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Minutes for August 6, 1962

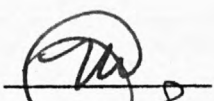
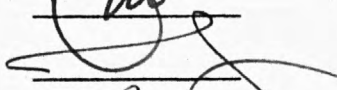
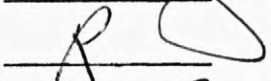
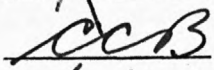
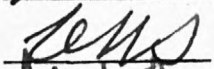
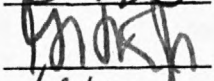
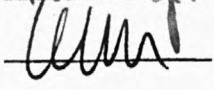
To: Members of the Board

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. Mills	
Gov. Robertson	
Gov. Balderston	
Gov. Shepardson	
Gov. King	
Gov. Mitchell	

Minutes of the Board of Governors of the Federal Reserve System on Monday, August 6, 1962. The Board met in the Board Room at 10:00 a.m.

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

Mr. Kenyon, Assistant Secretary  
 Mr. Fauver, Assistant to the Board  
 Mr. Solomon, Director, Division of Examinations  
 Mr. Johnson, Director, Division of Personnel Administration  
 Mr. O'Connell, Assistant General Counsel  
 Mr. Shay, Assistant General Counsel  
 Mr. Goodman, Assistant Director, Division of Examinations  
 Mr. Potter, Senior Attorney, Legal Division  
 Mr. McClintock, Supervisory Review Examiner, Division of Examinations  
 Mr. Smith, Assistant Review Examiner, Division of Examinations

Circulated or distributed items. The following items, which had been circulated or distributed 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 Colonial Bank and Trust Company, Waterbury, Connecticut, approving the establishment of a branch in Southbury.	1
Letter to Bankers International Financing Company, Inc., New York, New York, granting consent to the purchase of shares of Fabrica Espanola Magnetos S.A., Madrid, Spain.	2

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	<u>Item No.</u>
Letter to the Federal Reserve Bank of New York regarding plans of Union County Trust Company, Elizabeth, New Jersey, to establish a Bond Department.	3
Letter to First National City Bank, New York, New York, approving the establishment of a branch in Delhi, India.	4
Letter to Virgin Islands National Bank, Charlotte Amalie, St. Thomas, Virgin Islands, granting an extension of time to purchase the shares of a corporation (Vinbank Realty, Inc.) organized for the purpose of holding the premises of the bank.	5
Letter to Wells Fargo Bank, San Francisco, California, approving an extension of time to establish a branch in Salinas.	6
Letter to Wells Fargo Bank, San Francisco, California, approving an extension of time to establish a branch in Redding.	7
Telegram to the Federal Reserve Bank of San Francisco interposing no objection to additional leave without pay for Mr. O'Kane to permit him to continue to act as California State Superintendent of Banks.	8

Messrs. Goodman and McClintock then withdrew from the meeting.

First Wisconsin Bankshares Corporation. In preparation for the oral presentation to be held tomorrow on the application of First Wisconsin Bankshares Corporation, Milwaukee, Wisconsin, to acquire shares of Merchants & Savings Bank, Janesville, Wisconsin, there had been distributed copies of a memorandum from the Division of Examinations dated July 17, 1962.

At the Board's request, Mr. O'Connell commented with regard to the arrangements for tomorrow's oral presentation. In reply to a

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question, he pointed out that a hearing before a hearing examiner was required under the Bank Holding Company Act with respect to the application of The Marine Corporation, Milwaukee, to acquire shares of Beloit State Bank, Beloit, Wisconsin, because the Wisconsin Commissioner of Banks had submitted a recommendation for disapproval of the application within the 30-day period provided by law for receipt of his comments. (That hearing was to be held beginning August 14, 1962.) In the case of the First Wisconsin application, the State Commissioner also recommended adversely, but his recommendation was not received within the prescribed 30-day period. This circumstance provided an option as to procedure and on June 18, 1962, the Board decided to hold an oral presentation rather than to order a hearing before a hearing examiner. The Commissioner of Banks had been advised of the oral presentation, but it was understood that he was in ill health, and there was no indication that he would be present at the oral presentation. The Department of Justice also had been advised, but there was no indication as to whether it would have a representative present.

Messrs. Fauver, Johnson, O'Connell, and Smith then withdrew from the meeting.

Continental Bank and Trust Company (Items 9 and 10). Governor Robertson requested that the record show that although he would remain in the room for the following discussion of a matter involving the administrative proceeding against The Continental Bank and Trust Company, Salt Lake City, Utah, he would not participate in the discussion or any

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action that might be taken by the Board, in accordance with his long-standing position of having withdrawn from participation in that proceeding.

The Board had before it for consideration a memorandum from Mr. Hackley dated August 2, 1962, submitting a draft of proposed orders of the Board with respect to Continental Bank and Trust Company's pending Motion to Produce, Demand for Particulars, and Motion to Dismiss and Demand for Final Order. Attached to the memorandum were copies of the several motions and demands, reply memoranda filed by Counsel for the Board, and memoranda filed by Counsel for the bank. With his memorandum Mr. Hackley also submitted a draft of a Board statement intended to accompany the issuance of the proposed orders. The proposed statement of the Board was believed necessary in order to set forth the reasons for the Board's actions in denying certain of the bank's motions and demands, and also to clarify for the record two major points on which the documents filed with the Board appeared to reflect some confusion. These points were:

1. That the Board's 1960 Order to Increase Capital was based entirely on evidence contained in the record of the 1956-58 hearing (to the extent indicated in the Board's 1960 Order and Statement) and on information contained in examination and supervisory reports of the bank which, although not a part of the record, were "equally available to the bank"; and
2. That a sharp distinction must be made between (a) the question whether the bank had failed to comply with the Board's 1960 Order, and therefore with the provisions of the statute, and (b) the question whether, in the event of such noncompliance, the Board should order the bank to forfeit its membership.

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As pointed out in the proposed statement, although the bank had admitted its failure to comply with the Board's 1960 Order the Board could not properly close the record of the show cause hearing, now scheduled for September 10, in the absence of a stipulation by the bank that it did not wish to present evidence on any grounds upon which the Board, despite such noncompliance, would be warranted in not revoking the bank's membership in the Federal Reserve System. The statement also would emphasize that, in exercising its statutory responsibility of determining whether the bank's membership should be revoked, the Board must consider not only whether the bank had failed to comply with the 1960 Order but whether there were any grounds or circumstances that would justify it in determining not to require forfeiture of the bank's membership.

Other documents relating to this proceeding that had been made available to the Board included:

Memoranda from the Division of Examinations dated July 5 and July 17, 1962, regarding the current asset condition and capital position of Continental Bank and Trust Company.

