Minutes for August 29, 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 Wednesday, August 29, 1962. The Board met in the Board Room at 10:00 a.m.

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

Mr. Kenyon, Assistant Secretary
Mr. Solomon, Director, Division of Examinations
Mr. Shay, Assistant General Counsel
Mr. Leavitt, Assistant Director, Division of Examinations
Mr. Bakke, Senior Attorney, Legal Division

Messrs. Powell, O'Connell, and Chase, Counsel to the Board in the matter of Continental Bank and Trust Company

Governor Robertson requested that the record show that although he would remain in the room during the following discussion of a matter relating to the administrative proceeding involving The Continental Bank and Trust Company, Salt Lake City, Utah, he would not participate in the discussion of the matter or in any action taken by the Board with respect thereto, in accordance with his long-standing position of having withdrawn from participation in this proceeding.

It was understood that the record also would show that Messrs. Solomon, Shay, Leavitt, and Bakke did not participate in the discussion of the Board with Board Counsel.

Continental Bank and Trust Company (Item No. 1). This meeting with Board Counsel in the matter of The Continental Bank and Trust Company, Salt Lake City, Utah, had been arranged to receive the views of Counsel on certain questions contained in a letter from the Board dated August 27, 1962, which was transmitted to Counsel following the Board meeting on that date.

Mr. O'Connell, who spoke first on behalf of Counsel, stated that he believed the remarks he would make reflected the views of his associates as well as himself. However, his associates would feel free to express whatever different or supplemental views they might have.

Mr. O'Connell turned first to the so-called "Acceptance of Stipulation" that had been filed by Counsel for Continental under date of August 24, 1962. He noted that Counsel for the Board had filed a reply under today's date and that copies thereof had been distributed to the members of the Board prior to this meeting. In brief, Board Counsel submitted that the "Acceptance of Stipulation" was not in fact an acceptance of any stipulation that had been offered or suggested. It was not an acceptance of the stipulation invited by Board Counsel at page 5 of their July 5, 1962, memorandum in opposition to Respondent's Motion to Dismiss and Demand for Final Order. Neither did the "Acceptance of Stipulation" cover the substance of what the Board's August 9, 1962, statement explained that

it would be necessary to stipulate in order to close the record of the show cause hearing without a hearing. The response of Board Counsel set forth what it was conceived that any stipulation purporting to be an adequate substitute for the required hearing must include. It also stated that if Respondent desired to accomplish a stipulation within the framework of this outline, that should be done under the supervision of the Hearing Examiner, either before or at the commencement of the show cause hearing, presently scheduled to begin on September 10, 1962. Such procedure would be in accord with the Board's Rules of Practice for Formal Hearings.

Turning next to the questions set forth in the Board's letter of August 27, 1962, Mr. O'Connell suggested that the five questions actually merged one into the other. He also suggested that it was rather difficult for Counsel to comment fully on each of these inquiries, because Counsel was without knowledge of the views of the Division of Examinations on the proposal of Mr. Kenneth J. Sullivan, President of Continental Bank and Trust Company, for a settlement of the administrative proceeding. (Such proposal was discussed in memoranda from President Swan of the Federal Reserve Bank of San Francisco dated August 18 and 20, 1962.) However, Board Counsel had certain comments.

The first comments related to the sufficiency of Mr. Sullivan's proposal as a basis for not going forward with the current proceeding to determine whether to revoke the membership of Continental in the

Federal Reserve System. It was not, in the opinion of Counsel, a proposal such as to warrant termination of the proceeding at this time, or even continuance of the date of the show cause hearing. The proposal, as outlined, appeared to comprehend that about $1,111,000 would be added to the capital accounts of Continental as they stood at June 30, 1962. The proposal also appeared to comprehend that this addition to capital accounts would take place by about the end of 1962. Assuming that this would occur, the question arose whether the membership proceeding should be terminated or continued indefinitely, and Counsel would urge against such action.

