insured bank absorbs another bank, whether by merger, consolidation, or purchase. As indicated in the preceding paragraph, important categories of bank amalgamations are already subject to a requirement of Federal supervisory approval, and the pending legislative proposal that the Board favors, as brought out hereinafter, extends the approval requirement to bank amalgamations generally.

Advance approval would not only provide the requisite protection of the public interest but would give banks contemplating a merger greater assurance that it would not be inconsistent with the law. There are obvious difficulties in attempting to unscramble the assets and liabilities of constituent banks after a merger has occurred, and this is particularly true after considerable time has elapsed. Such difficulties might develop under the advance-notice provisions of H.R. 264 and H.R. 2143; they would not exist under an arrangement that required all proposed bank absorptions to be passed upon in advance.

As previously noted, under the present provisions of the Clayton Act the Board has authority to enforce that statute where applicable to banks. That authority, however, is limited by reason of the statute's present applicability only to

acquisitions of bank stocks. Under the pending bills the Board's responsibilities would be extended to all types of bank mergers, whether carried out under Federal or State statutes. This would mean that, if either bill was enacted, the Board would be called upon to consider the competitive or monopolistic aspects of every bank merger, even though it had previously been approved by one of the other Federal bank supervisory agencies or by the appropriate State authority.

As you are aware, the Senate Committee on Banking and Currency has under consideration a Committee Print (dated January 7, 1957) of a bill (the proposed "Financial Institutions Act of 1957") to amend and revise the statutes governing financial institutions and credit. Section 23 of Title III of that bill, which would supersede section 18(c) of the present Federal Deposit Insurance Act, would require the prior consent of the appropriate Federal supervisory authority in the case of every bank merger, consolidation, or acquisition of assets in which the resulting or continuing bank would be a national bank, a State member bank, or a nonmember insured bank. Consequently, the only banks not included would be those that are neither Federal Reserve members nor covered by Federal deposit insurance, and such banks presently hold only one per cent of the commercial bank deposits of the country.

In each case section 23 would require the appropriate supervisory agency to consider not only the financial condition of the bank, the adequacy of its capital, the character of its management, and the needs of the community, but also specifically whether the proposed merger might tend unduly to lessen competition or create a monopoly. The appropriate agency would be required to seek the views of the other two Federal banking agencies as to the impact of the merger upon competition or monopoly. Moreover, in each case the appropriate agency would be authorized to request, on this point, the opinion of the Attorney General.

Section 23 of Title III of the proposed Financial Institutions Act of 1957 would be identical, in this respect, with a bill (S. 3911) that passed the Senate during the Second Session of the 84th Congress.

Section 7 of the Clayton Act, both in its present form and as it would be amended under the pending bills, prescribes as its test whether the effect of an acquisition "may be substantially to lessen competition, or to tend to create a monopoly." In contrast, the proposed new section 23 of the Federal Deposit Insurance Act would require and enable the Federal supervisory agencies, in passing upon bank mergers, to base their decisions upon all aspects of the public interest, including not only the usual banking considerations but the effect of the merger upon competition.

Banking, more than any other type of business, directly affects credit conditions and the basic economy of the country. If a nonbanking business becomes insolvent, its stockholders and creditors suffer. If a bank fails, however, the effect is felt not only by its stockholders and creditors but also by its depositors, and by businesses and individuals in the community that must have banking facilities in order to carry on their activities. For these reasons, banks are governed by special statutes and are carefully regulated, examined, and supervised by governmental authorities.

While the effect of any significant lessening of competition in the banking field must, of course, be considered, it is also essential in the public interest, in the case of bank mergers, to look to the soundness of the particular banks involved and the adequacy of banking facilities in the community and area. In cases where lessening of competition is not outweighed by other factors, the public interest requires that the transaction not be approved or carried out. Each case, of course, must be considered in the light of its own particular facts, with public interest the basic criterion.

The Board believes, therefore, that in the field of banking the test should be whether a merger would result in undue lessening of competition, taking into consideration the above-mentioned "banking factors."