Memorandum from Mr. Sherman, Secretary of the Board, dated July 26, 1962, submitting memoranda prepared by Messrs. Stephenson, of the Board's staff, and Ahlf, of the Federal Reserve Bank of San Francisco, regarding their visit to Continental Bank and Trust Company on July 18, 1962, pursuant to the instructions of the Board on July 12, 1962, for the purpose of discussing adjustments made by the bank in calculating its capital requirements under the Form for Analyzing Bank Capital.

Memorandum from Mr. Solomon dated July 30, 1962, commenting on the facts outlined in the memoranda from Messrs. Stephenson and Ahlf.

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At the beginning of the discussion at today's meeting, Chairman Martin noted that Governor King had requested that consideration of the Continental matter not be held up in his absence. The Chairman pointed out that, with Governor Robertson not participating, there were four members of the Board available for consideration of the matter.

In response to a question from the Chairman, Mr. Hackley said there was no legal reason why the Board, with four members participating, should not proceed to consider the draft orders and statement. He added that, although the rulings on the motions and demands by Continental were of considerable significance for the record, no decision on the merits of the proceeding was involved.

It having been agreed that consideration of the proposed orders should proceed, Mr. Hackley stated that the complexity of the various pleadings had vindicated the action of the Board in postponing the date of the show cause hearing from July 23 to September 10, 1962. The documents were involved and complicated, and there were important points of principle that he believed should be set forth for the record in a statement accompanying the proposed orders of the Board. Mr. Hackley then discussed in some detail the several motions before the Board, the action that he would recommend be taken with respect to each of them, the reasons for his recommendations, and the comments that would be contained in the statement proposed to accompany the Board's orders. He indicated that if the Board approved the orders and statement in substance, there were certain editorial changes that he would like permission to make in the statement.

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After describing the nature of these editorial changes, Mr. Hackley said he did not think adoption of the orders and issuance of the accompanying statement would in any sense be inconsistent with further exploration of a possible settlement of the administrative proceeding on a basis that would maintain the Board's legal position and still result in Continental Bank having adequate capital. The orders and statement would indicate that the Board had a responsibility, before ordering forfeiture of the bank's membership, to consider all current relevant circumstances, which would include the current capital position of the bank and, in addition, the likelihood of any developments that would cause the bank's capital to become reasonably adequate within a reasonable amount of time.

Governor Mills said that he would concur in the issuance of the proposed orders and statement. As he understood it, they would contemplate a procedure by which the Board would move ahead to a show cause hearing and from such hearing determine whether to issue a final order requiring that some satisfactory amount of capital be introduced by the bank.

Governor Shepardson referred to Mr. Hackley's comment about the Board's responsibility to exercise its discretion as to whether it should order the bank's membership to be forfeited. He inquired whether it was sufficiently clear in the proposed statement that this judgment would be based on the current condition of the bank.

Mr. Hackley replied that he thought the statement was sufficiently clear. In fact, he had been somewhat apprehensive that the treatment of



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this phase of the matter may have been unduly repetitive. In a number of places in the statement there were references to consideration of any grounds upon which the Board would be warranted, in its discretion, in determining not to revoke the bank's membership, including the current capital condition of the bank and the prospect of any developments that would cause the bank's capital to become adequate. Adoption of these orders would mean that, unless something else happened in the meantime, the Board would go forward with the show cause hearing. This would be consistent, however, with consideration of any reasonable basis for settlement that might be offered. Mr. Hackley emphasized that he was speaking of a settlement on a reasonable basis and not a compromise.

In reply to a question regarding the status of negotiations looking toward a possible offer of settlement, Mr. Solomon said it was his impression that much would depend on what the Board wanted to do. The Board had sent Messrs. Stephenson and Ahlf to the offices of Continental to get a clear explanation of the adjustments made by that bank in calculating its capital requirements under the ABC Form. Memoranda from Messrs. Stephenson and Ahlf had been distributed to the Board, along with a memorandum from him (Mr. Solomon) commenting on those memoranda.

Governor Mills commented that, speaking against the background of the memoranda referred to by Mr. Solomon, he felt the Board should not invite a settlement at the present time. The show cause hearing would offer an opportunity for an up-to-date analysis of the bank's situation and a finding on the part of the Board as to what would be considered an

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adequate amount of capital. He would regard such a procedure as doing full justice to the case without putting the Board in a position of relinquishing the principle that there is implicit in the law authority on the part of the Board to require adequate capital. If Continental should contest such a final order, it could take the matter to court.

Mr. Hackley agreed that the Board should not invite any settlement. Any offer should come from the bank. He added, however, that the Administrative Procedure Act contemplates that an agency shall always afford a party in a case of this kind an opportunity to present an offer of settlement, either before or after a proceeding such as the show cause hearing. An offer could be made by Continental at the hearing. On the other hand, there would be nothing to prevent the bank from proposing a settlement before the start of the hearing. However, the Board should not take any steps that would be construed as an invitation to settle the matter.

Governors Shepardson and Balderston indicated that they had no further questions with regard to the proposed orders. The latter expressed the hope, however, that a satisfactory way might be found to bring the proceeding to a conclusion.

Mr. Solomon commented at this point that he was not present at the meeting of the Board with Mr. Sullivan on July 2, 1962. However, he had read the minutes of that meeting. Mr. Sullivan was not a lawyer, Mr. Solomon pointed out, and he had met with the Board on a personal basis.

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Mr. Solomon thought it possible, therefore, that Mr. Sullivan might have some question if he simply received the orders and statement. Mr. Sullivan might wonder whether the orders and statement constituted the Board's response to his approach.

Governor Mills expressed the view that the language of the proposed statement should be sufficient to indicate that full consideration would be given to any capital adjustments that might be made by Continental, and Mr. Solomon agreed that the statement had gone as far in that regard as seemed feasible. Yet he wondered whether a layman might not obtain the impression that the Board, by issuing the orders and statement, was saying that it wanted nothing more to do with an offer of settlement.

Mr. Hackley stated that he shared Mr. Solomon's feeling. He thought Mr. Sullivan might well construe the orders as an answer to his overture. While the issuance of the orders and statement was separate and apart from any negotiations for a settlement, and while it would be possible for the bank to present a capital proposal at the show cause hearing, the issuance of the orders would not preclude the bank from making proposals before the hearing began, and Mr. Hackley felt that the Board should give consideration to any such proposal. Mr. Sullivan, he recalled, had indicated a willingness to sit down with a representative designated by the Board to discuss the possibility of steps that might be taken that would render the bank's capital position

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adequate in the Board's judgment. In his opinion the Board might some day be subject to criticism if it did not consider any reasonable proposal by the bank; and that would not constitute in any sense a compromise of the Board's legal position.

