Minutes for April 24, 1959

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.

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Minutes of the Board of Governors of the Federal Reserve System

on Friday, April 24, 1959. The Board met in the Board Room at 10:00 a.m.

PRESENT: Mr. Martin, Chairman
Mr. Balderston, Vice Chairman
Mr. Szymczak
Mr. Mills
Mr. Robertson 1/
Mr. Shepardson
Mr. King

Mr. Sherman, Secretary
Mr. Kenyon, Assistant Secretary
Mr. Hackley, General Counsel
Mr. Molony, Special Assistant to the Board
Mr. Solomon, Assistant General Counsel
Mr. Hexter, Assistant General Counsel
Mr. Nelson, Assistant Director, Division of Examinations
Mr. Goodman, Assistant Director, Division of Examinations
Mr. Benner, Assistant Director, Division of Examinations
Mr. Hill, Assistant to the Secretary
Mr. Leavitt, Supervisory Review Examiner, Division of Examinations

Discount rates. The establishment without change by the Federal Reserve Banks of New York, Philadelphia, Cleveland, Richmond, St. Louis, Minneapolis, Kansas City, and Dallas on April 23, 1959, of the rates on discounts and advances in their existing schedules was approved unanimously, with the understanding that appropriate advice would be sent to those Banks.

Morgan-Guaranty branch application (Items 1 and 2). Under date of April 2, 1959, the Federal Reserve Bank of New York submitted a favorable recommendation on the application of the Guaranty Trust

1/ Withdrew from meeting at point indicated in minutes.
Company of New York to establish a branch at 23 Wall Street, New York, incident to the proposed merger of J. P. Morgan & Co. into Guaranty to form the Morgan Guaranty Trust Company of New York.

There had now been distributed to the Board memoranda from the Division of Examinations and the Legal Division dated April 17 and April 20, 1959, respectively. The Division of Examinations, in recommending approval of the application, stated that the general condition of Guaranty Trust and Morgan was satisfactory and the continuing bank would be a sound institution, with capable management. The memorandum from the Legal Division emphasized that the only question before the Board was whether to approve the application for establishment of a branch at 23 Wall Street. While the application admittedly was incidental to the merger of Morgan and Guaranty, in such cases the Board had taken the position that the sole question was whether the establishment of the proposed branch would be justified and had not used its authority with respect to the branch as a means of preventing consummation of a merger not directly subject to its jurisdiction. Consequently, it was suggested that the Board, in considering this application, proceed as though the merger had been accomplished. Since the information before the Board indicated that the situation was satisfactory from the standpoint of competence of management, condition and prospects of the merged bank, and convenience
to the public of a Morgan Guaranty branch at 23 Wall Street, the problem narrowed down to the effect on competition of the establishment of the subject branch. From the data available, it was questionable, in the opinion of the Legal Division, whether there would be a substantial basis for disapproval of the application on the ground that the establishment of the proposed branch would have such an adverse effect on banking competition as to outweigh the favorable factors. The memorandum noted that the pending merger was not subject to section 7 of the Clayton Act because that section, in its application to banking, applies only to a stock acquisition.

In commenting on the application, Mr. Nelson noted that after the merger the resulting bank would have about 11 per cent of the deposits of New York City's 17 central reserve city banks and 5 of the city's 592 commercial bank offices. In the opinion of the Division of Examinations, he said, the establishment of the subject branch, insofar as New York City was concerned, would not result in giving Morgan Guaranty any material competitive advantage. He also noted that the State banking authorities had approved the merger as well as the branch application, adding that the Superintendent of Banks was understood to be ready to issue final papers with respect to the merger upon being advised of Board action on the branch matter.
In response to the Chairman's question as to the position of the Justice Department, Mr. Hackley remarked that when he advised the Department that the branch application had been received, no request was made to see it. However, a representative of the Department called this morning and asked to be advised when the Board had made a decision.

