

Minutes for July 15, 1960

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.

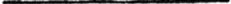
It is not proposed to include a statement with respect to any of the entries in this set of minutes in the record of policy actions required to be maintained pursuant to section 10 of the Federal Reserve Act.

Should you have any question with regard to the minutes, it will be appreciated if you will advise the Secretary's Office. Otherwise, please initial below. If you were present at the meeting, your initials will indicate approval of the minutes. If you were not present, your initials will indicate only that you have seen the minutes.

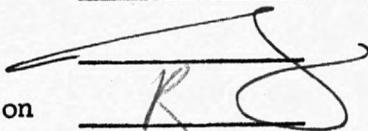
Chm. Martin



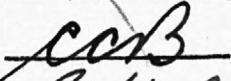
Gov. Szymczak



Gov. Mills



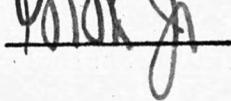
Gov. Robertson



Gov. Balderston



Gov. Shepardson



Gov. King

Minutes of the Board of Governors of the Federal Reserve System
on Friday, July 15, 1960. The Board met in the Board Room at 10:00 a.m.

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

Mr. Sherman, Secretary
Mr. Kenyon, Assistant Secretary
Mr. Hackley, General Counsel
Mr. Farrell, Director, Division of Bank Operations
Mr. Solomon, Director, Division of Examinations
Mr. Nelson, Assistant Director, Division of
Examinations
Mr. Langham, Chief, Call Report Section, Division
of Bank Operations

Discount rates. The establishment without change by the Federal Reserve Banks of New York, Cleveland, Richmond, St. Louis, Minneapolis, and Dallas on July 14, 1960, 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.

Items circulated to the Board. The following items, which had been circulated to the members of the Board and copies of which are attached to these minutes under the respective item numbers indicated, were approved unanimously:

	<u>Item No.</u>
Letter to the Kane Bank and Trust Company, Kane, Pennsylvania, approving the establishment of a branch at 2 Birch Street.	1

1/ Withdrew from meeting at point indicated in minutes.

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	<u>Item No.</u>
Letter to the Oklahoma State Bank, Ada, Oklahoma, approving an extension of time to establish a branch 260 feet from its main office.	2
Letter to the Wells Fargo Bank American Trust Company, San Francisco, California, approving an extension of time to establish a branch in Stockton.	3
Letter to the Comptroller of the Currency recommending approval of the application of The Farmers State Savings Bank, Delta, Ohio, to convert into a national banking association.	4

In connection with Item No. 4, there was a brief discussion, at the instance of Governor Balderston, concerning the possible reasons underlying applications by State banks to convert to national bank status, and it was understood that a memorandum setting forth information with respect to the number of such conversions in recent months would be submitted for the Board's information by the Division of Bank Operations.

Report on competitive factors (Cincinnati-Elmwood Place, Ohio).

The Comptroller of the Currency had requested a report on the competitive factors involved in a proposed purchase of assets and assumption of liabilities of The First National Bank of Elmwood Place, Elmwood Place, Ohio, by The First National Bank of Cincinnati, Cincinnati, Ohio. The file on the matter, which had been circulated to the Board, submitted a proposed report in which the conclusions were stated as follows:

The proposed purchase of assets and assumption of liabilities would combine the smallest and largest banks in the Cincinnati area and it would eliminate present and potential competition of the small national bank.

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At the suggestion of Governor Robertson it was agreed to eliminate the words "of the small national bank" at the end of the sentence, and the report was then approved unanimously for transmittal to the Comptroller of the Currency.

Report on competitive factors (Abbeville-Greenwood, South Carolina). The Federal Deposit Insurance Corporation had requested a report on the competitive factors involved in the proposed merger of The Bank of Abbeville, Abbeville, South Carolina, with and into State Bank and Trust Company, Greenwood, South Carolina. The file on the matter, which had been circulated to the Board, submitted a proposed report to the Corporation which contained the following conclusion:

The two banks involved in this merger are not known to have been competitive to any appreciable degree. The merger and continuation of the offices of The Bank of Abbeville as branches would not appear to change the local competitive situation, nor would the proposal have any significant effect on the competitive position of the continuing bank in areas served outside Abbeville County.

At the request of Governor Mills, who stated that he did not disagree with the conclusion but regarded this as a rather important case, Mr. Nelson reviewed in some detail the facts involved in the proposed merger, his comments being based on a memorandum prepared by the Federal Reserve Bank of Richmond and on other documents contained in the file relating to the application.

Governor Mills noted that this proposal reflected, although to a lesser degree, the trend in the State of North Carolina toward a small

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number of large banking institutions serving all or substantial parts of the State. He repeated that he did not disagree with the conclusion stated in the proposed report to the Federal Deposit Insurance Corporation. He pointed out, however, that the services of the Greenwood bank extended beyond the Greenwood-Abbeville area to certain of the more wealthy and populous areas of the State of South Carolina, and also that accomplishment of the proposed merger would give the bank almost exclusive control of banking in Abbeville County.

Thereupon, the proposed report was approved unanimously for transmittal to the Federal Deposit Insurance Corporation.

Report on competitive factors (Rye-White Plains, New York). The Comptroller of the Currency had requested a report from the Board on the competitive factors involved in the proposed consolidation of The Rye National Bank, Rye, New York, and the National Bank of Westchester, White Plains, White Plains, New York. A memorandum from the Division of Examinations dated July 7, 1960, copies of which had been distributed to the Board, submitted a proposed report to the Comptroller which contained the following conclusion:

The proposed consolidation will combine a relatively small bank operating in a limited area with a much larger one with county-wide operations. Present competition between the two banks is negligible and it appears that the proposed consolidation would enhance competition in the trade area now served by The Rye National Bank but would have little effect on competition throughout the remaining portion of Westchester County.

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At the suggestion of Governor Mills, it was agreed to omit, as superfluous for purposes of this report, a sentence contained in a preceding section of the proposed report which indicated that in time the continuing bank might alter competition in the trade area, since with its larger lending limit and expanded resources it might be in a position to serve those customers who could not now be accommodated by The Rye National Bank and who therefore had done business with the larger banks in Westchester County or those in New York City.

In making his suggestion, Governor Mills commented that this language might be regarded as an indication that the Board was recommending to the Comptroller that he approve the merger. Also, it would forecast the effects of the merger at a later date. The reporting requirements of the present legislation would, in his opinion, be fulfilled by the paragraph setting forth the Board's conclusions.

The proposed report was then approved unanimously for transmittal to the Comptroller of the Currency, subject to deletion of the language mentioned by Governor Mills.

Merger application: Petersburg-Colonial Heights, Virginia

(Item No. 5). There had been circulated to the Board a file relating to the application of the Petersburg Savings and American Trust Company, Petersburg, Virginia, to merge with The Bank of Colonial Heights, Colonial Heights, Virginia, and to establish branches at locations of the present offices of The Bank of Colonial Heights. The recommendations of the

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Federal Reserve Bank of Richmond and the Division of Examinations were favorable, and the views of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Department of Justice on the competitive aspects of the proposal were set forth in reports included in the file.

Agreement being expressed with the recommendations of the Reserve Bank and the Division of Examinations, unanimous approval was given to the letter to the Petersburg Savings and American Trust Company of which a copy is attached as Item No. 5.

Mr. Nelson then withdrew.