Governor Mills commented that all of these possibilities were open in the procedure he favored. If Mr. Sullivan had any question upon reading the orders and statement, he would no doubt make inquiry, if it was his desire to have further discussions with the Board or representatives of the Board. In Governor Mills' view, the issuance of the orders-- followed by the show cause hearing--would develop all of the circumstances and facets of the case so as to allow fair consideration of it by the Board.

Governor Balderston then described certain possibilities for improving the bank's capital position that he thought might appropriately be discussed with Mr. Sullivan by a representative of the Board should Mr. Sullivan express a desire to make an offer of settlement. It was his feeling that such a discussion could be beneficial and might lead to a reasonable proposal by Continental for a settlement of the case, but it was not clear to him how any such discussion might appropriately be arranged.

Chairman Martin inquired of Mr. Solomon whether it was the latter's suggestion that the Board should in some way convey to Mr. Sullivan the knowledge that the issuance of the orders was not intended to cut off such further negotiations as Mr. Sullivan might desire.

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Mr. Solomon said it was his thought that there might be some kind of informal indication to Mr. Sullivan that there was no intention on the part of the Board that this necessary legal step in the proceeding represented the response to Mr. Sullivan's effort to work out an offer of settlement. It might be indicated to him that the Board was no differently disposed in that regard than when Mr. Sullivan met with the Board, as would be indicated by a careful reading of the Board's statement.

Mr. Hackley noted that quite possibly a careful reading of the orders and statement might give Mr. Sullivan some encouragement and prompt him to inquire whether the issuance of the orders was meant to preclude any further negotiations for settlement. It would be preferable for any inquiry to come from Mr. Sullivan; the answer could then be given that consideration would be given to any proposal he might wish to make.

There followed further comments along this line, after which Governor Shepardson expressed support of Mr. Solomon's view that the issuance of the orders might give an impression of closing the doors to further overtures. Continuing, he brought out that the bank had challenged the authority of the Board to require additional capital. However, even though Continental did not acknowledge that authority, he wondered whether-- if the bank met a reasonable standard of capital adequacy--it would be necessary for the Board to carry the case to conclusion in order to maintain its position. The problem was whether, having gone this far, the Board

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would wish to leave unanswered a question that might create difficulties in the future or whether, if Continental came forward with a proposal that would seem to provide adequate capital but continued to deny the Board's legal authority, the Board would be justified in carrying the matter further. If he understood correctly, the staff felt that the Board would be in a sound position if Mr. Sullivan submitted a proposal that would provide adequate capital. In the circumstances, Governor Shepardson wondered whether there might not be a purpose in having someone sit down and discuss the capital problem with Mr. Sullivan in order to determine what possibilities might exist for improving the bank's position. Then it would be left to Mr. Sullivan to decide whether he wished to make an offer that would meet reasonable capital requirements. Governor Shepardson indicated that he would be inclined to favor such an approach if that would not jeopardize the Board's legal position.

Mr. Hackley said that he felt definitely that this would not jeopardize the Board's position. If a settlement offer should be acceptable to the Board, an order concerning its acceptance could be framed so as to maintain the Board's legal position. The bank probably would not agree with such language, but that would not be necessary. The option would be to continue with the proceeding to the stage of a court decision that might or might not uphold the Board's authority.

Governor Mills said he did not see how such a procedure could properly be agreed upon without first consulting Board Counsel, and Mr. Hackley said he had assumed that that would be done.

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Mr. Hackley also commented that, despite his previous statement that the issuance of the orders might prompt an inquiry from Mr. Sullivan, he thought such action might be more likely to have the effect suggested by Mr. Solomon; that is, of indicating to Mr. Sullivan that the door had been closed to negotiations for settlement. Mr. Hackley did not believe it would be inappropriate to give some informal indication to Mr. Sullivan that the issuance of the orders was separate and apart from negotiations relating to any proposal that he might want to make. Mr. Sullivan had already made an overture to the Board, and the Board had intimated that it would consider any proposal he might wish to offer.

There followed discussion as to how such an informal indication might be transmitted to Mr. Sullivan, and Governor Mills then reiterated his opinion that before any such step was taken the Board should meet with Board Counsel. This being agreed upon, it was understood that arrangements would be made for Board Counsel to meet with the Board as promptly as possible. It was further understood that the orders and statement to be issued by the Board regarding the motions and demands filed by Counsel for Continental would not be made available to Board Counsel until the orders were issued.

The issuance of the orders and statement was then authorized (Governor Robertson abstaining) subject to the editorial changes in the statement previously mentioned by Mr. Hackley, with the understanding that the orders would be issued after the contemplated meeting of the Board with Board Counsel.

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Secretary's Note: The orders and statement were issued under date of August 9, 1962, following a meeting with Board Counsel, in the form attached as Items 9 and 10, respectively.

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

Study of Retirement System. Governor Mills referred to the current study of certain aspects of the Retirement System of the Federal Reserve Banks and to the Board's meeting in executive session on June 18, 1962, with Professor Dan McGill, who had been retained by the Board on a consulting basis. In this connection, Governor Mills raised certain questions of procedure, including the scope of further studies that might be conducted by Professor McGill. It was Governor Mills' opinion that, at least for the time being, those should be limited to a consideration of the adequacy of the funding of the Retirement System. Governor Mills also noted that Professor McGill was currently on vacation and, after his return, might need a few weeks to produce his findings on the question.

There followed discussion as to whether Professor McGill should confer at some point with Mr. Buck, Actuary for the Retirement System, and there was some difference of opinion as to the procedure that had been contemplated at the conclusion of the meeting with Professor McGill. It was Governor Mills' thought that Professor McGill probably would wait to hear further from the Board before proceeding with his studies.

This raised the question whether, at an appropriate time, there should be another meeting of the Board with Professor McGill, or with him



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and Mr. Buck jointly. The discussion at this meeting did not resolve those points, and it was understood that the matter would be considered further. Governor Mills concluded the discussion by expressing his understanding that the matter would be held in abeyance until Professor McGill's return from vacation, at which time he could be contacted and given further instructions.

Entertainment in connection with Fund and Bank meetings.

Governor Shepardson reported having been advised by Mr. Young, Adviser to the Board and Director, Division of International Finance, that there was to be a meeting in Washington of Working Party 3 of the Economic Policy Committee of the Organization for Economic Cooperation and Development prior to the annual meetings of the International Monetary Fund and the World Bank that would begin on Monday, September 17. In the circumstances, Mr. Young had raised the question whether the Board would like to provide some form of entertainment for the delegates, to which appropriate representatives of agencies such as the U. S. Treasury, the State Department, and the Council for Economic Advisers might also be invited.