Discussion then turned to the situation with respect to Morgan & Cie. Incorporated, a wholly-owned subsidiary of J. P. Morgan & Co. operating under an agreement with the Board pursuant to section 25 of the Federal Reserve Act and conducting business with the public through a Paris branch. In that city, a branch also was operated by Guaranty Trust Company, and it was understood that the management of the banks involved in the proposed merger had in mind combining the two operations. However, a final decision had not yet been made because the New York State Banking Department took the position that Morgan & Cie., which was organized as an investment company, could not be merged into a commercial bank and because liquidation of Morgan & Cie. reportedly would involve a heavy tax liability in France. In 1952, after considering a somewhat similar situation, the Board advised the New York City bank concerned that ordinarily the maintenance of branches in the same foreign city by a member bank and its foreign banking subsidiary was not considered
desirable. Accordingly, the Division of Examinations recommended including advice to such effect in the letter sent to Guaranty Trust Company, with the added statement that the Board assumed that steps necessary to place the operation of both Paris offices under either Morgan & Cie. Incorporated or Morgan Guaranty Trust Company would be taken within a reasonable period of time.

Governor Robertson said he found himself in the position of questioning the statement that it "would not be desirable" for a member bank and a foreign banking subsidiary to maintain offices in the same foreign city. Such subsidiaries, he pointed out, are set up under the statutes to permit engaging in certain functions not permissible for a member bank branch, and he did not see why a member bank should be precluded from having a branch in a foreign city merely because its subsidiary had an office in the same city. He therefore suggested deleting all reference to the Paris situation from the letter to Guaranty Trust Company.

In response to a question by Chairman Martin as to the Board's reasoning in taking the position that it did in 1952, Mr. Goodman said the thought was to prevent pyramiding of companies, to keep the organizational structure as simple as possible in order to facilitate supervision, and to avoid confusion on the part of the public as to the firm with which it was dealing.
Governor Szymczak observed that Morgan Guaranty evidently would need time to make a final decision and work out arrangements with respect to the Paris operations. This was something that he felt should be explored further with the bank at an appropriate time. Therefore, it might be advisable to include some reference to the matter in the Board's letter. In response to a question from Governor Balderston, Governor Szymczak indicated that it would be satisfactory to him if the letter were modified so as to delete the reference to general Board policy.

Governor Mills expressed agreement with the reasoning of Governor Szymczak and with a change in the language of the letter along the lines suggested by Governor Balderston. It was his thought that the Board need be in no hurry to dispose of the general principle involved, which could be given further consideration at a later date.

Governor Robertson suggested that any reference in the letter such as had been proposed would intimate that the Board had a policy against operation of offices in a foreign city by both a member bank and its foreign banking subsidiary. Since he did not see that such a policy served any useful purpose or was desirable, he would prefer that the letter to Guaranty contain no reference to the Paris situation. However, when it was suggested that the draft letter be changed to state merely that the Board "understood" steps were contemplated within
a reasonable time to place the operation of both Paris offices under either Morgan Guaranty Trust Company or Morgan & Cie. Incorporated, Governor Robertson indicated that he would withdraw his objection.

Chairman Martin indicated that he also would be satisfied with such a disposition of the matter. Like Governor Robertson, he questioned the desirability of maintaining a policy restricting the operation of foreign offices because he wished to encourage participation by American banks in the financing of foreign commerce and to place as few handicaps as possible in the way of the banks.

Governor Robertson then stated that he favored approval of the application for establishment by Morgan Guaranty of a branch at 23 Wall Street. However, if the Board had had before it the question of the merger of Morgan and Guaranty, he felt that he would have been inclined toward disapproval.

Governor Mills stated that, while he would vote to approve the branch application, his approach to the matter was along somewhat different lines than those set forth in the staff presentation. Accordingly, he read the memorandum of which a copy is attached as Item No. 1.

After further discussion of the form of the letter to Guaranty Trust Company, it was decided to eliminate, as unnecessary, statements indicating that approval of the 23 Wall Street branch was contingent
Upon (1) the merger of Morgan and Guaranty being effected substantially in accordance with the terms of the Agreement of Merger dated February 5, 1959, (2) any dissenting stockholders' shares being disposed of within six months after date of acquisition, and (3) formal approval of the State authorities being effective at the time the branch was established.