Everyone, Mr. O'Connell said, recognized that it was Mr. Sullivan's intent that his proposal be submitted informally to the Board. That was legitimate. However, the show cause hearing involved a respondent, namely, Continental Bank and Trust Company. If the proceeding against the bank were to be terminated, that should be on the basis of some proposal that the bank as a party had submitted to the Board. In saying this, he was not urging that the Board abandon any informal negotiations with Mr. Sullivan. However, the question was whether the proceeding should be terminated on the basis of the proposal in its present form, and on that basis he would urge that the proceeding not be terminated. Only on the basis of a proposal submitted on behalf of the bank itself should the Board consider whether there was a sufficient basis for dismissing the proceeding.

Mr. O'Connell then turned to a breakdown of the Sullivan proposal. He noted first that $540,000 of additional capital would be obtained through the sale of 27,000 shares of common stock at $20 per share. This appeared to be the first genuine and sincere endeavor on the part of the new management of Continental to provide additional capital. However, in Mr. Swan's statement of the proposal, reference was made to an apparent assumption on the part of Mr. Sullivan that a new branch would be established early in 1963 and that there would be no new capital available to support the branch, although expenditures for land and building might amount to as much as $200,000. Further, it appeared from Mr. Swan's supplemental memorandum that Continental might spend as much as $290,000 for improvement of its existing bank building.

The second item in the proposal having legal significance was the amount of money to be realized from the liquidation by the trustees of Paramount Life Insurance Company, the estimate being about $180,000. According to the plan, the trustees would liquidate the insurance company and pay the proceeds directly to the bank. However, in a letter dated January 23, 1961, the Board had pointed out that under section 5136 of the Revised Statutes it is unlawful, with certain exceptions, for national banks to purchase for their own account shares of stock of any corporation, and that this provision is made applicable to State member banks through section 9, paragraph 20, of the Federal Reserve Act. The Board concluded that the stock of

Paramount was purchased for the account of Continental in violation of the law, and the Board required that provision be made so as to preclude the use of the stock directly for the benefit of the bank. Mr. Sullivan's present proposal comprehended that, subject to the Board having no objection, the trustees would dispose of this corporation and pay the proceeds directly to the bank. No mention was made of the bank's shareholders. Thus, Mr. Sullivan had placed in front of the Board a proposal counter to the position taken previously by the Board. Normally the Board would not be involved in the manner in which disposition was made, but when the Board was asked to approve this proposal it would be warranted in refusing to grant such approval, or perhaps in suggesting that other steps be taken to realize $180,000 from the insurance company. For example, the bank's shareholders at their next meeting could approve the dissolution of the insurance company and a contribution of capital by the shareholders to the bank. Or the shareholders might be told that a dividend on their stock would be passed, that instead the insurance company would be liquidated, and that this would afford them the proceeds they would otherwise have gotten from a dividend.

Continuing, Mr. O'Connell said it seemed to him that Mr. Sullivan's offer was not unreasonable as a starting point for negotiations. Perhaps there could be a reasonable and equitable settlement of this matter. However, this did not appear to be a

proposal that would provide a proper format for acceptance of a settlement by the Board. There was no reason why the show cause hearing could not proceed on September 10, and Mr. Sullivan should be so advised. He could be further advised, however, that there was no reason why a revised proposal could not be made. Such a revised proposal might guarantee that perhaps $200,000 or $250,000 of earnings would be retained for the purpose of financing a new branch building, thus providing that amount in addition to the $540,000 of new capital to be obtained from the sale of shares. If things such as that could be worked out, the bank might not be far from 90 per cent of the capital required by the Board's Form for Analyzing Bank Capital (the ABC Form), and not too far out of line from other banks in the System. Then there might be a basis for termination of the administrative proceeding, provided there was a proper guarantee of performance by the bank.

Any such settlement, Mr. O'Connell brought out, should be made a matter of record. Once the bank submitted a firm proposal to the Board and the Board was inclined to agree with it, there was no reason why such a proposal could not be included as part of the record. With a firm and acceptable proposal thus in the record, there was no reason why the proceeding could not be terminated. However, under no circumstances should the proceeding be terminated without a formal commitment by Continental to work out the matter to the satisfaction of the Board and formal acceptance of the proposal by the Board.