There followed a discussion during which general agreement was expressed that it would be appropriate for the Board to entertain the Working Party 3 delegates in some appropriate manner, particularly since it was understood that the State and Treasury Departments had entertained those delegates in connection with meetings of Working Party 3 held in Europe. The discussion then turned to the most suitable form of

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entertainment and the suggestion was made that the Board might act as host at a dinner in the Federal Reserve Building on one of the evenings when the delegates would be in Washington. The question of the specific form of entertainment was then referred to Governor Shepardson with power to act after further discussion with Mr. Young.

Secretary's Note: Governor Shepardson later informed the Secretary's Office that after discussion with Mr. Young and consultation by Mr. Young with the Treasury, he had authorized the making of arrangements for a dinner to be given in the Federal Reserve Building at 8 p.m. on Friday, September 14, with the understanding that the number of invitees would not exceed the capacity of the Staff Dining Room and that those invited might include, in addition to the delegates to Working Party 3, such persons from the U. S. Government or foreign central banks as might be deemed appropriate.

The Board also authorized payment of the cost of a dinner, to be given at an outside location in Washington with Mr. Young as host, for a relatively small group of persons with whom Mr. Young had been associated in some of the operations of Working Party 3, it being understood that this dinner would be held on an appropriate evening during the same week as the dinner to be held at the Federal Reserve Building.

The meeting then adjourned.

Secretary's Note: Pursuant to the recommendation contained in a memorandum from the Division of Administrative Services, Governor Shepardson today approved on behalf of the Board the appointment of Lee W. Joyner as Cafeteria Laborer in

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that Division, with basic annual salary at the rate of \$3,185, effective the date of entrance upon duty.

*Kenneth G. Thomson*

Assistant Secretary

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

Item No. 1  
8/6/62

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD



August 6, 1962

Board of Directors,  
The Colonial Bank and Trust Company,  
Waterbury, Connecticut.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the establishment by The Colonial Bank and Trust Company, Waterbury, Connecticut, of a branch in the Southbury Shopping Center, Southbury, Connecticut, provided the branch is established within six months from the date of this letter.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,  
Assistant Secretary.

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

Item No. 2  
8/6/62

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

August 6, 1962

Bankers International Financing  
Company, Inc.,  
16 Wall Street,  
New York 15, New York.

Gentlemen:

In accordance with the request and on the basis of the information furnished in your letter of May 25, 1962, transmitted through the Federal Reserve Bank of New York, the Board of Governors grants consent for Bankers International Financing Company, Inc. ("BIFC"), to purchase and hold 3,000 shares, par value Pesetas 1,000 each, of the common stock of Fabrica Espanola Magnetos S.A. ("FEMSA"), Madrid, Spain, at a cost of approximately US\$50,000, provided such stock is acquired within one year from the date of this letter.

The Board's consent is granted upon condition that BIFC shall dispose of its holdings of stock of FEMSA as promptly as practicable, in the event that FEMSA should at any time (1) engage in issuing, underwriting, selling or distributing securities in the United States; (2) engage in the general business of buying or selling goods, wares, merchandise, or commodities in the United States or transact any business in the United States except such as is incidental to its international or foreign business; or (3) otherwise conduct its operations in a manner which, in the judgment of the Board of Governors, causes the continued holding of its stock by BIFC to be inappropriate under the provisions of Section 25(a) of the Federal Reserve Act or regulations thereunder.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,  
Assistant Secretary.



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

Item No. 3  
8/6/62

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

August 6, 1962



Mr. Howard D. Crosse, Vice President,  
Federal Reserve Bank of New York,  
New York 45, New York.

Dear Mr. Crosse:

This refers to your letter of July 19, 1962, with respect to the necessity for Board permission for Union County Trust Company, Elizabeth, New Jersey, to establish a Bond Department.

If a member bank were not engaged in investment banking when admitted to membership in the Federal Reserve System, it would be necessary to obtain Board permission before establishing a Bond Department as such activity would constitute a change in the general character of the bank's business and in the scope of the corporate powers exercised by it that would require Board permission under the present condition of membership numbered (1). However, Union County Trust Company became a member of the System in 1926 subject to a condition of membership which merely requires Board permission for a change in the scope of the functions exercised by the bank at the time of admission to membership "such as will tend to affect materially the standard maintained at the time of . . . admission to the Federal Reserve System and required as a condition of membership."

The Board agrees with your conclusion that engaging in the business of operating a Bond Department would not affect materially the standard maintained by Union County Trust Company at the time of its admission to membership and, therefore, express permission by the Board is not required in this case.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,  
Assistant Secretary.



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

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Item No. 4  
8/6/62

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

August 6, 1962

First National City Bank,  
399 Park Avenue,  
New York 22, New York.

Gentlemen:

The Board of Governors of the Federal Reserve System authorizes First National City Bank, New York, pursuant to the provisions of Section 25 of the Federal Reserve Act, to establish a branch in Delhi, India; and to operate and maintain such branch subject to the provisions of such Section.

Unless the branch is actually established and opened for business on or before August 1, 1963, all rights granted hereby shall be deemed to have been abandoned and the authority hereby granted will automatically terminate on that date.

Please advise the Board of Governors, in writing, through the Federal Reserve Bank of New York, when the branch is opened for business, furnishing information as to the exact location of the branch.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,  
Assistant Secretary.

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

Item No. 5  
8/6/62

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

August 6, 1962

Virgin Islands National Bank,  
Charlotte Amalie,  
St. Thomas, Virgin Islands.

Gentlemen:

Reference is made to a letter dated July 18, 1962, from Mr. William L. Day, Chairman, The First Pennsylvania Banking and Trust Company, Philadelphia, Pennsylvania, requesting on behalf of Virgin Islands National Bank ("VINB") that the Board of Governors extend to September 1, 1962, the time within which VINB may purchase all the shares of a corporation organized under the laws of Delaware for the sole purpose of holding the banking premises of VINB and known as Vinbank Realty, Inc. The consent granted in the Board's letter of December 28, 1961, provided that the transaction was to be consummated within six months from the date of the letter; that the stock is not carried at a net amount in excess of \$1; and that the banking premises are leased back to VINB at a rental not to exceed approximately \$40,000 per annum.

Mr. Day's letter stated:

"... Due solely to technical delays in obtaining conveyancing information, this transaction has not yet been consummated. We are now prepared to settle at an early date, on or around August 1, 1962.

"On behalf of Virgin Islands National Bank, I respectfully request your consent to the consummation of this transaction prior to September 1, 1962."

The Board extends to September 1, 1962, the date indicated in the consent granted in its letter of December 28, 1961.

Please advise the Board of Governors through the Federal Reserve Bank of New York when the transaction has been consummated.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,  
Assistant Secretary.



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

Item No. 6  
8/6/62

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD



August 6, 1962

Board of Directors,  
Wells Fargo Bank,  
San Francisco, California.