Single issue of Federal Reserve notes. In a letter dated July 13, 1960, the Under Secretary of the Treasury advised that the Treasury had been asked by the Subcommittee on Foreign Operations and Monetary Affairs of the House Committee on Government Operations for its views and comments as to the advisability and practicability of a single issue of Federal Reserve notes. Attached to the letter was a copy of the Treasury's proposed reply with a request for comments or suggestions. The proposed reply of the Treasury would indicate that the Treasury knew of no reason why the use of a single issue of Federal Reserve notes would not be practicable, but it would then point out that the issuance of Federal Reserve notes is a function of the Federal Reserve System, and that the advisability of introducing a single issue of such notes would be a matter of primary concern to the System. Copies of the Under Secretary's

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letter and the proposed reply to the Subcommittee had been distributed to the Board with a draft of letter to the Under Secretary which would state that the Board had received a similar inquiry, that its staff was making a rather comprehensive study of the matter, that the position the Board eventually might take was not yet known, but that no reason was seen why the proposed reply of the Treasury should not go forward at this time.

Mr. Farrell distributed at this meeting copies of an additional sentence for possible inclusion in the reply to the Under Secretary which would suggest that the Treasury might want to consider the point that a single issue of Federal Reserve notes would make detection of counterfeits somewhat more difficult.

In commenting, Mr. Farrell said he had discussed the question of the detection of counterfeits with the Fiscal Assistant Secretary of the Treasury, who had indicated that this phase of the matter would be taken up with the Secret Service in considering the Treasury's reply to the House Subcommittee. Mr. Farrell went on to say that the study to date by the Board's staff of the question of a single issue of Federal Reserve notes suggested that if the Board should decide to take an unfavorable position, that position might have to be based principally on the ground that a single issue of notes would not be compatible with the regional aspects of the Federal Reserve System. The Treasury, of course, would not be expected to comment on that phase of the matter, and in the

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circumstances Mr. Farrell felt that the Treasury's proposed reply would not be objectionable.

There followed discussion regarding the possible inclusion of an additional sentence in the reply to the Under Secretary with respect to the detection of counterfeiting, and it was the feeling of the Board that it would be appropriate to bring this phase of the matter to the Treasury's attention.

With regard to other portions of the Treasury's proposed reply to the Subcommittee, Governor Mills suggested the possibility of inquiring whether the Treasury would be willing to phrase its reply in terms that the issuance of Federal Reserve notes is a function of the Federal Reserve System, that the advisability of such a procedure (a single issue of Federal Reserve notes) would be of primary concern to the System, and that this was a matter that the System would best be able to judge.

In the discussion that ensued, Mr. Farrell commented that accounting problems posed by a single issue of Federal Reserve notes apparently could be handled satisfactorily and that some savings apparently would be involved. Therefore, a question that would have to be decided by the Board was whether the advantage of cost-saving would be sufficient to outweigh the disadvantages that might be seen in such a change of procedure.

The suggestion then was made that the Board might inquire whether the Treasury would be willing to delete the sentence contained in its

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proposed letter to the Subcommittee which would state that the Treasury knew of no reason why the issuance of a single issue of Federal Reserve notes would not be practicable.

In this connection, Governor Shepardson called attention to a statement in the proposed Treasury letter which indicated that expenses incurred in printing, holding, and redeeming Federal Reserve notes are passed on to, and are borne by, the Federal Reserve Banks, and to a subsequent statement that the use of a single issue of notes would enable the Treasury to reduce its annual expense by approximately \$77,000. It was agreed that clarification of the second of these statements to bring out that the expenses of the Treasury referred to in the proposed letter are reimbursable from the Federal Reserve Banks should be suggested to the Treasury.

At the conclusion of the discussion, the suggestion was made that no written reply be made to the Under Secretary's letter of July 13 and that the points developed at this meeting be passed along to the Treasury by telephone. There was unanimous agreement with this suggestion, and it was understood that Mr. Farrell would get in touch with a representative of the Treasury.

Secretary's Note: The results of his subsequent conversation with a representative of the Treasury were set forth by Mr. Farrell in a memorandum dated July 15 which was circulated to the members of the Board for their information.

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At this point Mr. O'Connell, Assistant General Counsel, and Miss Hart, Assistant Counsel, joined the meeting along with Messrs. Benner, Assistant Director, and Leavitt, Supervisory Review Examiner, Division of Examinations.

Procedure for handling Reserve Bank budgets. There had been distributed to the Board copies of a memorandum from Mr. Farrell dated July 13, 1960, submitting a proposed procedure for handling the analysis and consideration of the 1961 budgets of the Federal Reserve Banks. The recommended procedure was similar to that followed in the handling of the 1960 budgets.

In the course of commenting on the matter, Mr. Farrell verified, in reply to a question by Governor Mills, that in addition to a general summary of the budgets, a reference volume containing a detailed analysis thereof would be made available upon request to any member of the Board.

Thereupon, the recommended procedure was approved unanimously.

Compilation of banking data for Chicago study (Item No. 6). There had been circulated to the Board a memorandum from the Division of Bank Operations dated July 6, 1960, submitting a proposed letter to Mr. Irving Schweiger, Associate Professor of Marketing, University of Chicago, which would offer to make available various data to be used in a banking study for the Graduate School of Business of the University of Chicago, as originally requested by Mr. Schweiger's associate, Professor John McGee, and discussed further in a letter from Mr. Schweiger to Governor Robertson

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dated June 29, 1960. The proposed reply would state that the Board would be pleased to make these data available provided the compilation could be processed in an orderly manner to fit into the existing workload. It was anticipated that all of the data processing would be completed by the end of September and that some of the data might be completed by a date (August 5, 1960) which had been referred to by Messrs. McGee and Schweiger.

Governor Robertson said he wished to make it clear that the fact that Mr. Schweiger's letter was addressed to him did not indicate that he (Governor Robertson) was acquainted with Professor McGee prior to the time Mr. McGee visited Governor Robertson's office in company with Mr. Schweiger about June 15, 1960, after having communicated with the Board's staff. Governor Robertson added that he had no strong feeling one way or the other with respect to the question of complying with the request.

Mr. Farrell said it was the feeling of the Division of Bank Operations that this was a worthwhile project, one in an area that perhaps should have been the subject of study by the Board's staff. On this basis it was thought that compliance with the request would be appropriate, provided the compilation of the data could be handled in an orderly manner to fit into the existing workload of data processing.

Thereupon, the letter to Professor Schweiger, of which a copy is attached as Item No. 6, was approved unanimously, with the understanding that the requested data would be furnished without charge.

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Technical assistance for Venezuela (Item No. 7). In accordance with the favorable recommendation contained in a memorandum from Mr. Marget, Director, Division of International Finance, dated July 13, 1960, copies of which had been distributed to the Board, unanimous approval was given to a letter to the Federal Reserve Bank of New York indicating that the Board would have no objection to arrangements approved by the Reserve Bank's directors for making the services of Messrs. Howard D. Crosse and Francis H. Schott, and possibly those of Mr. William E. Marple, available to Banco Central de Venezuela for assistance in connection with the formulation and implementation of rediscount policy and possible reorganization of Banco Central's Department of Financial and Credit Research. A copy of the letter is attached as Item No. 7.

Governor Robertson then withdrew from the meeting.

Continental Bank and Trust Company (Items 8 and 9). Pursuant to the understanding at the meeting on July 14, 1960, there had been distributed to the members of the Board a revised draft of statement that might be issued by the Board in connection with its order, the substance of which was agreed upon on July 7, 1960, that The Continental Bank and Trust Company, Salt Lake City, Utah, increase its net capital and surplus funds by at least \$1,500,000, through the sale of additional common stock for cash, within a period of six months from the date of such order. The portion of the revised statement furnished by members of the legal staff represented a substantial condensation from the draft considered

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by the Board on July 14, while the portion of the revised statement submitted by members of the examining staff reflected various comments and suggestions by members of the Board at the July 14 meeting but was substantially comparable in scope to the previous draft.

