

Minutes for October 24, 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 | <u> </u> | x <u> </u> |
| Gov. Szymczak | x <u> </u> | <u> </u> |
| Gov. Vardaman <u>1/</u> | <u> </u> | x <u> </u> |
| Gov. Mills | x <u> </u> | <u> </u> |
| Gov. Robertson | x <u> </u> | <u> </u> |
| Gov. Balderston | x <u> </u> | <u> </u> |
| Gov. Shepardson | x <u> </u> | <u> </u> |

1/ In accordance with Governor Shepardson's memorandum of March 8, 1957, these minutes are not being sent to Governor Vardaman for initial.

Minutes of actions taken by the Board of Governors of the Federal Reserve System on Thursday, October 24, 1957. The Board met in the Board Room at 10:00 a.m.

PRESENT: Mr. Balderston, Vice Chairman
Mr. Szymczak
Mr. Mills
Mr. Robertson
Mr. Shepardson

Mr. Carpenter, Secretary
Mr. Sherman, Assistant Secretary
Mr. Kenyon, Assistant Secretary
Mr. Solomon, Assistant General Counsel
Mr. O'Connell, Assistant General Counsel
Mr. Benner, Assistant Director, Division of Examinations

Certification to the Board in the matter of The Continental Bank and Trust Company. Under date of October 22, 1957, the Hearing Examiner in the matter of The Continental Bank and Trust Company, Salt Lake City, Utah, filed with the Board pursuant to Rule III(f) of the Board's Rules of Practice for Formal Hearings a certification of the question of holding conferences, with the consent of the parties, for settlement or simplification of the issues. The Hearing Examiner recommended that the Board consent to the holding of such conferences, which would be called and presided over by him, and that it designate one or more persons to participate on its behalf. In the certification, the Examiner also referred to motions made by the Respondent on October 9, 1957, to dismiss the proceeding, upon which motions he had reserved ruling. Copies of the certification had been distributed to the members of the Board prior to this meeting.

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Before discussing the certification, Mr. Solomon stated that the Board's Special Counsel, Mr. Bolling R. Powell, Jr., had indicated to members of the staff informally his intention to file with the Board, probably sometime today, a request that the Board in effect reconsider its ruling of September 19, 1957, and permit inspection by Counsel for Respondent on a confidential basis of edited copies of certain unpublished reports of condition and earnings and dividend reports for 19 far-western banks comparable in deposit size to The Continental Bank and Trust Company in order that Respondent might use this material for the preparation of cross examination and rebuttal. Following the Board's adverse ruling, the Hearing Examiner on September 30, 1957, had sustained a motion by Counsel for Respondent to strike from the record the 19-bank comparative studies and all testimony based thereon, and it was understood that Special Counsel to the Board considered it advisable to make the unpublished information available on the basis indicated so that the pertinent exhibits of the Board's witnesses and their testimony with relation thereto might be restored to the record.

There followed a series of questions by members of the Board and replies by Messrs. Solomon and O'Connell concerning the effect of taking action such as it was understood Mr. Powell would recommend. In addition, there was a discussion at the instance of Governor Mills for the purpose of clarifying the role of the Hearing Examiner in a hearing ordered by the Board, particularly with respect to making proposed determinations of law as contrasted with findings of fact.

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As to the certification filed by the Hearing Examiner in the Continental matter, Mr. Solomon brought out the fact that the Board's Rules of Practice for Formal Hearings, which follow the Administrative Procedure Act, place in the Hearing Examiner authority to hold conferences for the settlement or simplification of issues. It would seem, therefore, that the Hearing Examiner needed no further authority in this regard and that he would not have had to certify this question to the Board. In this connection, the impression had been obtained by the Board's staff from telephone conversations with Special Counsel that the latter felt no lack of authority to enter into any such conferences which might be called by the Examiner, it being understood, of course, that Special Counsel could make no binding settlement on behalf of the Board. One possibility, therefore, would be to turn the matter back to the Hearing Examiner with a statement to the effect that the authority to hold conferences for the settlement or simplification of issues had existed with him since the start of the proceeding and that Special Counsel to the Board had always had the authority to enter into such conferences and even to conduct negotiations with a view to settlement, having in mind that any tentative agreement would have to come to the Board for approval.

In this connection, the Secretary recalled that when, at an earlier stage of the proceeding, Counsel for Respondent mentioned to the President of the Federal Reserve Bank of San Francisco the

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possibility of some settlement of the case, the Board in its letter dated December 20, 1956, advised President Mangels to inform Counsel for Respondent that any such matter should be taken up with the Board's Special Counsel. Also, at the Board's request the substance of this reply was transmitted by the staff to Mr. Powell.

In further discussion, Governor Balderston referred to the broad principle involved in the Continental case, namely, the right of the Board to require a member bank to correct an undercapitalized condition on penalty of forfeiture of membership. He asked whether that principle could conceivably be damaged through the holding of conferences relating to settlement or simplification of the issues.

Mr. Solomon replied that this would not be true in the case of conferences for the clarification and simplification of issues. As to settlement, he did not think that the legal principle would be damaged, although resort to the conference procedure might mean that a final judicial determination would not be obtained. He went on to refer to the welfare of the Respondent in a case of this kind and to the possibility of a charge that it would be unfair to insist on carrying such a matter through to judicial determination if it were possible to obtain a settlement that would be acceptable to the Board.

Governor Mills commented that in a matter of interest to the whole Federal Reserve System, a settlement could possibly create the impression within the financial community that the Board had enough doubt about its position as to make it necessary to reach a settlement.

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In response, Mr. Solomon expressed the view that this might depend largely on the nature of the settlement.

It was then agreed unanimously to defer further consideration of the certification of the Hearing Examiner until after the Board had had an opportunity to meet with its Special Counsel regarding the recommendation which it was understood he intended to submit on making available certain unpublished information to Counsel for Respondent. The staff was requested to arrange such a meeting on Monday, October 28.

The meeting then adjourned.

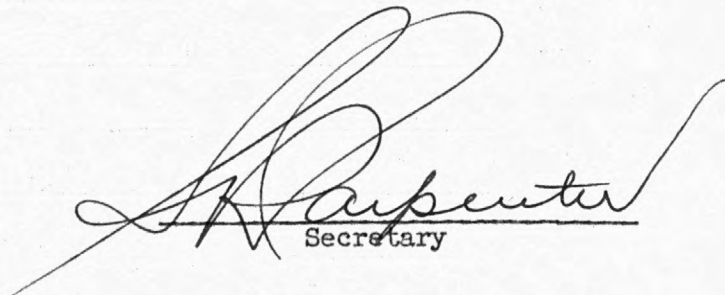
Secretary's Note: Pursuant to recommendations contained in memoranda from appropriate individuals concerned, Governor Shepardson today approved on behalf of the Board the following items affecting the Board's staff:

Appointment

Dorothy S. Projector as Economist in the Division of Research and Statistics, with basic annual salary at the rate of \$7,570, effective the date she assumes her duties.

Salary increase

Robert F. Emery, Economist, Division of International Finance, from \$5,575 to \$6,390 per annum, effective November 3, 1957.


Secretary