FR 609
Rev. 10/59

Minutes for November 29, 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 Tuesday, November 29, 1960. The Board met in the Board Room at 10:00 a.m.

PRESENT: Mr. Martin, Chairman
Mr. Balderston, Vice Chairman
Mr. Szymczak
Mr. Robertson
Mr. King

Mr. Sherman, Secretary
Mr. Kenyon, Assistant Secretary
Mr. Thomas, Adviser to the Board
Mr. Hackley, General Counsel
Mr. Noyes, Director, Division of Research and Statistics
Mr. Masters, Associate Director, Division of Examinations
Mr. Hexter, Assistant General Counsel
Mr. Brill, Associate Adviser, Division of Research and Statistics
Mr. Hostrup, Assistant Director, Division of Examinations
Miss Hart, Assistant Counsel
Mr. Smith, Legal Assistant
Mr. Solomon, Chief, Capital Markets Section, Division of Research and Statistics
Mrs. Ulrey, Economist, Division of Research and Statistics

Discount rates. The establishment without change by the Federal Reserve Banks of Boston, Atlanta, and Minneapolis on November 28, 1960, of the rates on discounts and advances in their existing schedules was approved unanimously, with the understanding that appropriate advice would would be sent to those Banks.

Questions under section 221.3(q) of Regulation U. In connection with the revision of Regulation U that became effective June 15, 1959, the Board adopted section 221.3(q) to close a loophole through which unregulated bank credit was available to the stock market. The procedure

involved the making of unsecured loans by banks to finance companies or other nonregulated persons, with the latter relending the funds for the purpose of purchasing or carrying registered securities. Section 221.3(q) provided that after June 15, 1959, loans by banks to a person engaged principally, or as one of the person's important activities, in the business of making loans for the purpose of purchasing or carrying registered stocks might not be made "without collateral or without the loan being secured as would be required...if it were secured by any stock" and that all loans to such persons, no matter when made, would be subject to all of the other provisions of Regulation U unless "effectively and unmistakably separated and disassociated from any financing or refinancing, for the borrower or others, of any purchasing or carrying of stocks so registered."

In order that bank loans to such persons might be identified, the Board adopted section 221.3(j), which required all lenders making any "purpose" loans in the ordinary course of business to file such reports as the Board might specify. Subsequently, the Board adopted Form FR 728 in order to obtain sufficient data from nonregulated lenders to determine those whose activities were of the kind described in section 221.3(q).

Financial reports on Form FR 728 had now been received from nearly 200 lenders, other than banks or brokers, and the information obtained was summarized in a memorandum from Mrs. Ulrey dated November 21, 1960, copies of which had been distributed to the Board. There had also been distributed copies of a memorandum from the Legal Division, likewise dated November 21, 1960, presenting several procedural questions for the Board's consideration

before the staff made further use of the information received on FR 728 or developed another reporting form for use in collecting data on a regular basis from lenders such as described in section 221.3(q).

The questions, and the instructions given by the Board to the staff following consideration of the respective questions, were as follows:

> 1. Shall the staff submit to the Securities and Exchange Commission, for cross-checking, a list of persons who have filed Form FR 728 and ask the assistance of the Commission's staff in locating persons who should have filed and have not done so? Should the staff raise with the Commission the question of imposing legal penalties on persons who may have willfully failed to file?

The staff was authorized to work with the staff of the Securities and Exchange Commission and to exchange such information as seemed appropriate. However, it was understood that the staff would not raise specifically with the Commission's staff the question of imposing legal penalties on persons who failed to file Form FR 728.

> 2. Shall the staff include in the regular reporting list (a) all persons whose lending activities are substantial when measured against their total assets, and 50 per cent or more of whose loans made to other persons as of their reporting date were secured by registered stock; (b) all persons whose reports on Form FR 728 give rise to a reasonable doubt as to whether they are lenders such as described in section 221.3(q); (c) all persons newly reporting in the future on Form FR 728 who are not clearly excludable from the classification of lenders described in section 221.3(q)?

The staff was given a wide range of discretion, working in cooperation with the staff of the Securities and Exchange Commission, to determine standards for the definition of persons who should be required

to report regularly, with the understanding that the staff might return to the Board for further guidance if necessary.

3. Shall the staff ask the Federal Reserve Banks of the districts where the respective lenders are located: (a) in the case of those reporting on Form FR 728 who have stated their intention to go out of the business, to make certain that they have in fact done so; (b) in the case of those who stated that they had ceased to be so engaged, to advise the firms that they must file a new report on FR 728 within 90 days after making any fresh purpose loans; (c) in the cases just mentioned, as well as of those who were not lenders described in section 221.3(q) when they filed FR 728 but who might become so in the future, to make a periodic investigation, perhaps once a year, to find out whether the persons concerned should be reclassified?