Gentlemen:

The Board of Governors of the Federal Reserve System extends to August 16, 1963, the time within which Wells Fargo Bank may establish a branch on U. S. Highway 101 in the vicinity of East Laurel Drive and Alvin Drive, Salinas, California.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,  
Assistant Secretary.

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

Item No. 7  
8/6/62

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

August 6, 1962

Board of Directors,  
Wells Fargo Bank,  
San Francisco, California.

Gentlemen:

The Board of Governors of the Federal Reserve System extends to December 17, 1962, the time within which Wells Fargo Bank may establish a branch in the downtown business section of Redding, Shasta County, California.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,  
Assistant Secretary.

TELEGRAM  
LEASED WIRE SERVICEItem No. 8  
8/6/62BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON

August 6, 1962

SWAN - SAN FRANCISCO

The Board interposes no objection to additional leave without pay for John O'Kane from August 8 to November 30 to act as California State Superintendent of Banks.

(Signed) Kenneth A. Kenyon

KENYON

Item No. 9  
8/6/62UNITED 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, UtahORDERS OF THE BOARD OF GOVERNORS ON RESPONDENT'S  
(I) MOTION TO PRODUCE, (II) DEMAND FOR PARTICULARS,  
AND (III) MOTION TO DISMISS AND DEMAND FOR FINAL ORDER

In connection with the hearing in this matter ordered by the Board in its Order to Show Cause and for Hearing Thereon, dated June 28, 1961 (hereafter sometimes referred to as the Show Cause Hearing), The Continental Bank and Trust Company, Salt Lake City, Utah (hereafter sometimes referred to as the Respondent or the Bank), has filed with the Board of Governors

- (I) a Motion to Produce, dated May 31, 1962,
- (II) a Demand for Particulars, dated May 31, 1962, and
- (III) a Motion to Dismiss and Demand for Final Order, dated June 25, 1962.

In its consideration of these Motions and Demands, the Board has also considered Board Counsel's Memorandum in Reply to Respondent's Motion to Produce, dated June 11, 1962; Respondent's Memorandum in Support of Respondent's Motion to Produce and in Response to Reply Memorandum of Counsel of the Board, dated June 29, 1962; the Statement of Board Counsel in Response to Demand for Particulars, dated June 11,

1962; Respondent's Statement in Support of Respondent's Demand for Particulars, dated June 29, 1962; Board Counsel's Memorandum in Opposition to Respondent's Motion to Dismiss and Demand for Final Order, dated July 5, 1962; Respondent's Memorandum in Support of Respondent's Motion to Dismiss and Demand for Final Order and in Response to Memorandum in Opposition Thereto Filed by Counsel to the Board, dated July 13, 1962; and Board Counsel's Reply to Memorandum in Support of Respondent's Motion to Dismiss and Demand for Final Order, dated July 18, 1962.

In submitting its Motion to Dismiss and Demand for Final Order, Respondent requested that the Board rule on such Motion and Demand prior to ruling on the Bank's previously filed Motion to Produce and Demand for Particulars. For the reasons indicated in the accompanying Statement, the Board has concluded that it cannot appropriately grant this request and that, instead, it should rule at the same time on all of the Motions and Demands filed by Respondent.

Upon consideration of all of the documents heretofore described, and for the reasons set forth in the accompanying Statement of the Board,

I. With respect to Respondent's Motion to Produce,

IT IS HEREBY ORDERED as follows:

(a) Respondent's demand for production of the confidential sections of reports of examination of the Bank beginning April 12, 1955, to and including February 1, 1960, is DENIED.

(b)(1) Respondent's demand for a designation of the reports of examination and supervisory reports filed by Respondent which were not a part of the record of the hearing in this matter held pursuant to the Board's Order of June 29, 1956 (hereafter referred to as the 1956-58 hearing) but which were considered by the Board in formulating its Order and accompanying Statement of July 18, 1960, is GRANTED. Such examination and supervisory reports that were not in their entirety a part of the record of the 1956-58 hearing were the following:

Report of examination of October 22, 1951 (a portion of which was in evidence as Exhibit 173);

Report of examination of September 22, 1952 (a portion of which was in evidence as Exhibit 174);

Report of examination of May 11, 1953 (a portion of which was in evidence as Exhibit 175);

Report of examination of March 1, 1954 (a portion of which was in evidence as Exhibit 176);

Report of examination of April 12, 1955 (a portion of which was in evidence as Exhibit 177);

Report of examination of December 2, 1957;

Report of examination of October 6, 1958;

Report of examination of May 25, 1959;

Report of examination of February 1, 1960;

Reports of Earnings and Dividends filed between January 8, 1957 and July 17, 1960, inclusive; and

Reports of Condition filed between March 15, 1957 and July 17, 1960, inclusive.

(b)(2) Respondent's demand for production of copies of all summaries, memoranda, and other material prepared by the Board's staff and submitted to the Board for use in formulating its Order of July 18, 1960, is DENIED.

(b)(3) Respondent's demand for all other "information" considered by the Board as recited on pages 17 to 25 of the Board's Statement of July 18, 1960, and as recited in the second paragraph of the Board's Order of the same date is GRANTED. The nature of all such other information considered by the Board as a basis for such Statement and Order is explicitly set forth on page 2 of such Order and on pages 15, 16, 17, and 18 to 25 of such Statement. No further specification of such information appears necessary.

II. With respect to Respondent's Demand for Particulars,

IT IS HEREBY ORDERED that such Demand for Particulars is GRANTED to the extent and in the manner stated below:

(1) The "standards or criteria which the Board asserts are to be used in determining whether Continental's membership in the Federal Reserve System is to be revoked" are

(a) whether Respondent has failed to comply with the Board's Order of July 18, 1960, and therefore with Condition of Membership No. 2 imposed upon and accepted by Respondent at the time of its admission to membership in the Federal Reserve System, and therefore with the provisions of section 9 of the Federal Reserve Act and regulations of the Board issued pursuant thereto; and

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(b) whether, if Respondent has so failed to comply with such Order of July 18, 1960, Condition of Membership No. 2, and the provisions of section 9 of the Federal Reserve Act and regulations issued pursuant thereto, there are nevertheless any reasonable grounds upon which the Board would be warranted, in its discretion, in determining not to order forfeiture of Respondent's membership in the System, such as the current adequacy of Respondent's net capital and surplus funds in relation to the character of its assets and its deposit liabilities and other corporate responsibilities, or the likelihood or prospect of developments that would cause its net capital and surplus funds to become adequate within a reasonable period of time.