Mr. Hackley said that the legal staff had considered the possibility of dispensing entirely with any statement in connection with the issuance of the Board's order but had concluded that this would not be desirable. The legal portion of the statement that had now been distributed was revised with two principal objectives in mind. The first was to shorten the statement and to make it somewhat less legal sounding in nature. It had been possible to cut this portion of the statement approximately 50 per cent, but there had been no attempt to cut down the background discussion substantially. The second objective was to put less emphasis on the necessity for a further hearing, although the members of the Legal Division who had worked on the matter still felt that there had as yet been no charge of violation against Continental, that, as indicated in the revised statement, a prerequisite to forfeiture of membership would be a finding that Continental had violated provisions of the statute and the Board's regulations, and that a hearing must then be held regarding Continental's apparent failure to comply with the order of the Board.

Governor Mills said he would accept the legal portion of the statement in the revised form in which it had been distributed. Should

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there be a charge of noncompliance, he would cross that bridge when necessary. He was still troubled, however, by some of the statements in the portion of the proposed statement that had been submitted by the examining staff.

Mr. Solomon then commented on that portion of the statement in its revised form, indicating that there were certain respects in which the examining staff would suggest condensation and that further condensation would be possible in the Board's discretion.

In response to a request by Governor Shepardson for clarification regarding the purpose of another hearing in the event of failure of Continental to comply with the Board's order, Mr. Hackley stated that this would afford Continental, in accordance with due process of law, an opportunity to present its case--to have its day in court, so to speak--before any action was taken to forfeit the bank's membership in the Federal Reserve System. Thus it would be possible for the bank to appear, contest the validity of the Board's order, and defend noncompliance on the ground that the Board had no valid basis for issuing the order or that the order was not reasonable. The bank might state that although it had not increased its capital by selling stock, its capital situation had been improved by asset changes, retained earnings, or some other means. On the basis of such a hearing, the Board might, of course, modify its position.

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There followed discussion to clarify a technical point in the revised statement in the light of a question by Governor Shepardson, following which Governor Mills inquired whether it was correct to say that if the Board issued an order and Continental did not comply with it, the hearing then held would really be intended for the benefit of Continental. He also asked whether it was correct to assume, in the light of the history of the case, that Continental might reject the possibility of a further hearing and take the matter into court immediately.

In his reply, Mr. Hackley said it was entirely possible that Continental, perhaps in as short a time as a week, would proceed by way of judicial action of some kind to contest the Board's authority to issue the order to increase capital without waiting for the period of six months to expire. Mr. O'Connell commented that a court quite possibly would dismiss such action as premature, for Continental would not have been injured before the six-month period expired and the Board took other steps.

Governor Shepardson then stated that he considered the portion of the revised statement submitted by the legal staff a distinct improvement.

Governor Balderston commented to the same effect and suggested minor changes at certain points in the interest of clarification and further improvement of the presentation. He then reviewed his thoughts

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pro and con regarding the use of the rather lengthy factual presentation developed by the examining staff.

At this point Mr. Hackley indicated that he and other members of the staff had endeavored to prepare a draft, in rather rough form, of an alternative and shorter version of the factual part of the statement in order that the Board might have such an alternative available for its consideration.

At the Board's request, Mr. Hackley then read the alternative draft. During the reading thereof, certain suggestions were made by members of the Board, and at the conclusion of the presentation Mr. Solomon indicated that he would be favorable to such a statement if in the Board's judgment it would be appropriate.

Mr. Hackley commented that if Continental should go to court immediately and challenge the validity of the Board's order, or if the matter should go to litigation at a later date, the questions involved would be related to the Board's legal authority and the reasonableness of the Board's factual determination. Therefore, it was felt that all that was essential at this time was a reasonable indication of the basis on which the Board had reached its determination. In the event of administrative proceedings, the material in the revised statement probably would have to be expanded substantially so as to include all of the material in the statement as originally drafted and perhaps additional material.

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Governor Balderston then made comments in which he indicated that the points he had had in mind with regard to what should be covered in the factual portion of the statement would be met by a statement along the lines Mr. Hackley had read. Accordingly, he suggested that the order and accompanying statement be issued as promptly as possible.

Governor Mills expressed agreement with Governor Balderston that the Board could reasonably proceed to issue a statement in such form, subject to such minor additions and corrections as the staff might find necessary in the light of today's discussion and its own further study.

Further discussion indicated that it would appear feasible to have the order and statement available for issuance next Monday afternoon, July 18.

In this connection, agreement was expressed with a suggestion by Mr. Solomon that it be made clear in the statement that in the Board's opinion at least \$1,500,000 of new capital through the sale of additional common stock was called for on the basis of the bank's condition at the present time, thus indicating clearly that if conditions should change the Board's position as to the extent of the need of additional capital might also be subject to change.

It was then agreed unanimously to issue on the afternoon of Monday, July 18, if possible, an Order reflecting the decision of the Board on July 7, 1960, with an accompanying Statement in the general form of the revised draft presented for the Board's consideration this morning.

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This action was taken with the understanding that the staff would proceed with the editing of the statement and that the statement need not be brought back to the Board for further consideration. It was also understood that shortly before the hour of release of the Order and Statement, Counsel for Continental Bank and Trust Company in Salt Lake City and in Washington would be advised of the Order and Statement and that copies of those documents would be made available to representatives of Continental at the Board's offices at the time of release. It was further understood that after the hour of release copies of the Order and Statement would be sent to Continental Bank and Trust Company, its Counsel, each of its directors, and each Federal Reserve Bank, as well as certain other interested parties, and that the Order and Statement would be published in the Federal Register and the Federal Reserve Bulletin.

Secretary's Note: Copies of the Order and Statement as released at 4:30 p.m. EDT, on July 18, 1960, are attached as Items 8 and 9, respectively.

All of the members of the staff except Mr. Hackley then withdrew from the meeting.

Services of Special Counsel (Item No. 10). The Secretary later was informed that consideration was given to the status of the services of Mr. Bolling R. Powell, Jr., as Special Counsel to the Board in the matter of The Continental Bank and Trust Company, Salt Lake City, Utah, following which it was agreed that Governor Balderston would discuss the

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matter with Mr. Powell in the light of the understanding reached at today's meeting and that an appropriate letter would subsequently be sent to Mr. Powell.

Secretary's Note: Governor Balderston having met with Mr. Powell, the letter of which a copy is attached as Item No. 10 was sent to Mr. Powell under date of July 21, 1960.

Mr. Hackley then withdrew.

Delegations of authority to Governor Shepardson. The Chairman later informed the Secretary that the Board had vested in Governor Shepardson for the year beginning August 1, 1960, the direction of its internal affairs that are of a managerial nature. This meant that the directors of divisions would continue to take up with him matters pertaining to Board personnel, budget, and housekeeping, and that the Board as a whole would continue to keep in touch with the operating problems of the staff and determine questions of policy. Governor Shepardson's designation included authorization to approve travel requests in accordance with the official travel regulations of the Board, as amended August 6, 1956. The action also continued the authorization conferred by the Board on Governor Shepardson at its meeting on June 26, 1957, to approve on behalf of the Board (1) all proposed personnel actions relating to members of the Board's staff other than the Advisers to the Board, the Assistants to the Board, the Legislative Counsel, and the directors and assistant directors of the various divisions of the staff; and (2) the proposed appointment of examiners, assistant examiners,

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and special or special assistant examiners of the Federal Reserve Banks,
with the understanding that all such approvals would continue to be
entered in the minutes as of the date of approval.