Accordingly, unanimous approval was given to a letter to Guaranty Trust Company, for transmittal through the New York Reserve Bank, in the form attached as Item No. 2.

As to the procedure to be followed in advising of the Board's decision, it was agreed that (1) the Secretary would advise Vice President Wiltse of the New York Bank by telephone and request him to communicate the Board's decision to the New York State Superintendent of Banks, (2) Mr. Hackley would advise the Justice Department by telephone, and (3) a notice of approval of the branch application would be put on the ticker by Mr. Molony.

Secretary's Note: These steps were taken and Messrs. Sherman, Hackley, and Molony then returned to the meeting.

Mr. Goodman withdrew from the meeting at this point.

Proposed absorption of City Bank by American Security. In a letter dated March 25, 1959, the Comptroller of the Currency requested the Board's views on the proposed absorption of the City Bank, Washington, D. C., by the American Security and Trust Company, also
of Washington, in relation to the provisions of section 7 of the Clayton Act. This matter was discussed briefly at the meeting on April 15, and on April 23 there was distributed to the Board a memorandum from the Division of Examinations supplementing the information contained in memoranda from that Division and the Legal Division dated March 30 and April 6, 1959, respectively.

In reviewing the matter, Mr. Nelson noted, among other things, that the merger of these two banks would result in removing from the local financial scene one bank holding about 3 per cent of the deposits and 10 per cent of the offices of all Washington city commercial banks. American Security would remain second in size, with 24 per cent of the city's deposits and 26 per cent of the banking offices. While some competition would be removed as a result of the merger, keen competition would continue to be provided in the city and surrounding suburban areas by 30 banks and by savings and loan associations, credit unions, small loan companies, and insurance companies. In all the circumstances, the Division of Examinations was of the opinion that the merger would not result in a substantial lessening of competition or a tendency toward monopoly.

Mr. Hackley commented that in this case, as opposed to a branch bank or holding company application where the Board could act in its discretion on the basis of all pertinent factors, including competition, the sole question before the Board was whether the
transaction would violate the language of the Clayton Act which makes unlawful any transaction the effect of which would be substantially to lessen competition or tend to create a monopoly in any form of commerce in any section of the country. If the Board should so decide, section 11 of the Clayton Act would impose upon it an obligation to institute proceedings to require divestment of the City Bank stock acquired by American Security Corporation, an affiliate of American Security & Trust Company. This would involve an administrative hearing in which the Attorney General might intervene and which would be subject to judicial review.

In the circumstances, Mr. Hackley pointed out, it was necessary for the Board to have full information available and to scrutinize the case carefully. Personally, he would consider it desirable to have more information than now available before reaching a conclusion to institute proceedings. On the other hand, the Board now had considerable information before it and might feel the data were sufficient for the purpose of expressing an opinion.

Mr. Hackley noted that the language of section 7 of the Clayton Act was not too clear; while some court decisions had been made with respect to nonbank corporations, they tended to be confusing and unclear, particularly in their application to the field of banking. Nevertheless certain general principles had been established. Clearly, the Clayton Act intended to prevent tendencies toward monopoly in their incipiency
and was broader in its application than the Sherman Act. Also, in connection with the 1950 amendments to the Clayton Act, it was apparent that the Congress had in mind situations in which a major enterprise, through a number of transactions, acquired a number of small enterprises.

After referring to certain court decisions under the Clayton Act involving nonbank corporations and to the proceeding recently instituted by the Justice Department against Firstamerica Corporation, Mr. Hackley said that these and other considerations might suggest that the case now before the Board would violate the Clayton Act. However, since there had been nothing conclusive in the form of court decisions as to banks, the Board might feel more inclined to be guided by the philosophy inherent in certain of its own decisions, including cases under the Bank Holding Company Act, where it had reached the conclusion that no violation of the Clayton Act was involved.