(2) With respect to the Board's Order of July 18, 1960:

(a) The "initial or preliminary tests" upon which the Board relied or which it applied in reaching its conclusion that the Bank's net capital and surplus funds were inadequate in an amount of not less than \$2,200,000 as of October 16, 1956, are set forth at pages 17 and 18 of the Statement accompanying such Order of July 18, 1960.

(b) The Board did not, as stated in Respondent's Demand, reach the conclusion that Respondent's capital as of July 18, 1960, "was inadequate in the amount of \$1,500,000"; but, as stated in its Order of that date and the accompanying Statement (pp. 24 and 25), the Board concluded that Respondent's net capital and surplus funds were then "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" showed



"no likelihood of being corrected within a reasonable time by retained earnings"; and, in reaching this conclusion, the Board relied upon or applied the "initial or preliminary tests" set forth at pages 17 and 18 of the Statement accompanying such Order of July 18, 1960.

(c) The "standard on each test" and the "specific factors" suggesting upward or downward adjustments in such standards are set forth in the evidence of record in the 1956-58 hearing, and such "special factors" are referred to in the testimony of witnesses listed on page 19 of the Statement accompanying the Board's Order of July 18, 1960.

(d) In reaching its conclusion that Respondent's capital as of October 16, 1956, was inadequate in the amount of \$2,200,000, the Board made adjustments for special or additional factors or special circumstances of the kind referred to in (c) immediately above.

(e) As heretofore stated, the Board in its July 18, 1960 Statement did not find that Respondent's capital as of that date was inadequate in the amount of \$1,500,000; it concluded that Respondent's capital was inadequate and that such inadequacy in an amount of not less than \$1,500,000 showed no likelihood of being corrected within a reasonable time by retained earnings; but in reaching this conclusion the Board considered the special circumstances described on page 24 of such Statement of July 18, 1960.

(f) The "relevant information" upon which the Board relied in concluding that Respondent's capital should be increased by the sale of common stock for cash, as directed by the Board's Order of July 18, 1960,

was contained in testimony of witnesses cited on page 19 of the Statement accompanying that Order.

(g) In concluding that six months was an adequate period within which Respondent should increase its capital as directed by the Board's Order of July 18, 1960, the Board exercised its judgment in determining that this would be a reasonable period of time for the effectuation of such an increase of capital, particularly in the light of the testimony of the witness Jennings (Tr. 1597-1603, 1657-1668) and in the absence of any suggestion by Respondent that such a period of time would not be reasonably adequate for this purpose.

(h) In concluding that Respondent's capital was inadequate as of October 16, 1956 and as of July 18, 1960, the Board did not compare Respondent with any other individual bank. Comparison of Respondent with groups of banks was based upon testimony of Langham, Rice, and Schwartz and Exhibit 141, as contained in the record of the 1956-58 hearing.

(i) The aspects of the groups of banks with which Respondent was compared by the Board in reaching its conclusions as to the inadequacy of the capital of Respondent as of October 16, 1956 and July 18, 1960, were set forth in the evidence contained in the record of the 1956-58 hearing; in particular, they were the operating ratios for such groups of banks as regularly published by the Federal Reserve Bank of San Francisco in its "Operating Ratios of Member Banks Twelfth Federal Reserve District" (Exhibit 342) and by the Board in the Federal Reserve Bulletin.

III. With respect to Respondent's Motion to Dismiss and Demand for Final Order,

IT IS HEREBY ORDERED as follows:

(a) Respondent's Motion to Dismiss is DENIED.

(b)(1) Respondent's motion, in the alternative, that the record of the Show Cause Hearing show by stipulation that the Board issued its Order of July 18, 1960, and that Respondent has failed and refused to comply with the terms of that Order for the reasons set forth in its Motion to Dismiss is GRANTED.

(b)(2) Respondent's alternative motion that, with the stipulations above described, the hearing on the Order to Show Cause of June 28, 1961, be closed is DENIED.

(b)(3) Respondent's alternative motion that the Board issue an order requiring Respondent to surrender its stock in the Federal Reserve Bank of San Francisco and to forfeit all rights and privileges of membership in the Federal Reserve System within such reasonable time as to allow Respondent to secure judicial review of such order is DENIED.

Dated at Washington, D. C., this 9th day of August, 1962.

By order of the Board of Governors.

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

Absent and not voting: Governors King and Mitchell.

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) Kenneth A. Kenyon

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Kenneth A. Kenyon,  
Assistant Secretary.

Item No. 10  
8/6/62

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

The Orders issued by the Board under today's date with respect to Respondent's Motion to Produce, Demand for Particulars, and Motion to Dismiss and Demand for Final Order appear to warrant certain explanatory comments, particularly as to those motions and demands denied by the Board.

Motion to Produce

Paragraph I(a) of the Board's Orders denies Respondent's demand for production of the confidential sections of the reports of examination of Respondent for each year beginning April 12, 1955, to and including the report of February 1, 1960, for the following reasons.

Respondent's Motion to Produce is premised upon section 7(d) of the Administrative Procedure Act (5 U.S.C. 1006(d)) which provides:

" . . . Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary."

Respondent's Motion, therefore, apparently assumes that the material and information therein specified constitute material facts not appearing

in the evidence of the record of which the Board took "official notice" and upon which it based the "decision" embodied in the Board's Order to Increase Capital dated July 18, 1960. This assumption, to the extent that it relates to confidential sections of examination reports of Respondent, is incorrect.

As explicitly indicated on page 2 of the Board's Order of July 18, 1960, the material considered by the Board in formulating that Order was limited to evidence of record in the hearing held pursuant to the Board's Order of June 29, 1956 (hereafter referred to as the 1956-58 hearing), "to the extent and in the degree" set forth in the accompanying Statement of the Board, the arguments of Counsel, 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." (Underscoring supplied)

The confidential sections of the reports of examination of Respondent of March 12, 1956, and October 16, 1956, were made available to Respondent for inspection, but Respondent declined the opportunity to inspect them. Although thus made "available to the Bank", the confidential sections of these reports of examination were not considered by the Board in reaching the decision embodied in its Order of July 18, 1960. Referring specifically to such confidential sections, the Board's Statement (p. 16) accompanying that Order stated that, while proffer of such sections to the Bank was sufficiently timely, nevertheless "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 examinations."

The confidential sections of all other reports of examination of Respondent between April 12, 1955 and February 1, 1960 were not "available to the Bank" and, accordingly, were not considered by the Board in reaching the decision embodied in its Order of July 18, 1960.