With respect to the question in the Board's August 27 letter whether termination of the proceeding on the basis of the proposed settlement would be regarded as a "compromise" that might adversely affect the legal position of the Board in this matter, Mr. O'Connell said he believed it was Counsel's opinion that acceptance of this proposal as a basis for dismissal of the proceeding could affect the Board's position adversely, not only with respect to this capital adequacy proceeding but possibly with respect also to any future capital adequacy proceeding. If the workout included agreement on the establishment of a new branch without additional capital, along with the provision of less new capital than the Board originally required, that could be damaging to the position of the Board. This should not be permitted to happen, and it was possible if this particular offer of settlement should be accepted. There was nothing wrong with a settlement per se. That would not indicate weakness, but acceptance of a proposal like the one now submitted might be interpreted as weakness on the part of the Board.

Governor Mitchell asked whether there was any way in which the Board could put on record a proposal for settlement that it would consider satisfactory.

Mr. O'Connell replied that if a proposal for settlement was made during the course of an administrative hearing, the record could indicate that the hearing had been recessed for consideration

of the settlement offer. If such an offer was firmed up thereafter, there was no reason why the record should not show the terms of the proposal and their acceptance by the Board.

Governor Mitchell then inquired whether the Board could take Mr. Sullivan's proposal, modify it in such a way as seemed suitable to the Board, and include it in the hearing record.

Mr. O'Connell replied that he would not encourage the Board to make any proposal. The Board's position should be one of refusing the present proposal if it did not wish to consider the offer. Thereafter, a properly designated representative of the Board could informally negotiate with Mr. Sullivan, expressing views as to the deficiencies of the proposal. Mr. Sullivan could then, if he wished, make a revised proposal.

Governor Mitchell inquired whether the Board would not be in a better position, so far as protecting itself from a charge that it had given way on this case, if it could enter in the record a proposal that it regarded as satisfactory and if that proposal were accepted by Mr. Sullivan.

Mr. O'Connell replied that this would put the Board in the position of moving for a settlement in a capital adequacy proceeding without any indication on the record that the respondent desired settlement. The first thing the record would show was that the Board was inquiring whether respondent wanted to settle on some particular basis.

Mr. Powell said he would advise definitely that in the present posture of this proceeding the Board not take such a step. That could have been done before the proceeding got under way. In fact, it was done by a letter dated February 1956 which was transmitted to Continental through the Federal Reserve Bank of San Franciso. That letter advised Continental that the Board felt that the bank should put in not less than $1.5 million of new capital immediately. However, the administrative proceeding had been instituted thereafter and had gone this far. The Board was in the position of judge, and must adjudicate this matter on the record. Thus, it should not make any formal or informal offers of settlement on or off the record.

Mr. Powell then stated that he had a few notes on the questions raised in the Board's letter and that he would like to comment.

It was his view, Mr. Powell said, that Mr. Sullivan's proposal was not a sufficient basis for either terminating or suspending the proceeding, or even for delaying the show cause hearing. First, as to the form of the proposal, Mr. Sullivan had not been authorized by Continental Bank to make this or any other proposal. Neither Continental's directors nor its stockholders had approved the proposal; apparently they had not even been advised. Mr. Sullivan could only recommend a proposal to his directors and stockholders. Unlike former President Cosgriff, Mr. Sullivan did not control the voting of a majority of the stock of the bank. There was no assurance that his

recommendation would be approved by the directors or stockholders. Any proposal, even to be considered by the Board, should first be formally authorized by the board of directors; and there should be at least an informal assurance of approval by the three members of the Cosgriff family who controlled a majority of the stock of the bank. It should be possible to accomplish this easily, because those three members of the family controlled 60 per cent of the total issued and outstanding stock and they had voted approximately 70 per cent of the total shares of stock voted at recent meetings. Only 51 per cent would be required under Utah State law to make effective any such proposal as this.

Otherwise, Mr. Powell said, the Board might find itself in a position of approving a proposal that was later rejected by the directors or stockholders of the bank. The Board would have committed itself to the bank, even though informally, before the bank committed itself to the Board. By committing itself in advance, even informally, the Board might also establish a practical and effective ceiling on the amount of additional capital it could formally order at the conclusion of the hearing, regardless of what the evidence might show the bank's capital deficiency to be. Should the Board order more capital, the bank would attempt to discredit the final order on the ground that it was inconsistent with a previous proposal that had been found acceptable to the Board. The Board's 1956 letter asking for $1.5 million additional

capital had been used by Continental in an attempt to discredit the Board's later finding that the capital deficiency was $2.2 million. Therefore, the Board should not entertain or consider the proposal in its present form.