For the reasons enumerated, it is believed that general Federal control of bank mergers would be more beneficially achieved by a requirement of advance approval than by expansion of the scope of section 7 of the Clayton Act, and accordingly the Board recommends enactment of legislation along the lines of section 23 of Title III of the proposed Financial Institutions Act of 1957. However, if your Committee and the Congress conclude adversely to this recommendation and decide instead that

section 7 of the Clayton Act should be amended as contemplated by H.R. 264 or H.R. 2143, the Board of Governors recommends consideration of the advisability of a transfer of enforcement responsibility thereunder with respect to banks. The principal functions of the Federal Reserve System lie in the field of monetary and credit policy and bank supervision. The prosecuting and adjudicatory functions involved in the enforcement of the antitrust laws are only indirectly related to the Board's major responsibilities. They are of a character quite different from the functions normally exercised by the Board in passing upon particular transactions in the bank supervisory field. In short, enforcement of the antitrust laws and the function of bank supervision represent different spheres of governmental operation. For these reasons, the Board believes that enforcement of the Clayton Act with respect to acquisitions of bank stock and bank assets is a responsibility that should not be vested in the Board.

With reference to the current proceeding in the matter of The Continental Bank and Trust Company, Salt Lake City, Utah, Mr. Hexter presented for the Board's consideration a joint motion for continuance filed by Special Counsel to the Board and Counsel for the member bank asking that the hearing in the proceeding be continued from the time and date to which now recessed (10:00 a.m., February 4, 1957) to 10:00 a.m., March 4, 1957, in Room 2019 of the Federal Reserve Building, or as soon thereafter as might suit the convenience of the hearing examiner and the parties, on the following grounds:

1. Counsel for the Continental Bank and Trust Company has filed with the Supreme Court of the United States a Petition for Writ of Certiorari to the United Stated Court of Appeals for the Tenth Circuit in the case of The Continental Bank and Trust Company of Salt Lake City, Utah, v. Emery J. Woodall. Special counsel to the Board of Governors, in collaboration with the Solicitor General of the United

States, are in process of preparing a brief in opposition to this Petition for Certiorari, and it is not expected that the Supreme Court of the United States will enter its order with respect to this Petition for Certiorari before February 25, 1957, at the earliest.

2. Emery J. Woodall, the Examiner appointed by the United States Civil Service Commission, with the approval of the Board of Governors, to preside at the taking of the evidence in this Membership Proceeding, entered Doctors Hospital in Washington, D. C., on January 30, 1957, for major surgery, and his physicians advise that it will be March 1st at the earliest before Mr. Woodall will be able to resume his full duties.

Following comments by Mr. Hexter and a brief discussion of the situation, unanimous approval was given to an Order as follows, with the understanding that copies would be sent to Special Counsel for the Board and Counsel for The Continental Bank and Trust Company:

UNITED STATES OF AMERICA
BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

In the Matter of	)	
	)	
THE CONTINENTAL BANK AND TRUST COMPANY	)	MEMBERSHIP PROCEEDING
Salt Lake City, Utah	)	

ORDER GRANTING JOINT MOTION FOR CONTINUANCE

Upon consideration of the Joint Motion for Continuance filed herein by Special Counsel to the Board of Governors and counsel for The Continental Bank and Trust Company, Salt Lake

City, Utah, it is, by the Board of Governors this 4th day of February, 1957,

ORDERED, That the hearing of this proceeding be, and the same hereby is, continued until the 4th day of March, 1957, at 10:00 A.M., in Room 2019 of the Federal Reserve Building, Washington, D. C.

By Order of the Board of Governors

(Seal)

(Signed) Merritt Sherman
Merritt Sherman, Assistant Secretary

Washington, D. C.
February 4, 1957

With regard to the foregoing matter, Governor Vardaman suggested that it might be advisable for the Legal Division to get in touch with the Civil Service Commission with a view to determining the availability of another hearing examiner in the event Mr. Woodall's health did not permit him to continue with the case.

Mr. Vest indicated that appropriate steps would be taken in line with Governor Vardaman's suggestion.