Mr. Hexter supplemented Mr. Hackley's remarks by saying that he felt the best course to follow in this case might be for the Board to defer taking a definite position and for the Justice Department to proceed with its study of the matter. The Board's power, he noted, would end if the two banks were to merge, whereas the Justice Department could obtain a restraining order to prevent the merger. Furthermore, Justice had indicated by its action in the Firstamerica case that it might be inclined to take a broader view of the Clayton Act than the Board. It seemed to him, Mr. Hexter said, that there was no strong
reason for the Board to conduct a parallel study. If the Board should also feel that way, the Comptroller of the Currency might be informed that the Board had not formed an opinion, in the absence of an elaborate study, and that the case was being investigated by the Justice Department.

In further comments by the legal staff, Mr. Hackley said that while the Board must be meticulous when considering any action that could lead to litigation, in this case the Board might conclude from the information already at hand that it did not find sufficient evidence to warrant institution of a proceeding under the Clayton Act. Mr. Hexter brought out that the Board had no duty to conduct a searching inquiry in every case of acquisition of bank stock. In its judgment the Board could say that, looking at the over-all situation, it seemed so improbable that further investigation would disclose a Clayton Act violation that no further steps need be taken. While thorough investigation would be required before instituting a proceeding, the Board might properly decide in a given case that it had enough information to be satisfied that it was not required to conduct such an investigation.

On the basis of the comments by Messrs. Hackley and Hexter, the Board gave consideration to alternative courses of action open to it under the circumstances. The first of these would be to advise the Comptroller that, on the basis of available information, the Board had concluded that the institution of a proceeding under the Clayton Act would not be warranted. A second alternative would be to instruct
the Board's staff to carry out a searching investigation, and a third
would be to wait until the Justice Department had completed its
investigation before coming to a conclusion. While Governor Mills
indicated that he would be prepared to send a letter in line with the
first alternative on the basis of the data already placed before the
Board, other members felt that more information should be made available
before a decision was reached. In this connection, it was noted that
additional data prepared by American Security for the Justice Department
had just been made available to the Board's staff by the Comptroller's
Office in copy form, and it was stated that these data could be analyzed
and summarized for the Board rather promptly.

After further discussion of the reasons that might be given
for and against the various alternative procedures, Governor Robertson
suggested that Counsel be requested to check informally with the
Justice Department to determine the progress of the investigation
being conducted by that Department.

Agreement was expressed with Governor Robertson's suggestion,
and it was understood that the Legal Division would report back to
the Board. It was also understood that the Division of Examinations
would prepare an analysis of the additional information received through
the Comptroller's Office, with emphasis on the pattern of banking
developments in the District of Columbia and the growth of American
Security & Trust Company in relation to the over-all picture.
Application of The Marine Trust Company of Western New York (Item No. 3). At the meeting on March 20, 1959, the Board reached a tentative decision to deny the application of The Marine Trust Company of Western New York, Buffalo, New York, to establish a branch at 2340 Niagara Falls Boulevard, in an unincorporated area of the Town of Tonawanda. At that time Governors Balderston and Mills were inclined to favor approving the application, while Governors Szymczak, Robertson, and Shepardson were inclined toward denial. In accordance with the usual practice in cases where the action proposed by the Board differs from that recommended by the Reserve Bank concerned, informal advice was given to the Federal Reserve Bank of New York that the Board's decision might be to deny the application. The New York Bank indicated that it considered the application borderline in nature and made no further representations. However, at a luncheon meeting on March 26, 1959, attended by members of the Board and the Superintendent of Banks for New York and certain of his aides, the views of the State authorities in favor of granting the application were presented.

Chairman Martin stated that in studying the file on the matter, he had at first been inclined toward a negative view. After reviewing the file further, however, he came to the conclusion that it would be rather unfair to deny the Marine application and wait until other parties came along to provide banking services to the area concerned. Because of his predilection in favor of unit banking, he would have preferred
an application by a smaller Buffalo bank or an application to establish a new bank. On the other hand, looking at the matter from the standpoint of the convenience, needs, and welfare factor, it seemed clear that the area was growing and could use banking facilities. Also, he found himself impressed by the Legal Division's memorandum on the matter, including the possibility referred to therein that an adverse decision might be overruled by the courts.