Respondent's demand for production of copies of "all summaries, memoranda and other material prepared by the Board's staff and submitted to the Board for use in formulating its Order of July 18, 1960" must be denied, as stated in Paragraph I(b)(2) of the Board's Orders of today's date, because such documents did not constitute "material facts" of which the Board took official notice and upon which it based its decision in formulating its Order of July 18, 1960. They were only in the nature of aids to the Board in connection with its adjudication of this matter; they were not "evidence" in the record that was considered by the Board; and their production in response to the present Motion is not required by principles of due process. The privileged nature of material of this kind, as a part of an agency's "decisional process", is clearly supported by decisions of the courts. (See Pierce v. Securities and Exchange Commission, 239 F. 2d 160, 163 (1956); Boeing Airplane Co. v. Coggeshall, 280 F. 2d 654 (C.A.D.C. 1960); Kaiser v. U. S., 157 F. Supp. 939, 946 (Ct. Cl. 1958); United Air Lines v. C. A. B., 281 F. 2d 53 (D. C. Cir. 1960)).

Demand for Particulars

Respondent's Demand for Particulars, especially when considered in connection with its Motion to Dismiss and Demand for Final Order, appears to reflect confusion as to the basis, nature, and effect of the Board's Order to Increase Capital of July 18, 1960 and the Order to Show Cause and for Hearing Thereon of June 28, 1961.

Thus, the Demand for Particulars seems to assume that specific "initial or preliminary tests" and "specific adjustments for special or additional factors" are conclusively and automatically determinative of the exact amount of any capital inadequacy on the part of Respondent. This, of course, is not the case. As stated in the Board's Statement of July 18, 1960 (p. 17), a decision as to whether a particular bank's net capital and surplus funds are inadequate within the meaning 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." In its exercise of this judgment, the Board considers, and has considered in this case, the preliminary tests and adjustments referred to in the 1960 Statement and in today's Order with respect to Respondent's Demand for Particulars; but such tests and adjustments are not conclusive or automatic but only "screening devices" that are considered along with all other relevant factors and considerations.

The Demand for Particulars implies that the standards, criteria, tests, and adjustments there mentioned are demanded by Respondent either (1) for the purpose of contending that the Board's 1960 determination

as to Respondent's inadequacy of capital was incorrect or unreasonable, or (2) conceding the correctness of the 1960 determination, for the purpose of showing that Respondent's capital is now adequate and that this is a "cause" for which the Board should not order forfeiture of Respondent's membership. The latter purpose is suggested in Respondent's Statement in Support of its Demand for Particulars in which it alleges that, without the particulars demanded, "it has no basis for asserting any extenuating or mitigating circumstances which should cause the Board not to invoke the sanction of section 327 for Continental's failure to comply with the Order of July 18, 1960."

Inconsistently, however, Respondent, in its Motion to Dismiss and Demand for Final Order, appears to take the position that, since Respondent admits its failure to comply with the Board's Order of July 18, 1960, "any additional evidence would be superfluous and irrelevant and no further hearings are necessary to support the imposition of the statutory sanction."

In the Board's view, the correct statement of the background and present posture of this proceeding is as follows:

The 1956-58 hearing was instituted by the Board in order to determine the adequacy or inadequacy of the Bank's net capital and surplus funds for purposes of its Condition of Membership No. 2, the additional amount of capital funds, if any, needed by the Bank, and what period of time would be reasonable in which to allow the Bank to increase its capital funds to make them adequate. Commencement



of that hearing was delayed by Respondent's petition in the United States District Court for the District of Utah to enjoin conduct of the hearing on the ground of the Board's alleged lack of authority. That petition was dismissed by the District Court, and that Court's judgment was affirmed by the United States Court of Appeals for the Eighth Circuit. (The Continental Bank and Trust Co. v. Woodall, 239 F. 2d 707 (1957), cert. den. 353 U.S. 909.) Consequently, the 1956-58 hearing did not commence until April 1957, and, with numerous adjournments, it continued until November 1958. In March 1959, the Trial Examiner recommended that the proceeding be dismissed; and in July 1959, the Board heard oral arguments by Counsel for the Bank and Counsel for the Board.

On the basis of substantial evidence contained in the record of the 1956-58 hearing and in examination and supervisory reports of Respondent equally available to Respondent, the Board in its Order of July 18, 1960, found that Respondent's net capital and surplus funds as of that date were inadequate within the meaning of the Bank's Condition of Membership No. 2. The Board did not then charge the Bank with noncompliance with that Condition; but the Board ordered the Bank to correct the inadequacy of its capital to the extent of issuing \$1,500,000 of common stock for cash within a period of six months.

Respondent challenged the validity of the Board's Order of July 18, 1960, in a suit filed in the United States District Court for the District of Columbia. On June 27, 1961, that Court dismissed the

Bank's suit on the ground that the Board's Order of July 18, 1960 was not a final order subject to judicial review. Thereupon, Respondent having failed to comply with the terms of the 1960 Order, the Board on June 28, 1961, issued its Order to Show Cause and for Hearing Thereon. The date for commencement of such hearing was continued by the Board pending disposition of Respondent's motion to set aside the District Court's decision, and, following denial of that motion by that Court, the date set for such hearing was again continued pending disposition of an appeal by Respondent to the Court of Appeals for the District of Columbia. On May 3, 1962, the Court of Appeals affirmed the District Court's decision. As a result of subsequent continuances, the Show Cause Hearing is now scheduled to commence on September 10, 1962.

In the Board's Order of June 28, 1961, it was stated for the first time that it appeared to the Board that, in failing to comply with the Board's 1960 Order to Increase Capital, Respondent had "failed to comply with section 9 of the Federal Reserve Act" and, in particular, with Condition of Membership No. 2. Accordingly, the Board ordered a hearing to be held at which Respondent "shall show cause" why the Board should not require it to surrender its Federal Reserve Bank stock and forfeit its membership in the System. This Order was issued in accordance with the ninth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 327) which provides that, "if it shall appear to the Board" that a State member bank "has failed to comply with the provisions of this section" or regulations of the Board pursuant

thereto, "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."

In the light of the provisions of the statute, it is clear that, even though a member bank may be found to have violated the provisions of section 9 of the Act, it nevertheless remains the responsibility of the Board to exercise its discretion in determining whether it will order forfeiture of the bank's membership. Thus, in the present case, if it appears that Respondent has failed to comply with section 9 of the Act by reason of its noncompliance with Condition of Membership No. 2, the Board must nevertheless consider all relevant circumstances in determining whether or not to order forfeiture of Respondent's membership, including the current capital condition of the Bank or the likelihood of any developments that would cause its capital to become adequate in a reasonable period of time. In its opinion of May 3, 1962, the Court of Appeals for the District of Columbia expressly recognized that action taken as a result of proceedings held pursuant to the Board's Order to Show Cause of June 28, 1961, would be final agency action which, if adverse, could be judicially reviewed, but that it is possible "that such adverse action will not be taken in this case."