The staff was authorized to proceed generally along the lines contemplated by the foregoing questions, with the understanding that appropriate letters would be sent to the Federal Reserve Banks concerned.

4. In drafting the proposed reporting form, shall the staff include information requested by the Securities and Exchange Commission which, although it might be consistent with the Board's objectives under the Securities Exchange Act, would be wanted principally for the benefit of the Commission to assist the Commission in carrying out its own responsibilities under the Act?

The staff was given wide latitude for the exercise of discretion in determining the scope of the proposed reporting form, subject to the general understanding that there should be some justification, in terms of the Board's responsibilities, for whatever information might be requested on the form. This understanding indicated that it would be of doubtful propriety to request information, not needed by the Board, that the Securities and Exchange Commission did not itself have the authority to require and therefore might wish to obtain through the Board's form.

5. Does the Board wish to authorize the staff to send letters to the appropriate Federal Reserve Banks asking them to investigate bank loans to persons who have reported on Form FR 728 and who are believed clearly to be lenders of the kind described in section 221.3(q)?

It was understood that such a procedure would be followed.

6. Does the Board approve sending letters to Federal Reserve Banks requesting them to make inquiries in order to find out whether particular lenders, whose volume of purpose lending would suggest that they be classified as lenders described by section 221.3(q), are actually in the business of making purpose loans?

No objection was indicated to the sending of such letters.

Messrs. Thomas, Noyes, Brill, Solomon, and Smith then withdrew, as did Mrs. Ulrey.

Application of Bank Stock Corporation of Milwaukee. There had been distributed to the Board copies of two memoranda from the Division of Examinations dated July 18, 1960, and a memorandum from the Legal Division dated November 23, 1960, concerning the application of Bank Stock Corporation of Milwaukee, Milwaukee, Wisconsin, pursuant to section 3(a)(2) of the Bank Holding Company Act, for prior approval of the acquisition of 80 per cent or more of the authorized and outstanding common stock of The Bank of Commerce, Milwaukee, Wisconsin.

The recommendation of the Deputy and Acting Commissioner of Banks for the State of Wisconsin was favorable, as was the recommendation of the Federal Reserve Bank of Chicago. The Division of Examinations recommended issuance of a notice of tentative decision granting the application.

On receiving notice that the application had been filed, the Department of Justice asked for and was granted permission to file a statement in opposition. Such a statement was received late in July, and applicant filed a response in August. Early in September the Justice Department filed a statement in reply, which applicant elected not to answer. The Department of Justice expressed the view that the proposed acquisition would diminish competition to such an extent as to violate section 7 of the Clayton Act, and stated that it could find no favorable circumstances sufficient to justify such a request.

The memorandum from the Legal Division reviewed the legal aspects of the case in considerable detail, particularly in the light of the questions raised by the Justice Department. It was the view of the Legal Division that either approval or denial of the application could be reconciled with prior positions of the Board, that the Board's judgment would be accorded considerable weight if applicant were to challenge in court a denial of the application, and that a favorable decision would similarly receive respectful attention if the Justice Department should thereafter bring an antitrust action to prevent the acquisition.

At the request of the Board, Mr. Hostrup summarized the application, pointing out in his concluding remarks that this was not a case where the applicant was promising to bring about improvement of the condition of the bank sought to be acquired. This improvement had already been accomplished by the present management, and it appeared that the condition of the bank

would continue to be favorable if the application were approved. If the application were denied, the new owners of the bank might continue the favorable trend, but one could not be certain.1/ The Division of Examinations did not feel that it was the Board's responsibility to check out alternatives to a proposal offered by an applicant under section 3 of the Bank Holding Company Act, and that instead the Board must weigh the five factors enumerated in section 3(c) of the Act and then reach a decision. While this was a close case, the Division felt that the favorable considerations weighed more heavily than the unfavorable factors.

Mr. Hackley indicated that the Legal Division found this a rather difficult case. Although the applicant bank holding company might be regarded as a rather small company and the bank proposed to be acquired was a relatively small bank, the evidence did not seem to indicate that the acquisition would result in any improvement in the management or financial condition of the bank. Also, although the holding company had only two subsidiary banks, it was the second largest of three holding companies controlling together about 80 per cent of total bank deposits in the city of Milwaukee. While it was not clear that the acquisition

1/ In its response to the statement in opposition filed by the Department of Justice, the applicant indicated that the majority stockholder of Bank of Commerce, Mr. A. S. Puelicher, would have to dispose of his stock "because of business and financial reasons." In the material presented to the Board, Mr. Puelicher was described as Chairman of the Board and President of Bank Stock Corporation of Milwaukee; Chairman of the Board of Marshall and Ilsley Bank, Milwaukee, a subsidiary of the applicant; Chairman of the Board of Northern Bank, Milwaukee, another subsidiary of the applicant; and Chairman of the Board and President of Bank of Commerce.

would result in a substantial lessening of competition, it seemed likely that there would be some lessening of competition in view of the overlapping primary service areas of the bank to be acquired and the subsidiary banks of the applicant company. The Justice Department had not only expressed the view that the acquisition would have an adverse effect on competition but had expressed the opinion that the acquisition would constitute a violation of the Clayton Act because it would involve a substantial lessening of competition and a tendency toward monopoly.