Messrs. Hexter and Goodman then withdrew from the meeting and Mr. Eckert, Chief, Banking Section, Division of Research and Statistics, entered the room.

At the meeting on February 1, 1957, consideration was given to the service of Mr. Leonard K. Firestone as a member of the City Council of Beverly Hills, California, while serving as a director of the Los Angeles Branch of the Federal Reserve Bank of San Francisco. Pursuant to the decision reached at that time, the San Francisco Reserve Bank was

advised informally that if Mr. Firestone desired to accept appointment as a Los Angeles Branch director, the Board would consider it preferable for him to resign as Councilman as soon as a successor on the Council had been appointed.

Later in the day Mr. Y. Frank Freeman, Deputy Chairman of the Federal Reserve Bank of San Francisco, called the Secretary of the Board on the telephone and suggested that the matter be presented to the Board again on the basis that Mr. Firestone be permitted to serve out his present term on the City Council, expiring April 1, 1958. Mr. Freeman stated that it was the practice to pick the top business and professional men of the municipality to serve on the Council, that these men serve without remuneration as a civic duty, that there are no politics involved, and that the election is a matter of form, there seldom being any opposition. Subsequently, President Mangels and First Vice President Swan of the San Francisco Bank verified these facts to the Secretary of the Board by telephone, and Mr. Mangels expressed hope that the Board might see fit to follow Mr. Freeman's suggestion.

The matter was discussed and, on the basis of the representations made by Mr. Freeman, agreement was expressed with his recommendation.

Accordingly, it was agreed unanimously to advise the Federal Reserve Bank of San Francisco informally that in view of the circumstances outlined by Mr. Freeman, the Board would have no objection to Mr. Firestone's serving until

the expiration of his present term (April 1, 1958) as a member of the City Council of Beverly Hills, California, while serving at the same time as a director of the Los Angeles Branch.

Mr. Fauver referred to a letter received by Chairman Martin from the President of the New York Stock Exchange requesting a meeting of the Board with Stock Exchange officials for a discussion similar to those that had taken place on the occasion of periodic visits of Stock Exchange representatives in the past. He said it appeared that a meeting on March 15, 1957, at 11:00 a.m. would be agreeable to the members of the Board, although Governor Vardaman might be out of the city on that date.

It was agreed unanimously to advise the New York Stock Exchange that the Board would be glad to meet with representatives of the Exchange at 11:00 a.m. on March 15.

Mr. Fauver then withdrew from the meeting.

At the meeting on February 1, 1957, consideration was given to drafts of (1) a statement and (2) answers to five specific questions for use by Chairman Martin in testifying tomorrow before the Congressional Joint Economic Committee in connection with hearings by that Committee on the President's Economic Report.

Pursuant to the understanding at that meeting, revised drafts of the statement and answers, reflecting comments by the members of the Board, were distributed before this meeting.

The revised drafts were discussed at some length and a number of suggestions were agreed upon in the interest of clarifying the Board's position.

At the conclusion of the discussion, during which Mr. Thurston reported that he had received comments from Governors Balderston and Shepardson, the statement and answers to questions, in a form which would take into account the changes agreed upon at this meeting, were approved unanimously, subject to final approval by Chairman Martin.

The meeting then adjourned.

Secretary's Note: On February 1, 1957, Governor Shepardson approved on behalf of the Board the following letter to Mr. Stetzelberger, Vice President, Federal Reserve Bank of Cleveland:

In accordance with the requests contained in your letters of January 28, 1957, the Board approves the appointments of John M. Connare and Charles D. Hostetler as assistant examiners for the Federal Reserve Bank of Cleveland. Please advise as to the dates upon which the appointments are made effective.

It is noted that Mr. Hostetler is indebted to The National City Bank of Cleveland, Cleveland, Ohio, a member bank, in the amount of $760, secured by chattel mortgage on an automobile, and that the loan will be paid in ten monthly installments. Accordingly, the Board's approval is given with the understanding that Mr. Hostetler will not participate in any examinations

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of The National City Bank of Cleveland, Cleveland, Ohio, until his indebtedness has been liquidated or otherwise eliminated.

Assistant Secretary