The meeting then adjourned.


Secretary

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 1
7/15/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 15, 1960

Board of Directors,
Kane Bank and Trust Company,
Kane, Pennsylvania.

Gentlemen:

Pursuant to your request submitted through the Federal Reserve Bank of Philadelphia, the Board of Governors of the Federal Reserve System approves the establishment of an in-town branch at 2 Birch Street, Kane, Pennsylvania, by Kane Bank and Trust Company, provided the branch is established within one year from the date of this letter.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 2
7/15/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 15, 1960

Board of Directors,
Oklahoma State Bank,
Ada, Oklahoma.

Gentlemen:

Pursuant to your request, the Board of
Governors extends to August 24, 1960, the time within
which Oklahoma State Bank may establish a branch 260
feet from its main office as authorized in the Board's
letter of January 25, 1960.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 3
7/15/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 15, 1960

Board of Directors,
Wells Fargo Bank American
Trust Company,
San Francisco, California.

Gentlemen:

Pursuant to your request submitted through the Federal Reserve Bank of San Francisco, the Board of Governors of the Federal Reserve System extends until February 13, 1961, the time within which Wells Fargo Bank American Trust Company may establish a branch in the vicinity of the intersection of Wilson Way and Main Street, Stockton, California, under the authorization contained in the Board's letter of August 12, 1959.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 4
7/15/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 15, 1960

Comptroller of the Currency,
Treasury Department,
Washington 25, D. C.

Attention Mr. Reed Dolan,
Chief National Bank Examiner.

Dear Mr. Comptroller:

Reference is made to a letter from your office dated June 27, 1960, enclosing copies of an application of The Farmers State Savings Bank, Delta, Ohio, to convert into a national banking association and requesting a recommendation as to whether or not the application should be approved.

A field investigation of the application has not been made, but the Federal Reserve Bank of Cleveland has furnished us with a report on the application based upon the examination of the bank as of February 16, 1960, and other data available.

The Farmers State Savings Bank has been a member of the Federal Reserve System since May 1, 1943. The present capital structure of the bank, future earnings prospects, and management are regarded as satisfactory. The bank has served the community quite satisfactorily for many years. Accordingly, the Board of Governors recommends approval of the application of The Farmers State Savings Bank to convert into a national banking association.

The Board's Division of Examinations will be glad to discuss any aspects of this case with representatives of your office if you so desire.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 5
7/15/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 15, 1960

Board of Directors,
Petersburg Savings and American
Trust Company,
Petersburg, Virginia.

Gentlemen:

The Board of Governors of the Federal Reserve System, after consideration of all factors set forth in Section 18(c) of the Federal Deposit Insurance Act as amended by the Act of May 13, 1960, and finding the transaction to be in the public interest, hereby consents to the merger of The Bank of Colonial Heights, Colonial Heights, Virginia, into the Petersburg Savings and American Trust Company. The Board of Governors also approves the establishment of branches by Petersburg Savings and American Trust Company at the following locations of the present offices of The Bank of Colonial Heights:

123 Pickwick Avenue, Colonial Heights, Virginia,
Intersection of Boulevard and Temple Avenue,
Colonial Heights, Virginia.

This approval is given provided the transactions are consummated within six months from the date of this letter.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 6
7/15/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 15, 1960



Mr. Irving Schweiger,
Associate Professor of Marketing and
Editor, Journal of Business,
Graduate School of Business,
University of Chicago,
Chicago 37, Illinois.

Dear Mr. Schweiger:

This refers to your letter of June 29 to Governor Robertson with which you enclosed a series of specifications for special compilations of banking data to be used in your banking study for the Graduate School of Business at the University of Chicago.

The study you have outlined is believed to be a desirable one and, when completed, should make a significant contribution to the field of banking. However, in view of the numerous and comprehensive compilations requested and the Board's computer schedule for a substantial amount of overtime in July, no commitment can be made for completing the compilations within the time limitations stated in your letter. The Board will be pleased to make these data available for your use, provided the compilations can be processed in an orderly manner to fit into the existing workload. It is anticipated that all data processing would be completed by the end of September and some of the data might be completed by your August 5 deadline.

Please inform the Division of Bank Operations whether, under such a schedule, the compilations would still be of value to you. Incidentally, programming of some of the data has already been started on this basis.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 7
7/15/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 15, 1960

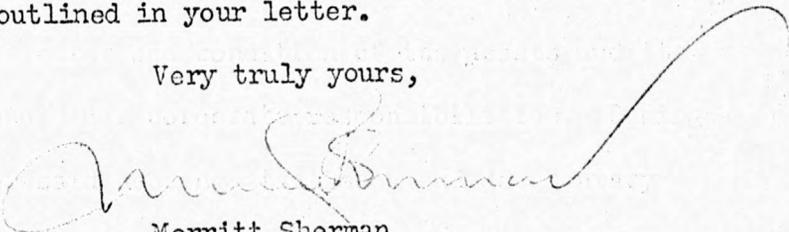
Mr. Robert W. Stone,
Assistant Secretary,
Federal Reserve Bank of New York,
New York 45, New York.

Dear Mr. Stone:

This letter is in reply to your letter of July 8 regarding the provision of the services of Messrs. Grosse and Schott and possibly those of Mr. Marple to the Banco Central de Venezuela for an assignment in connection with the formulation and implementation of rediscount policy and the possible reorganization of the Banco's Department of Financial and Credit Research.

The Board of Governors interposes no objection to the arrangements outlined in your letter.

Very truly yours,



Merritt Sherman,
Secretary.

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Board filed exceptions, with supporting brief, and Counsel for the Bank filed a brief in opposition to such exceptions; and the matter was argued orally before the Board.

The Board has considered the evidence of record to the extent and in the degree set forth in the Statement accompanying this Order; the arguments of Counsel on the issues of fact and law raised by motion and otherwise during this proceeding; the Trial Examiner's Report and Recommended Decision; the exceptions and briefs filed by Counsel; the oral arguments before the Board; and information, equally available to the Bank, derived before and after the date of such hearing from reports of examination of the Bank and from supervisory reports filed by the Bank.

On the basis of such deliberation and consideration, and for the reasons set forth in the Statement accompanying this Order, it is the judgment of the Board, and the Board has so determined, that the net capital and surplus funds of the Bank are inadequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, and that such inadequacy in an amount of not less than \$1,500,000 shows no likelihood of being corrected within a reasonable time by retained earnings.

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Accordingly, IT IS HEREBY ORDERED that, within six months from the date of this Order, the Bank shall, by the sale of common stock for cash, effect an increase in its net capital and surplus funds in the amount of not less than \$1,500,000.

Dated at Washington, D. C., this 18th day of July, 1960.

By order of the Board of Governors.

Voting for this action: Chairman Martin and Governors Balderston, Szymczak, Mills, Shepardson, and King.

Governor Robertson took no part in the Board's consideration of this matter or in the Board's action of this date, having voluntarily withdrawn from participation in the matter for the reasons set forth in the Statement issued by him on June 30, 1959, and made a part of the record in these proceedings.