Governor King stated that he had given a great deal of thought to this case, including the views expressed at the luncheon meeting with the State authorities. Like the Chairman, he favored the unit banking system, and the tendency of the big to get bigger in all lines of endeavor was a matter of concern to him. Nevertheless, he had come to the conclusion in this particular case that the branch application should be approved. It appeared from the reports of those who had investigated the matter that a need for banking services existed, and there apparently was only one institution that desired to provide the service. The next largest Buffalo bank reportedly had no interest in establishing a branch in the area. Therefore, the question was whether to deny banking services to the public in order to hold the area open for some unknown party who might want to go into business. Also, as he understood it, persons desiring to deal with a bank other than Marine would have to travel only a few miles. If the Tonawanda area were such that persons were more or less confined to it, he might have
a different opinion, but with other banks and branches so close at hand he could not see that approval of the Marine branch application would substantially lessen competition or create a tendency toward monopoly. Therefore, in spite of his general opinion that it was a bad thing for the big continually to get bigger, on the merits of this particular case he would favor approval and wished so to record himself.

Governor Robertson then commented to the effect that this was admittedly a close case and that he thought much good had already been accomplished by way of calling to the attention of the State authorities the factors that the Board had in mind in considering applications of this nature.

Thereupon, the branch application of The Marine Trust Company of Western New York was approved, Chairman Martin and Governors Balderston, Mills, and King voting for approval, while Governors Szymczak, Robertson, and Shepardson voted "no". A copy of the letter sent to the applicant bank through the Federal Reserve Bank of New York pursuant to this action is attached as Item No. 3.

 Authority over trust activities (Item No. 4) Following the meeting on April 15, 1959, Governor Shepardson requested that the approved letter to the Bureau of the Budget regarding a bill proposed by the Treasury Department "to transfer from the Board of Governors of the Federal Reserve System to the Comptroller of the Currency
authority over the trust activities of national banks" be held up in order to permit further discussion.

Governor Shepardson stated that his question related to the portion of the proposed bill that would result in regulatory authority over common trust funds being retained by the Board of Governors while all other aspects of regulatory authority over trust activities of national banks would be transferred to the Comptroller of the Currency. After having considered further the distinctions between regulation and supervision, it appeared to him that retention of the regulatory authority over common trust funds would present certain administrative problems. For example, the Board would have to be in close touch with the Comptroller's Office to determine what was being done by that Office with regard to regulating other aspects of the trust function. Also, the regulatory authority vested in the Comptroller would not apply to State banks except insofar as such banks wished to take advantage of a tax privilege granted by the Internal Revenue Code in connection with the operation of common trust funds. In summary, retention by the Board of regulatory authority with respect to common trust funds would present complications without appearing to give a particular advantage to any party. Accordingly, Governor Shepardson said, he was presently inclined to a view different from the one he expressed at the meeting on April 15. He now felt that the Board might be well
advised to recommend that the proposed bill be amended so as to transfer to the Comptroller regulatory authority with respect to all trust activities of national banks.

Governor Mills said he continued to feel that the Board should retain regulatory authority over common trust funds. He noted that State banks were accustomed to regulation in this regard through the Board of Governors and that in any event the Federal Reserve System would still have supervisory responsibility for examining the trust departments of State member banks. Furthermore, considerations incident to the preservation of the dual banking system seemed to suggest that the Board should remain in this field insofar as common trust funds were concerned, for transfer of the regulatory authority over such funds to the Comptroller of the Currency would have the effect of imposing the Comptroller's regulations on State member banks wishing to take advantage of tax benefits in operating common trust funds. Although the Comptroller now had some area of responsibility over State member banks through the definition of investment securities, this involved prescribing standards and not regulating activities of State banks. In summary, where a dual banking system was in existence, Governor Mills felt that every step within reason should be taken to preserve it. Also, if authority over common trust funds was transferred to the Comptroller, there might be an added problem in that the Comptroller and the Internal Revenue Service are...
both within the Treasury Department. While the Federal Reserve would still have responsibility for the examination of trust activities of State member banks if the regulatory authority were transferred to the Comptroller, it would relinquish its authority to draft regulations and thus lose its experience in handling the regulations and preparing amendments to them as circumstances might change.