As to the substance of the proposal, Mr. Powell expressed the view that even if this particular proposal had been authorized by the directors and approved by the shareholders it was of insufficient merit to warrant terminating or suspending the proceeding, or even delaying the show cause hearing. Even assuming that the funds described were legally available in the amount of $1,111,000, this would constitute only 55 or 60 per cent of the capital needed to correct a long-standing inadequacy. Each of the recognized ratios computed in preparation for the show cause hearing came out with around a $2 million deficiency. This was also indicated by statistical studies prepared for the hearing and by the testimony prepared by bank supervisory experts who were going to testify.

Therefore, unless the Board was prepared to abandon these yardsticks of what constituted a bank's capital requirement, the Sullivan proposal was hopelessly inadequate. Acceptance of such a small amount of additional capital in this widely publicized test case would be recognized as an obvious compromise. It doubtless would be interpreted by bankers, particularly those with capital problems, as an indication of a lack of confidence on the part of

the Board in its legal position. This interpretation would be emphasized by the nature of the Hearing Examiner's report that had already been filed in this proceeding. The action taken by the Board in this test case would set a standard for the banking industry as to capital. For that reason the Board could not afford to accept anything less than capital adequacy.

On the basis of the Swan memoranda, Mr. Powell continued, Mr. Sullivan had put the Board on notice that almost $.5 million of the proposed $1,111,000 of additional capital would shortly be committed to additional buildings and fixed assets by Continental Bank, and Continental already had 41 per cent of its capital account frozen in this type of asset. Mr. Sullivan had also put the Board on notice that he would expect approval by the Board of a new branch within a few months without any new capital being required. The Board was likewise on notice that any statement, order, or press release by the Board terminating this proceeding would have to be acceptable to Continental. This could only mean that there would be no indication that the bank's capital was inadequate, or that the Board had required correction of the inadequacy and had authority to do so, because those were issues on which the bank had taken a position that it was right and the Board was wrong. Doubtless the bank would ascribe some reason for the capital increase other than a step toward remedying its capital inadequacy.

As to his recommendations, Mr. Powell said he would recommend that the Board proceed as follows: First, it should direct Mr. Swan, or anyone else it wanted to direct on its behalf, to advise Mr. Sullivan that the Board would consider only such proposals as had been formally authorized by the bank's directors, and had been given assurance of ultimate stockholder approval, at least by those three members of the Cosgriff family owning a majority of the stock. Second, the Board should direct its representative to advise Mr. Sullivan that, on the basis of the facts at hand, any proposal submitted by the bank would have to contain provision for the issuance of substantially more new capital stock for cash. Third, the Board should also direct its representative to advise Mr. Sullivan that the Board, in considering or acting on any proposals submitted by the bank, would make no commitments regarding the establishment of branch offices or regarding the contents of Board statements, orders, or press releases. Fourth, the Board should direct its representative to advise Mr. Sullivan that the Board would consider any proposal embodying these principles that might be made by the bank at any time, either before the start of the show cause hearing or thereafter.

Mr. Powell noted that Board Counsel had filed today a reply to the so-called "Acceptance of Stipulation" filed by Counsel for Continental. On the basis of the document filed by Board Counsel, it would now be possible--with the concurrence of Counsel for Continental-- for the show cause hearing to be completed and the record certified to the Board promptly.

Mr. Powell also noted that this had been a long and expensive proceeding. However, the time and expense to complete it properly would not be more than 5 per cent of what had already been expended, even if the proceeding should ultimately go to the Supreme Court. In summary, unless Continental made a bona fide offer of settlement that would without question correct its long-standing capital inadequacy, the proceeding should be completed.

In discussion, Governor Shepardson commented that Mr. Powell had said that the proposal of Mr. Sullivan would amount to something in the order of half of the amount that it would take to bring Continental up to 100 per cent capital adequacy.

Mr. Powell replied that the proposal would provide about half the amount of new capital that the supervisory witnesses would say was necessary to provide the minimum capital requirement of the bank under the various formulas.