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

(SEAL)

UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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

STATEMENT OF THE BOARD

IN CONNECTION WITH ORDER TO INCREASE CAPITAL

I. BACKGROUND

Prior to February 1, 1952, Continental was a national bank chartered under provisions of the National Bank Act. As of that date it converted to a State charter under the laws of the State of Utah. As of the same date, the Bank was admitted to membership in the Federal Reserve System by virtue of the Board's approval of the Bank's application for such membership filed pursuant to provisions of the Federal Reserve Act. In thus voluntarily becoming a member of the System, Continental became subject to all provisions of the Federal Reserve Act and other laws of Congress applicable to State member banks.

At the time of Continental's admission to membership, section 9 of the Federal Reserve Act required a State bank, in order to be eligible for membership, to have capital equal to the minimum amount specified by the National Bank Act for the organization of a national bank in the place in which such State bank was located,

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and the amount so specified by the latter Act was arbitrarily related to the population of the place of the bank's location. Continental's capital met this requirement of the statute. It was not until July 15, 1952, several months after Continental's admission, that section 9 of the Federal Reserve Act (12 U.S.C. 329) was amended to prohibit admission of a State bank to membership in the Federal Reserve System unless it has "capital stock and surplus which, in the judgment of the Board of Governors of the Federal Reserve System, are adequate in relation to the character and condition of its assets and to its existing and prospective deposit liabilities and other corporate responsibilities".

Although Continental met the minimum capital requirement prescribed by the Federal Reserve Act at the time of its admission to membership, nevertheless, if in the judgment of the Board the Bank lacked adequate capital, it was within the Board's statutory discretion either to withhold approval of the Bank's application for membership or to approve the Bank's application notwithstanding its capital situation. An intermediate course was also open to the Board. Under the first paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 321), the Board had authority to permit an applying State bank to become a member of the System "subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto." Pursuant to this provision, the Board prescribed the following conditions of membership in approving Continental's application for membership:

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- "1. Such bank at all times shall conduct its business and exercise its powers with due regard to the safety of its depositors, and, except with the permission of the Board of Governors of the Federal Reserve System, such bank shall not cause or permit any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership.
- "2. The net capital and surplus funds of such bank shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, and its capital shall not be reduced except with the permission of the Board of Governors of the Federal Reserve System."

It was the second of these conditions, hereafter called "Condition of Membership No. 2", that expressly related to the maintenance of adequate capital.

In accordance with its practice of prescribing special conditions of membership when warranted by the circumstances of particular cases, the Board also prescribed two such special conditions in Continental's case. One required full payment within two years of the indebtedness to Continental of certain members of the family of Mr. Walter E. Cosgriff, President of Continental; the other provided that the Bank prior to membership should charge off or otherwise eliminate certain losses.

That the Board had reservations as to the adequacy of Continental's capital and that Condition of Membership No. 2 was intended to be a continuing condition as to maintenance of adequate capital was clearly evidenced by the Board's letter of January 25, 1952, advising the Bank of the Board's approval of its application for membership. In that letter, the Board stated:

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"In approving this application the Board of Governors has considered and relied upon the assurances given by Mr. Cosgriff that his indebtedness and that of his immediate family to the affiliated banks in which they own a majority stock interest will be liquidated within two years and that the dividends of The Continental Bank and Trust Company will not exceed \$108,000 per annum until the capital funds of the bank have been increased through retention of earnings by a substantial amount: at least \$600,000 to \$700,000. The Board feels that the present capitalization of the bank is low in relation to its total assets and, particularly, in relation to the amount of its risk assets (total assets less Cash and Government securities). Therefore, the Board wishes to emphasize the fact that its present action in approving the application for membership is not to be construed as approving in any way the bank's capital position or as indicating that the Board may not hereafter insist on an increase in the bank's capital or on the correction of any undesirable condition." (Exh. 52) (Underscoring supplied)

In compliance with the understanding stated in this letter with respect to dividends, Continental did not increase its dividends until after its capital funds had been increased by \$700,000. Nevertheless, each examination of Continental subsequent to its admission to membership indicated that, because of changes in the risk quality of its assets, its capital structure was still low in relation to the character and condition of its assets and liabilities. On each such occasion, corrective action was urged, but the Bank refused to take any further steps to improve its capital situation.

By letter dated February 10, 1956, the Federal Reserve Bank of San Francisco informed Continental that, after review of its capital situation, the Board of Governors believed that corrective action was needed; and advice was requested within 60 days as to what steps the Bank would take to provide not less than \$1,500,000

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of net additional capital funds by the sale of additional common stock. Continental issued notice of a special stockholders' meeting to consider an increase in capital; but the notice was accompanied by a letter from Mr. Walter E. Cosgriff, President of Continental, opposing such action, and the stockholders rejected the request.

On June 29, 1956, the Board issued to Continental a notice of institution of a proceeding with a formal hearing, stating that, if reports of examination of Continental made by the Federal Reserve Bank of San Francisco were correct, they indicated that the capital and surplus funds of Continental were inadequate, and that the hearing was being ordered to determine:

"(1) the adequacy or inadequacy of the net capital stock and surplus of the Bank in relation to the character and condition of its assets and its present and prospective deposit liabilities and other corporate responsibilities;

"(2) the additional amount of capital funds, if any, needed by the Bank; and

"(3) what period of time would be reasonable to allow the Bank to increase its capital funds to make them adequate, before being required by the Board to surrender its Federal Reserve Bank stock and forfeit its membership in the System."

The Board of Governors, having no hearing examiner on its staff, requested the Civil Service Commission to select and assign, in accordance with section 11 of the Administrative Procedure Act (5 U.S.C. 1010), a hearing examiner to conduct the hearing ordered by the Board. From its list of qualified hearing examiners, the

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Civil Service Commission selected an examiner on the staff of the Federal Power Commission to conduct the Board's hearing. In connection with this matter, the Board retained a private attorney to act as Special Counsel in representing the Board.

Commencement of the hearing for the purpose of taking evidence was delayed by Continental's petition in the United States District Court for the District of Utah to enjoin the conduct of the hearing by the Trial Examiner, on the ground that the Board lacked authority to order the proceeding. The District Court denied the Bank's petition and, on appeal to the United States Court of Appeals for the Eighth Circuit, that Court affirmed the judgment of dismissal. The Court held that, since the Board was authorized by statute to conduct the hearing and had lawfully delegated such authority to the Trial Examiner, the Board was an indispensable party to the action, and that, inasmuch as the Board had not been joined as a party defendant, the petition should be dismissed. The Continental Bank and Trust Co. v. Woodall, 239 F.2d 707 (1957), cert. den. 353 U. S. 909.

In April 1957, the hearing began for the purpose of taking evidence and, with numerous adjournments, it continued until November 1958. In March 1959, the Trial Examiner filed his Report and Recommended Decision. He recommended that the proceeding be dismissed for (1) want of jurisdiction or lawful authority, (2) violation of due process of law, and (3) failure to sustain the burden of proof.

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Exceptions to the Trial Examiner's Report and Recommended Decision, with a supporting brief, were filed by Special Counsel to the Board, and Counsel for Continental filed a brief in opposition thereto. Oral arguments by both Counsel were heard by the Board on July 22, 1959.