In further discussion, Mr. Hackley brought out that Regulation F is presently applicable to and binding upon national banks only, and this situation would not change if regulation of trust activities were transferred to the Comptroller in the manner proposed by the Legal Division. It was a separate and distinct matter that any bank desiring tax benefits in the operation of its common trust fund must operate such fund in accordance with the provisions of Regulation F. On the other hand, the Comptroller's investment securities regulation is binding upon both national and State member banks.

Mr. Benner then discussed the possibility of a separate regulation covering common trust funds, pointing out that it was only a matter of convenience that provisions relating to such funds were incorporated in Regulation F. In further comments, he described the role of the Federal Reserve in helping to prepare the common trust fund provisions now found in the statutes and Regulation F and also referred to the responsibilities performed by the System in the common trust field over a period of more than twenty years.
At this point Governor Robertson withdrew from the meeting. Before leaving, however, he stated that he had previously expressed himself, both in Congressional testimony and otherwise, as favoring the transfer of authority over common trust funds to the Comptroller of the Currency along with authority over other trust activities of national banks. He said that he continued to hold this view.

Mr. Benner then reviewed various arguments tending to favor retention of authority over common trust funds in the Board of Governors, his comments being based on the memorandum from the Division of Examinations dated April 10, 1959, that had been distributed to the Board prior to the April 15 Board meeting.

After further discussion, Governors Szymczak, Balderston, and King indicated that they had reached the conclusion stated by Governor Shepardson, namely, that regulatory authority over common trust activities of national banks, including the operation of common trust funds, should be transferred to the Comptroller of the Currency. Chairman Martin concurred in this view.

Consideration then was given to the public relations aspect of the matter, but it was the consensus that this would not be likely to involve any serious problem. It was likewise the consensus that the views of the Federal Reserve Banks need not be solicited.
Accordingly, approval was given to a letter to the Bureau of the Budget in the form originally suggested by the Legal Division, Governor Mills voting "no" for the reasons he had stated and Governor King not voting. A copy of the letter is attached as Item No. 4.

The meeting then adjourned.

Secretary's Notes: Governor Shepardson today approved on behalf of the Board a letter to the Federal Reserve Bank of Richmond (attached Item No. 5) approving the appointment of Thomas Owens Keech, Freeman Lee Moore, Jr., Leonard A. Ross, Jr., and Leigh Carrington Whaley, Jr., as assistant examiners.

Governor Shepardson also approved today on behalf of the Board a letter to the Presidents of all Federal Reserve Banks transmitting copies of the form to be used by State member banks in submitting reports of earnings and dividends for the six months ending June 30, 1959, with the understanding that the letter would be sent when the forms were printed.
A decision regarding the proposal to merge the Guaranty Trust Company of New York and J. P. Morgan & Co. must take into account the same principles regarding the competitive aspects of the merger that were raised by the Federal Reserve Board in the Old Kent Bank and Trust Company and the Wachovia Bank and Trust Company cases. Accordingly, the competitive factor involved in the subject case must be given primary consideration.

Although the proposed merger does not directly involve Clayton Antitrust Act factors, both the Federal Reserve Board and the Comptroller of the Currency have publicly recognized a duty to consider the competitive effects that stem from an application to establish a branch on the part of a bank operating under their jurisdictions. In the present instance, the application to retain the existing 23 Wall Street location of J. P. Morgan & Co. as a branch of the merged banking institution is the central factor requiring the Federal Reserve Board to assess whether the competitive results of the merger would be contrary to the public interest and the spirit of its responsibility to scrutinize the possible development of monopolistic commercial banking situations.

The question of whether over-all size produces a dominating market power, in the writer's opinion, ranks higher in the proposed Guaranty Trust Company-J. P. Morgan & Co. merger than in the Old Kent Bank and Trust Company and the Wachovia Bank and Trust Company cases, where prospective lessening of competition, stemming out of merger actions, involves an increase in the size of the merged institutions but, more importantly, produces a spreading of their facilities over a market area in which they are already financially influential. In this case, the question of whether the retention of the 23 Wall Street office of J. P. Morgan & Co. would adversely tip the balance of the decision on a proposed merger is not believed to be of critical importance.