For the foregoing reasons, the "standards or criteria" to be used by the Board in determining whether Respondent's membership should be revoked, as stated in Paragraph II(1) of the Board's Orders

of today's date, are (1) whether Respondent has failed to comply with the Board's Order of July 18, 1960, and therefore with Condition of Membership No. 2 and the provisions of section 9 of the Federal Reserve Act and regulations issued pursuant thereto, and (2) if so, whether there is any cause, such as the current adequacy of Respondent's capital, for which the Board in its discretion should not order forfeiture of Respondent's membership. These standards or criteria relate to the two principal issues involved in the Show Cause Hearing.

The first of these issues has in effect been resolved by Respondent's admission in both its Statement in Support of Respondent's Demand for Particulars (p. 4) and its Motion to Dismiss and Demand for Final Order (p. 2) that it has failed to comply with the Board's Order of July 18, 1960, and by Paragraph III(b)(1) of the Board's Orders of today's date granting Respondent's Motion that a stipulation to that effect be shown in the record of the Show Cause Hearing. It is recognized that Respondent's admission is based upon its position that the Board lacks legal authority in this matter and that the Board's Order of July 18, 1960 was invalid; and in this respect, therefore, this proceeding involves an issue of law as well as issues of facts. However, apart from this legal "cause" asserted by Respondent for which its membership should not be revoked, Respondent continues to have an opportunity, at the Show Cause Hearing, to show other causes for which its membership should not be revoked, such as the current adequacy of its capital or the likelihood of developments that will cause its capital to become adequate within a reasonable period of time.

Motion to Dismiss and Demand for Final Order

Respondent's Motion to Dismiss this proceeding must be denied for the reasons set forth in the Statement that accompanied the Board's Order of July 18, 1960, particularly at pages 8-16 of that Statement, and also because that Order was supported by substantial evidence contained in the record of the 1956-58 hearing and in examination and supervisory reports of Respondent which, although not a part of that record, were equally available to Respondent and the Board, as specified in Paragraph I(b)(1) of the Board's Orders of today's date.

In the event of denial of its Motion to Dismiss, Respondent moves in the alternative (1) that the record of the Show Cause Hearing show by stipulation that the Board issued its Order to Increase Capital of July 18, 1960 and that Respondent has failed and refused to comply with that Order for the reasons set forth in its Motion to Dismiss, (2) that thereupon the Show Cause Hearing be closed, and (3) that the Board then issue a "final order" requiring Respondent to surrender its Federal Reserve Bank stock and to forfeit all rights and privileges in the Federal Reserve System within such reasonable time as to allow it to secure judicial review.

As to the first part of this alternative motion, there is no reason why it should not be granted, since it is an evident fact that the Board did issue its Order of July 18, 1960, and since Respondent admits that it has not complied with that Order for the reasons stated in support of its Motion to Dismiss. However, for the reasons hereafter

indicated, the Board cannot properly accede to the second and third parts of Respondent's alternative motion which demand that the Board close the record of the Show Cause Hearing and issue a "final order" of forfeiture.

If the Board should grant Respondent's demand that the record of the Show Cause Hearing be closed with only the stipulations suggested by Respondent, the record would be barren of any evidence or stipulation relating to the second principal issue involved in this hearing, i.e., whether there is any reasonable ground for which the Board should not order forfeiture of Respondent's membership. Under present circumstances, the Board could not properly close the record of the Show Cause Hearing at this time unless Respondent should agree to stipulate further (1) that it does not wish to present evidence as to the current adequacy of its capital or as to the prospect or likelihood of developments that will cause its capital to become adequate within a reasonable period of time or as to any other factors or considerations that may be relevant to the question whether its membership should be revoked, and (2) that the record of the Show Cause Hearing shall be deemed to include the Board's Order and Statement of July 18, 1960, the evidence in the record of the 1956-58 hearing to the extent that it was considered by the Board in formulating such Order and Statement as therein indicated, and examination and supervisory reports of Respondent equally available to Respondent, including those designated in Paragraph I(b)(1) of the Board's Orders of today's date and all such reports since July 18, 1960.

As to Respondent's demand for issuance of a "final order" requiring forfeiture of Respondent's membership, it must be clear from what has already been said why this demand cannot properly be granted. In brief, the demand overlooks the distinction heretofore made between (1) noncompliance with the provisions of section 9 of the Federal Reserve Act and regulations of the Board pursuant thereto, and (2) discharge of the Board's statutory responsibility to determine whether to order forfeiture of membership because of such noncompliance. Even though it "appears" to the Board that Respondent has failed to comply with section 9 of the Act and regulations of the Board, forfeiture of membership is not automatic as apparently assumed by Respondent's motion. Under paragraph 9 of section 9 of the Act, the Board, after a hearing, must still determine whether there are any grounds or circumstances for which it should not order such forfeiture of membership.

There does not, therefore, exist any "dilemma" of the kind suggested by Respondent in its July 13, 1962 Memorandum in Support of its Motion to Dismiss and Demand for Final Order (p. 5). Denial of Respondent's demand for a final order of forfeiture does not imply either that the Board must accede to Respondent's Motion to Dismiss on the ground that the Board's Order of July 18, 1960 was not supported by substantial evidence or that such a final order would not itself be supported by substantial evidence. Denial of Respondent's demand for a final order rests simply on the ground that the determination whether such an order should be issued involves the exercise of the Board's

discretion. That discretion will be exercised by the Board on the basis of the record in the Show Cause Hearing and information contained in supervisory and examination reports of Respondent equally available to Respondent, and after consideration of all relevant factors, such as the current capital condition of Respondent and the likelihood of any developments that would cause its capital to become adequate. It is for this reason that the Board could not properly rule on Respondent's Motion to Dismiss and Demand for Final Order without at the same time ruling on its Motion to Produce and its Demand for Particulars in the manner stated in the Board's Orders of today's date.

By way of summary, in the Board's Order of July 18, 1960, on the basis of substantial evidence contained in the record of the 1956-58 hearing and in examination and supervisory reports equally available to Respondent, the Board determined that Respondent's capital was inadequate and ordered Respondent to increase its capital within 6 months by the sale of \$1,500,000 of common stock for cash; in its Order of June 28, 1961, the Board found that it appeared that, by failing to comply with the Order of July 18, 1960, Respondent had failed to comply with Condition of Membership No. 2, the provisions of section 9 of the Federal Reserve Act and regulations of the Board pursuant thereto; by such Order of June 28, 1961, Respondent was afforded an opportunity at a hearing, as required by the ninth paragraph of section 9 of the Act, to show cause why its membership should



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not be revoked; and, on the basis of the record of such a hearing and information contained in examination and supervisory reports of Respondent equally available to Respondent and the Board, and in the light of all relevant considerations, the Board will exercise its discretion in determining whether to order forfeiture of Respondent's membership.

August 9, 1962.