The conclusions of the Trial Examiner may be briefly summarized as follows: First, as to the Board's statutory authority, he concluded that the Board has no authority under the law to prescribe regulations requiring maintenance of adequate capital by a State member bank; that, even if such authority may be implied from various provisions of the Federal Reserve Act, the law contains no constitutionally adequate standards to guide the Board in exercising such authority; that, in any event, the Board's regulation on the subject is too vague and indefinite to be enforceable; that, even if Condition of Membership No. 2 is enforceable as a condition precedent to membership, it is invalid as applied subsequent to membership; and that such condition is in derogation of the authority of the Federal Deposit Insurance Corporation to terminate deposit insurance upon a finding of "unsafe and unsound" banking practices. Second, aside from the question of the Board's authority, the Trial Examiner concluded that requirements of due process of law were not observed during the 1956-1958 hearing because of the indefiniteness of the notice of that hearing, the refusal of the Board to permit access by Counsel for Continental to certain material in the Board's files, bias and prejudice on the part of certain witnesses called by Special

Counsel to the Board, and because of certain other stated reasons. Finally, the Trial Examiner concluded that the evidence at that hearing was not sufficient to establish a violation by Continental of Condition of Membership No. 2. On the basis of these conclusions, the Trial Examiner recommended that the proceeding be dismissed.

II. LEGAL ASPECTS OF THE CASE

Forfeiture of a State member bank's membership in the Federal Reserve System is provided for by the ninth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 327) which reads as follows:

"If at any time it shall appear to the Board of Governors of the Federal Reserve System that a member bank has failed to comply with the provisions of this section or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto, or has ceased to exercise banking functions without a receiver or liquidating agent having been appointed therefor, it shall be within the power of the board after hearing to require such bank to surrender its stock in the Federal reserve bank and to forfeit all rights and privileges of membership. The Board of Governors of the Federal Reserve System may restore membership upon due proof of compliance with the conditions imposed by this section."

In the present case there is no question of cessation of banking functions. Accordingly, the Board's authority to forfeit membership for violation of Condition of Membership No. 2 must depend upon (1) whether violation of a condition of membership constitutes a failure to comply with the provisions of section 9 of

the Federal Reserve Act or with regulations of the Board made pursuant thereto; (2) whether Condition of Membership No. 2 is a valid condition prescribed pursuant to the Act; and (3) whether, in the event of noncompliance with such condition, any action taken by the Board meets the requirements prescribed by the ninth paragraph of section 9 of the Federal Reserve Act and any other applicable procedural requirements, including due process of law.

Violation of condition of membership as ground for forfeiture of membership. - It has been recognized by judicial decision that the Board has authority, after hearing, to terminate membership of a State member bank that fails to comply with a condition of membership imposed by the Board and accepted by such bank, if it is a valid condition prescribed pursuant to the Federal Reserve Act. Peoples Bank v. Eccles, 161 F. 2d 636 (1947), reversed on other grounds, 333 U. S. 426 (1948). Implicit in the Court's holding in that case was the conclusion that violation of a validly prescribed condition of membership constitutes a violation either of the provisions of section 9 of the Federal Reserve Act or of some regulation prescribed by the Board pursuant thereto, or both. For the reasons hereafter indicated, it is the Board's opinion that violation of such a condition constitutes a violation of both section 9 of the Act and the present section 6(c) of the Board's Regulation H (12 CFR 208.6(c)).

As has been noted, conditions of membership are authorized by the first paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 321), relating to applications by State banks for membership in the System. That paragraph provides in part:

" . . . The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank."

The legislative history of this provision, as reflected in amendments made by Congress in 1917 and in 1927, clearly indicates that Congress did not regard a condition of membership as itself constituting a "regulation". Although the so-called "standard" conditions of membership, including Condition of Membership No. 2, are contained in section 7 of the Board's Regulation H (section 6 at the time of Continental's admission), they are set forth there for the information of State banks that may wish to become members of the System and are not themselves of a regulatory nature.

Since Condition of Membership No. 2 is not itself a "regulation" as to capital adequacy, the Board finds it unnecessary to consider the question posed by the Trial Examiner whether the Board has statutory authority to prescribe regulations on this subject or whether the law prescribes adequate standards for such regulations.

In the Board's opinion, the provision of the first paragraph of section 9, heretofore quoted, with respect to the Board's authority to impose conditions of membership, must be read as implicitly providing that any State bank voluntarily

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becoming a member of the System shall comply with conditions of membership imposed by the Board pursuant to the Act. Otherwise, the Board's authority to prescribe such conditions would be meaningless. Consequently, violation of such a condition constitutes a violation of this provision of the Act.

In addition, noncompliance with a condition of membership also constitutes a violation of section 6(c) of the Board's Regulation H (section 7(c) at the time of Continental's admission) which expressly provides:

"Every State bank while a member of the Federal Reserve System -

* * *

"(c) Shall comply at all times with any and all conditions of membership prescribed by the Board in connection with the admission of such bank to membership in the Federal Reserve System; . . ."

Under section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), the Board is authorized to "make all rules and regulations necessary to . . . perform the duties, functions, or services specified in this Act." One of the Board's statutory duties and functions is the prescribing of conditions of membership. The Board cannot effectively perform this duty and function without the power to require compliance with conditions so prescribed. It is clear, therefore, that the Board has authority to prescribe by regulation that State member banks shall comply with conditions of membership; otherwise, a State member bank, having voluntarily accepted such conditions, could disregard them after becoming a member and the purpose of the law would be wholly nullified.

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A violation of a valid condition of membership is, therefore, both a noncompliance with the first paragraph of section 9 of the Federal Reserve Act and with section 6(c) of the Board's Regulation H issued pursuant thereto. It remains to be considered whether Condition of Membership No. 2 is a valid condition of membership.

Validity of Condition of Membership No. 2. - The fourth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 322) requires the Board, in acting upon an application for membership, to consider:

" . . . the financial condition of the applying bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purposes of this Act."

Consideration of the "financial condition" of a bank applying for membership and of the "general character of its management" reasonably justifies, and even requires, the imposition by the Board of a condition regarding the capital adequacy of a bank admitted to membership. It is the Board's opinion, therefore, that such a condition is properly to be regarded as one prescribed "pursuant" to the fourth paragraph of section 9 of the Federal Reserve Act. At the same time, the language found in that paragraph of the Act contains statutory guides which, in the Board's judgment, are at least as specific as standards that have been sustained by the United States Supreme Court against contentions of unconstitutional delegations of legislative powers.

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Moreover, it is the Board's opinion that the language of Condition of Membership No. 2 itself, which relates capital adequacy to the character and condition of a bank's assets and its deposit liabilities and other corporate responsibilities, is sufficiently definite to overcome charges of vagueness made by Continental and by the Trial Examiner to the same effect.

The Board disagrees with the conclusion of the Trial Examiner that, even if the Board has authority to prescribe Condition of Membership No. 2 as a condition precedent to membership, it has no authority to prescribe it as a condition subsequent to membership. Such a position would mean that a bank could be required to have adequate capital in order to be admitted to membership, but that, once a member, it could freely allow its capital situation to deteriorate without regard to the safety of its depositors or the general desirability of maintaining a sound banking system.

Similarly untenable, in the Board's opinion, is the Trial Examiner's conclusion that termination of a State bank's membership in the Federal Reserve System for capital inadequacy would be in derogation of the authority of the Federal Deposit Insurance Corporation to terminate such bank's deposit insurance for unsafe or unsound banking practices. The Federal Reserve Act and the Federal Deposit Insurance Act are separate statutes conferring

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separate authority. The Federal Deposit Insurance Act itself recognizes that the Federal Deposit Insurance Corporation does not have "exclusive" authority to issue and terminate deposit insurance as to banks that are members of the System. Under the provisions of that Act, State banks that are admitted to the Federal Reserve System are insured without application to the Federal Deposit Insurance Corporation, and State banks whose membership in the System is terminated by the Board automatically lose deposit insurance.