The key factor of importance to be considered is whether a merger of the Guaranty Trust Company and J. P. Morgan & Co. would produce a concentration of lending power and a marshaling of financial resources to an extent that would give the merged institution a dominating position in the financial world that would exert a lessening of competition that would be contrary to the public interest. In that regard, it is essential to bear in mind that both banks that are parties to the merger are wholesale commercial banks, a large part of whose business is transacted with national concerns operating over extended geographical areas. Due to their size and credit worthiness, these national concerns have ready access to bank lines of credit, not only at banks in New York City but at banks located in many other important financial centers. Under these circumstances, the larger lending potential that would derive from a merger of the Guaranty Trust Company and J. P. Morgan & Co. favors the proposal, in that the capacity of the merged
institutions to serve their clientele would, on the one hand, be enhanced while on the other hand no material reduction in the sources of credit available to their clientele would occur, in that the national concerns who add up to the largest part of both merged banks' customers are able to command bank credit from diverse sources. There is no evidence on the score of size and lending power that the proposed merger would unduly lessen competition.

As that is the case, the problem boils down to the question of whether the proposed merger would unduly lessen competition within metropolitan New York City. In view of the fact that both the Guaranty Trust Company and J. P. Morgan & Co. are wholesale banks and do not operate extensive branch bank systems within New York City, they do not actively compete with the downtown New York City banks and outlying New York City banks whose branch facilities bring them into aggressive competition with each other. Because this competitive factor, related to the competition between New York City banks operating extensive branch bank systems, is not present in the case of the Guaranty Trust Company-J. P. Morgan & Co. merger, the entire competitive issue at stake devolves around the question of whether the enlarged size of the merged institution could exert an influence adverse to the public interest. And, as has been brought out above, it is the writer's judgment that the proposed merger cannot be considered contrary to the public interest in that regard. All factors considered, the merger should be approved.

A. L. Mills, Jr.
April 24, 1959.

Board of Directors,
Guaranty Trust Company of New York,
New York, New York.

Gentlemen:

Pursuant to your request submitted through the Federal Reserve Bank of New York, the Board of Governors approves the establishment of a branch at 23 Wall Street, New York, New York, by Morgan Guaranty Trust Company of New York, New York, New York, provided the branch is established within six months from the date of this letter.

It is understood Morgan Guaranty Trust Company of New York will continue to operate foreign branches in Brussels, London, and Paris, and that Morgan & Cie. Incorporated will continue to operate, for the time being, a branch in Paris. The Board also understands that steps necessary to place operation of both Paris branches under Morgan Guaranty Trust Company of New York will be taken within a reasonable period of time.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon.
Assistant Secretary.
Board of Directors,
The Marine Trust Company of Western New York,
Buffalo, New York.

Gentlemen:

Pursuant to your request submitted through the Federal Reserve Bank of New York, the Board of Governors approves the establishment of a branch at 2340 Niagara Falls Boulevard, unincorporated area of the Town of Tonawanda, Erie County, New York, by The Marine Trust Company of Western New York, Buffalo, New York. This approval is given provided the branch is established within one year from the date of this letter and that formal approval of State authorities is effective at the time the branch is established.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.
Mr. Phillip S. Hughes,
Assistant Director for
Legislative Reference,
Bureau of the Budget,
Washington 25, D. C.

Dear Mr. Hughes:

This is in reference to your Legislative Referral Memorandum of February 10, 1959, requesting the Board's views with respect to a draft of a bill, proposed by the Treasury Department, "To transfer from the Board of Governors of the Federal Reserve System to the Comptroller of the Currency authority over the trust activities of national banks."

For the reasons set forth in the proposed covering letter from the Secretary of the Treasury to the Speaker of the House of Representatives, which you enclosed, the Board favors sections 1 and 2 of the proposed bill, which would transfer from the Board to the Comptroller authority (1) to grant to national banks the right to act in fiduciary capacities, and (2) to promulgate regulations governing the exercise of fiduciary powers by national banks.