Mr. Hackley pointed out that the Bank Holding Company Act specifically preserves the applicability of the Clayton Act despite the Board's approval of an application under the Bank Holding Company Act. The present application, he said, involved essentially a matter of judgment as to whether the possible adverse effects on competition were sufficiently outweighed by any favorable considerations to warrant approval of the application.

Governor Robertson indicated that he would be inclined to oppose granting the application. It appeared to him that there was direct competition to a substantial degree between the bank proposed to be acquired and at least one unit of the holding company system, and that this adverse factor was not offset by any favorable factor. The Board must look at the case in the present circumstances, he said, and not as of the time when the independent bank was acquired by its present owner. It appeared likely that the independent bank would remain profitable and a good competitor, while approval of the application would wipe out the bank as

an independent unit and thus the competition afforded by it. He did not feel that examination of the first four factors required to be considered by the Bank Holding Company Act disclosed favorable considerations sufficient to offset the unfavorable considerations under the fifth factor.

Governor King suggested that this case pointed up the limitations in attempting to deal with a situation involving close relationships between a bank holding company and a bank proposed to be acquired by it. By this, he referred to the fact that the majority stockholder of the bank proposed to be acquired was also identified prominently with the applicant and its subsidiary banks, and that close business relationships already existed between Bank of Commerce and the holding company's principal subsidiary bank. Looking at the situation from a practical point of view, he doubted that he could find justification for denial of the application. He noted that the independent bank had been plagued by management problems prior to its acquisition by the present ownership, and in all the circumstances he could not persuade himself that it would serve the public interest to risk having the bank returned to inadequate management.

After further discussion with regard to the scope and intent of the provisions of the Bank Holding Company Act, Chairman Martin noted that the recommendation of the Federal Reserve Bank of Chicago had been favorable. He suggested, therefore, that the Board might wish to have its staff advise the Reserve Bank that there were questions within the Board concerning this application and inquire whether the Reserve Bank would like to present additional information or comments.

This suggestion was discussed in the light of the procedure followed by the Board in other cases, both under the Bank Holding Company Act and the Bank Merger Act, and reasons were stated for and against following the practice of checking with the Reserve Bank concerned when it appeared that the Board might reach a decision contrary to the recommendation of the Reserve Bank.

At the conclusion of the discussion, it was agreed that the procedure suggested by Chairman Martin would be followed in this case and that the application would then be considered further by the Board.

Messrs. Johnson, Director, Division of Personnel Administration, Sprecher, Assistant Director of that Division, and Chase, Assistant General Counsel, entered the room at this point.

Letter to Civil Service Commission (Item No. 1). After consideration of a draft that had been distributed to the members of the Board at the beginning of this meeting, unanimous approval was given to a letter to the United States Civil Service Commission, in the form attached as Item No. 1, in reply to a bulletin of the Commission that, in effect, requested certain information on positions with the Board of Governors having an entrance salary of $10,000 or more and excepted by statute from the Civil Service Rules and Regulations.

The meeting then adjourned.

Secretary

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

Item No. 1
11/29/60

OFFICE OF THE CHAIRMAN

November 29, 1960.

Chief, Program Systems and
Instructions Division,
United States Civil Service Commission,
Washington 25, D. C.

Dear Sir:

Receipt is acknowledged of your Bulletin No. 213-2 dated November 22, 1960, asking for certain information on positions with the Board of Governors for which the entrance salary is $10,000 or more and which are excepted by statute from the Civil Service Rules and Regulations.

The same information as that called for by this Bulletin was forwarded to your Commission, attention of Mr. John D. Glasheen, Chief, Program Management Review Section No. 5, under date of November 23, 1960, in response to an oral request. That request assumed that all positions on the Board's staff are properly listed in Schedule A (C.F.R. Title 5, Sec. 6.119), but my letter transmitting the information pointed out that it is not clear that the positions on the Board's staff should be listed in that schedule rather than in a separate list of positions excepted by statute. This is because all appointments to the Board's staff are made pursuant to U. S. Code, Title 12, Sec. 248(1) which provides that all employees of the Board "shall be appointed without regard to the provisions of" the Civil Service Act.

Sincerely yours,

Wm. McC. Martin, Jr.