Procedural requirements. - Under the ninth paragraph of section 9 of the Federal Reserve Act, heretofore quoted, membership of a State member bank may not be forfeited (1) until after it shall "appear" to the Board that the bank "has failed to comply" with section 9 of the Act or regulations pursuant thereto, and (2) until after a hearing held with respect to such noncompliance.

Although, as has been noted, the Board in February 1956 had expressed the view that Continental should increase its capital by at least \$1,500,000, no final determination as to whether Continental's capital was inadequate or, if so, the amount of such inadequacy, had been made by the Board at the time of the institution of the 1956-1958 hearing. That hearing was ordered for the purpose of receiving evidence upon which the Board might base a determination of the adequacy of the Bank's capital. The notice of that hearing did not charge the Bank with having failed to comply with Condition of Membership No. 2 or with section 9 of the Federal Reserve Act and

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regulations pursuant thereto; such a charge would be appropriate only in the event of failure of the Bank to comply with the Board's Order of today's date. Consequently, arguments made by Counsel for Continental as to the failure of the Board in the 1956-1958 hearing to sustain its "burden" of proving a violation of law or regulation are irrelevant and the Trial Examiner's conclusions in this respect are therefore rejected.

Counsel for Continental asserted, and the Trial Examiner concluded, that the 1956-1958 hearing failed to comply in certain respects with requirements of due process of law. Without passing upon the validity of these assertions and conclusions, but in order to avoid any questions in this respect, the Board has excluded from its consideration any evidence which in its judgment might reasonably be regarded as inconsistent with principles of due process and fair play in respect to the 1956-1958 hearing and the Board's Order of today's date. For this reason only and without impugning their good faith or passing upon the Trial Examiner's finding that their testimony was biased, the Board has excluded from consideration all testimony by Messrs. Holahan, Millard, Shaw and Walker. Also excluded from consideration is the so-called "19-bank" study and all evidence based thereon.

Despite the Trial Examiner's conclusion to the contrary, the Board is of the opinion that the tender to Continental of the confidential portions of reports of examinations of that Bank,

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although made late in the hearing, was nevertheless sufficiently timely to permit the Bank's use of them for every proper purpose. The Board does not believe that such inconvenience to Continental as may have been occasioned by the late tender of these materials constitutes denial of due process of law. However, in order again to avoid any question in this respect, the Board has excluded from its consideration evidence adduced at the hearing that, in the Board's judgment, could reasonably be considered as based upon or influenced by information in such confidential sections of reports of examination.

To the extent that the Trial Examiner's conclusions as to the Board's lack of statutory authority in this matter, failure to sustain its burden of proof, and denial of due process of law, are inconsistent with the above-stated conclusions of the Board, the Trial Examiner's conclusions and his recommendations based thereon are hereby rejected for the reasons heretofore indicated. The Board also rejects all other findings and conclusions of the Trial Examiner including his findings and conclusions regarding the adequacy of Continental's capital, to the extent that they are inconsistent with the findings and conclusions of the Board as heretofore or hereafter set forth in this Statement.

III. CONTINENTAL'S CAPITAL NEEDS

A decision on the question whether a particular bank's "net capital and surplus funds" are "adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities" - the language of Condition of Membership No. 2 - requires the formation in each case of a reasonable judgment based on all relevant factors and formed in the light of experience in this field.

The factual information considered in this case derives principally from Continental's own books and records, and is reflected largely in reports of examination of that Bank, copies of which were furnished to it, as well as in supervisory reports filed by the Bank. The Board has considered not only information to the date of the 1956-1958 hearing, but also, in order to be more currently realistic and to give Continental the benefit of any later net improvement in its capital situation, subsequent information to the present time.

Recognizing that no single formula or mechanistic rule can show definitely whether a particular bank's capital is adequate and that this question must depend upon consideration of all relevant circumstances, the Board in this case has taken into account all of the evidence adduced at the 1956-1958 hearing relating to the adequacy of Continental's capital except that portion of the evidence heretofore excluded for the reasons stated. It was made clear during that hearing that it is the practice of experts in this field to consider certain initial or preliminary tests in appraising a bank's capital situation, with subsequent adjustments for

special factors not given effect fully in the initial tests, before reaching a final judgment as to whether a bank's capital is adequate or inadequate. Among such initial or preliminary tests are (1) the ratio of capital to total deposits; (2) the ratio of capital to total assets; (3) the ratio of capital to so-called "primary risk" assets (total assets less cash assets and U. S. Government securities); (4) the ratio of capital to so-called "secondary risk assets" (total assets less cash assets, U. S. Government securities, Government guaranteed assets, and certain other similar assets); (5) a test in the nature of a schedule of different capital requirements against different types of assets formulated by the Federal Reserve Bank of New York; (6) a somewhat similar schedule prepared for the Illinois Bankers Association; and (7) a somewhat similar and more specific schedule developed by the staff of the Board of Governors.

Expert witnesses* called on behalf of the Board during the hearing applied one or more of these preliminary tests and then made

*Eleven expert witnesses called by the Board testified as to the capital needs of Continental; however, as mentioned previously no consideration has been given the testimony of Messrs. Holahan, Millard, Shaw, and Walker. Mr. George R. Wilkinson, Senior Examiner employed by the Federal Reserve Bank of Kansas City, expressed an opinion on the subject of capital adequacy only to the extent of stating the amount of additional capital needed to bring the ratio of capital to so-called "secondary risk assets" to approximately 1 to 6. The six other witnesses called by the Board were:

Brumbaugh, D. Emmert, President of the First National Bank of Claysburg, Pennsylvania, had served four years as Secretary of Banking of the Commonwealth of Pennsylvania and for four years before that as a member of Congress during which time he served on the House Banking and Currency Committee.

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adjustments for special or additional factors before reaching their ultimate judgments as to Continental's capital situation. A summary of their judgments on this basis is indicated by the following table:

Appraisals of Continental's Capital Inadequacy as
of October 16, 1956

(dollar amounts in thousands)

<u>Expert Witness</u> (A)	<u>Appraisal of Inadequacy</u> (B)	<u>Actual Capital</u> (C)	<u>% of Actual Capital (C) to Capital Need (B plus C)</u> (D)
Brumbaugh	\$ 2,500	\$3,547	59
Crosse	3,500	"	51
Greensides	3,000	"	55
Jennings	2,240-2,500	"	61-59 ^{1/}
Marshall	3,000	"	55
Sutherland	3,600	"	50

^{1/} Witness testified Bank needed about \$2,500,000 of additional capital. As a recapitalization program he suggested sale of 140,000 shares of common stock to yield, depending upon market conditions, about \$2,240,000 to \$2,520,000.

*Footnote p. 18 (cont'd)

Crosse, Howard D., now Vice President in Charge of Bank Examinations for the Federal Reserve Bank of New York.

Greensides, Neil G., Chief, Division of Examination and Acting Assistant to the Chairman of the Federal Deposit Insurance Corporation.

Jennings, Llewellyn A., First Deputy Comptroller of the Currency; now Senior Vice President and Member of Executive Committee, Republic National Bank, Dallas, Texas.

Marshall, Harold J., President of the National Bank of Westchester, White Plains, New York, lecturer on bank capital at the Graduate School of Banking conducted at Rutgers University by the American Bankers Association, and formerly president of Manufacturers National Bank of Troy, Troy, New York.

Sutherland, Allen J., employed by the Security Trust and Savings Bank, San Diego, California, since 1928, had been president of the bank since 1945.