However, under section 3 of the proposed bill authority to regulate the collective investment of trust funds by national banks would not be transferred to the Comptroller, but would continue to be vested in the Board of Governors. The Treasury letter takes the position that collective investment of common trust funds should be regulated by the Board because, in view of the provisions of section 584 of the Internal Revenue Code of 1954, "as a practical matter state banks as well as national banks must conform" to the Federal banking regulations pertaining to common trust funds.

In the Board's opinion, it is preferable for regulatory authority over all aspects of the trust activities of national banks to be vested in the Comptroller of the Currency. The placing of full regulatory authority in a single agency would benefit the general public interest as well as the banking industry from the viewpoint of simplicity and efficiency of operations and administration. Furthermore, that arrangement would avoid regulatory
inconsistencies or conflicts that might occur if general authority in this area were vested in one agency and authority over a particular aspect (i.e., common trust funds) in another. The Board is unable to see that any segment of the banking system would be injured by the circumstance that regulations regarding common trust funds promulgated by the Comptroller of the Currency would apply to State banks as well as national banks. In this connection it is pointed out that member State banks, like national banks, have been subject for many years to the Investment Securities Regulation promulgated by the Comptroller of the Currency pursuant to section 5136 of the Revised Statutes (12 U.S.C. 24). As far as the Board is aware, member State banks have not been placed at any disadvantage as a result of this arrangement.

Accordingly, the Board of Governors favors enactment of the proposed bill with the exception of section 3. In lieu of that section, the Board recommends that section 584(a)(2) of the Internal Revenue Code of 1954 be amended by substituting "Comptroller of the Currency" for "Board of Governors of the Federal Reserve System".

In the event that, contrary to the Board's recommendation, a provision along the general lines of section 3 of the Treasury draft is to be included in the bill as introduced, it is suggested that, in lieu of a separate section on this matter, the following clause be added to the last sentence of section 1:

"; provided, however, that regulations pertaining to collective investment in common trust funds shall be promulgated by the Board of Governors of the Federal Reserve System."

In their fiduciary activities, national banks sometimes have occasion to invest funds collectively otherwise than in "common trust funds" of the kind contemplated by section 584 of the Internal Revenue Code. The suggested proviso would make clear that the regulatory authority of the Board of Governors would be confined to the field of common trust funds, and that regulatory authority with respect to other collective investments of trust funds by national banks would be vested in the Comptroller of the Currency. It also would avoid the possibility of the new statute being interpreted as meaning that, with respect to common trust funds, national banks would be subject to regulation by both the Comptroller of the Currency and the Board of Governors, which the Board would consider undesirable.
There is one additional matter that should be covered by the bill. Section 581 of the Internal Revenue Code of 1954, defining the word "bank", refers to fiduciary powers permitted to national banks "under section 11(k) of the Federal Reserve Act (38 Stat. 262; 12 U.S.C. 248(k))." Since section 2 of the proposed bill would repeal section 11(k), this reference must be corrected. It is believed that this could best be effected by adding the following sentence to section 2:

"Section 581 of the Internal Revenue Code of 1954 is amended by deleting the phrase 'under section 11(k) of the Federal Reserve Act (38 Stat. 262; 12 U.S.C. 248(k)).'"

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.
CONFIDENTIAL (F.R.)

Mr. N. L. Armistead, Vice President,
Federal Reserve Bank of Richmond,
Richmond 13, Virginia.

Dear Mr. Armistead:

In accordance with the request contained in your letter of April 3, 1959, the Board approves the appointment of Thomas Owens Keech, Freeman Lee Moore, Jr., Leonard A. Ross, Jr., and Leigh Carrington Whaley, Jr., as assistant examiners for the Federal Reserve Bank of Richmond, effective April 1, 1959.

It is noted that Mr. Moore is indebted to Campbell County Bank, Rustburg, Virginia, a nonmember bank, in the amount of $295 and Virginia Trust Company, Richmond, Virginia, a nonmember bank, in the amount of $350. Accordingly, the Board's approval of the appointment of Mr. Moore is given with the understanding that he will not participate in any examinations of either bank until the indebtedness to such bank has been liquidated.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.