Witnesses* called by Continental during the hearing, and also Continental's counsel, presented certain general arguments to support their conclusion that Continental's capital was adequate. First they contended that the Board must have found Continental's capital to be adequate when it was admitted to membership on February 1, 1952, and that the Bank's capital position has remained as good or better since that time. This argument ignores the facts, heretofore mentioned, that when the Board admitted the Bank to membership the Board specifically found the Bank's capital to be inadequate by at least \$600,000 to \$700,000, admitted it to membership only on condition that at least this much capital be added, and stated that changed circumstances might require further additions of capital in the future. The argument also relies solely on rough initial tests, completely ignoring the essential process of applying experienced judgment to other factors not fully reflected in the preliminary tests.

*Witnesses called by Continental who testified on the subject of capital adequacy were:

Cosgriff, Walter E., President, member of Board of Directors, and controlling stockholder of Continental.

Kent, Raymond P., Professor of Finance at the University of Notre Dame.

Sullivan, Kenneth J., Executive Vice President and member of Board of Directors of Continental.

Dayton, Newell B., President, Tracy Collins Trust Company, Salt Lake City, Utah. (Mr. Dayton's testimony was restricted to the value of the bank premises occupied by Continental.)

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Continental further argued that the Board's request in February 1956 for \$1,500,000 additional capital was inconsistent with subsequent statements by Special Counsel for the Board and appraisals of the Board's expert witnesses at the hearing. This argument fails to take into account the fact that for the years 1951, 1952, 1953 and 1954 the Bank's records, as reflected in various reports, had indicated capital deficiencies that would be reasonably corrected by about \$1,500,000 of new capital, and that despite an indication in the latest reports that the deficiency might be widening, the Board gave the Bank the benefit of the doubt as to the possible temporary nature of the worsening. Subsequent information at the time of Special Counsel's statements, and particularly when the expert witnesses testified, dispelled doubts as to the nature of the increased deficiency.

Continental argued that it is adequately capitalized because it survived the 1929-1933 depression and is even stronger today. However, the Bank, then under different management, was according to Mr. Cosgriff not only inadequately capitalized but in fact insolvent in 1929. This argument would lead to the absurd conclusion that the experience of one bank at one time, when it was inadequately capitalized and even insolvent, provides a reasonable test for capital adequacy of all banks.

Continental also argued that its capital is adequate because of the strengthening of the Federal Reserve System's lending powers, the creation of the Federal Deposit Insurance Corporation, the

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development of various forms of Government guarantees for various kinds of loans, and the addition to the economy of other built-in stabilizers; that comparison with other banks is meaningless; and that most other banks have excessive capital. Such arguments, if accepted, would invite every bank to proceed on the theory that it may be imprudent and improvident in its affairs because the Government will take care of it in time of stress. Moreover, such arguments fail to recognize that each bank would need substantially more capital than it now has if it were not for the strength available in time of need from all other banks and from the Federal Reserve System and the FDIC. When one bank provides considerably less than its proportionate share of capital it abuses the composite protection provided by other banks and governmental action, and decreases the protection available to other banks with a resulting increase in the risk which they and the general public must bear.

The Board has carefully considered the arguments of Continental as previously stated above, but, for the reasons indicated, concludes that they cannot be given significant weight in appraising the adequacy or inadequacy of Continental's capital.

In the present case the Board has considered the results suggested by the application of preliminary tests of the kind heretofore

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discussed, and it has also considered whether special circumstances in this case require adjustments, either upward or downward in those preliminary indications of capital need. For example, the Board has taken into account the Bank's investment in buildings and other fixed assets, including the substantial proportion of bank capital invested therein, nonbank income from the property, and testimony as to estimated value currently and in a depression; the nature of Continental's management, including its relationships with a number of smaller banks comprising in effect a "chain" of banks under similar control; and significant trends in capital, various assets and deposits of Continental.

On the basis of all of the circumstances heretofore indicated, and after considering all arguments and relevant evidence in this matter, including the testimony of the witnesses heretofore identified, the results of the application of preliminary tests, further factors in this case not fully given effect in those tests, views expressed by counsel, and the Report and Recommended Decision of the Trial Examiner, the Board has concluded in its judgment that as of October 16, 1956, Continental's net capital and surplus funds were inadequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities by an amount of not less than \$2,200,000.

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Since October 16, 1956, Continental has increased its capital and surplus funds to some extent from retained earnings. On the other hand, there have been substantial changes in the nature and risk quality of its assets, with the result that its capital needs have further increased and the reduction in capital inadequacy has been less than the additions to capital. For example, there has been a significant and substantial shift in the Bank's investments in securities from those with relatively short maturities to securities with much longer maturities. While such a shift to longer maturities may in no way lessen the certainty of the obligations being paid when they mature, nevertheless, such a shift does increase the Bank's risks and need for capital. This is not only because securities with longer maturities generally experience wider fluctuations in market prices, but also because a bank that has reduced its holdings of shorter-term, liquid assets which it might otherwise be able to convert into cash in case of need is more likely to have to sell other assets such as the longer-term obligations.

For the reasons here indicated, it is the Board's judgment, and it so determines, that Continental's net capital and surplus funds are now inadequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, and that such inadequacy in an amount of not less than \$1,500,000 shows no

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likelihood of being corrected within a reasonable time by retained earnings and should in the public interest be corrected by the issuance of additional common stock for cash. While the Board has carefully considered whether this necessary increase might be accomplished by some other means, the Board has concluded on the basis of all relevant information, and in the exercise of its judgment, that such an increase should be effected by the sale of common stock for cash.

The Board has also concluded on the basis of the testimony and after consideration of all circumstances of this case, that a period of six months from the date of the accompanying Order would be an adequate period within which such an increase in capital should be effected by Continental.

Since the present conclusions as to Continental's capital inadequacy are based, as indicated above, on the relationship of its actual capital to its appraised need, a substantial worsening in either would require further consideration and possibly further determinations by the Board.

By Order of the Board of Governors of the Federal Reserve System.

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

July 18, 1960

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 10
7/15/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 21, 1960.



Mr. Bolling R. Powell, Jr.,
Powell, Dorsey, Blum & White,
Attorneys at Law,
1741 K Street, N. W.,
Washington 6, D. C.

Dear Mr. Powell:

This is to confirm the oral understanding reached between you and Governor Balderston in your meeting on July 20, 1960, as to the nature and extent of future services of your firm on behalf of the Board in connection with proceedings regarding the capital adequacy of The Continental Bank and Trust Company, Salt Lake City, Utah.

If the Bank should comply with the Board's Order of July 18, 1960, directing it to increase its capital, neither you nor your firm would be needed any longer. If, however, the Bank should institute litigation against the Board as a result of that Order, the matter presumably would be handled by the Department of Justice.

In the light of the terms of the Board's Order of July 18, 1960, no further administrative proceedings will be necessary unless the Bank fails to comply with that Order, in which event such proceedings would not be instituted until after expiration of six months from the date of the Order. If such proceedings were instituted, or if in the meantime the matter gave rise to litigation, the Board would then advise you whether it wished to retain your services in connection therewith.

For these reasons, it is understood that, without terminating the retainer agreement contained in the Board's letter of May 25, 1956, as amended January 1, 1959, in accordance with the Board's letter of January 21, 1959, you or your firm will not perform any services on the Board's behalf pursuant to that agreement unless and until you are requested by the Board to do so.

The Board wishes to express its recognition and appreciation of the skillful and careful manner in which you have handled this case, particularly in the light of the complexity and novelty of the questions involved and the magnitude of the work entailed.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.