Governor Shepardson then commented that when it came to the question of expelling a bank from the System--which was the ultimate issue in this proceeding--for failure to meet the capital requirement, his question was whether the Board would be justified in taking a position of expelling a bank for having less than 100 per cent capital adequacy. There were a number of other banks operating on less than 100 per cent of the capital requirement.

Mr. Powell replied that evidence to be introduced at the forthcoming hearing would show that very few banks--practically none--were operating on as low a percentage of their capital requirement as Continental. It would also show, through application of the primary risk asset formula to banks generally on the basis of published information, that the average bank met the capital requirement indicated by the formula. The mere fact that there might be some banks operating on less than 100 per cent of the capital requirement did not justify allowing Continental to operate on such basis. There was absolutely nothing, in the case of Continental, by way of factors regarding nature of business and character of management that, according to the testimony of experts, would justify less than 100 per cent. The matter must be decided by the Board on the basis of Continental's position, its volume, and the character of its operations. The Board must decide what requirement it should exact of Continental. It would not be justified in excusing Continental simply because other banks with different types of operations or different management characteristics might be allowed to operate with less than 100 per cent of the capital requirement.

In response to a further question by Governor Shepardson, Mr. O'Connell said it appeared to him that acceptance of the Sullivan proposal would mean that Continental would have less than 90 per cent of the capital requirement and more than 70 per cent.

Mr. Powell said it was his understanding from Mr. Swan's memorandum that, making certain assumptions, the capital of Continental

would be about 80 per cent of the requirement based on the ABC form, which he understood was used by the Board's Division of Examinations. If the Board should accept the present proposal, that was going to set a standard. Knowledge of the matter was bound to get out in a highly publicized case of this kind. If the Board accepted the proposal, it was going to set a standard at 80 per cent of what was shown by the ABC form to be satisfactory, even in the case of a bank like Continental, with a management that indulged in relatively high-risk and high-volume operations.

Mr. O'Connell said that he differed from Mr. Powell only in a few respects. He did not agree that the Board could not, in good conscience and in the light of future operations, accept less than 100 per cent capital adequacy.

Governor Shepardson again raised the question whether, in view of his understanding that the capital of a considerable number of banks was less than 100 per cent of the requirement, the Board could justifiably take the position that if a bank was below that line it would expel the bank from membership.

Mr. Powell replied that the Board's order of July 1960 had acknowledged the inconclusiveness of the various formulas and ratios. However, when one looked beyond them and examined the volume and characteristics of Continental's banking operations, there was nothing that would justify less than 100 per cent capital adequacy.

In the case of other banks there might be factors that would justify going below that standard, but according to expert supervisory witnesses this was not true in the case of Continental. He was not saying that the Board must require the bank to sell enough stock immediately to bring it to within the 100 per cent range of the formula. However, he was saying that the Board should at least require the bank to sell enough stock to bring its capital sufficiently close to 100 per cent so that, by retention of earnings or otherwise, there would be a normal expectation that its capital would be brought up to the 100 per cent area within a fairly short time.

Turning to the question of procedure, Governor Shepardson said he would share the feeling that had been expressed that the Board should not set up an offer of settlement. He would like to have the judgment of Board Counsel, however, as to the best procedure for bringing about changes in the Sullivan proposal such as had been suggested by Mr. O'Connell.

Mr. O'Connell replied that this point had not been discussed among Board Counsel, but that he would express his own view. He noted that Mr. Powell had made the statement that the Board should not accept any offer that did not come to it with the authorization of the bank's directors and shareholders. Mr. O'Connell said that he differed somewhat from Mr. Powell in this respect. He thought the Board could with propriety, and consistent with its position in the

hearing, direct President Swan to be in touch with Mr. Sullivan on quite an informal basis, as apparently had been the case in the past few weeks, for the purpose of advising Mr. Sullivan of the Board's refusal to accept the present proposal and giving reasons why it could not be accepted. President Swan could make clear, however, that this was not intended to cut off further negotiations. Mr. Swan could also say that apparently it was the Board's intention to proceed with the show cause hearing on September 10. Then, if Mr. Sullivan felt so inclined, he could submit another proposal.

Mr. O'Connell also said it was his view that Mr. Sullivan could obtain approval of Continental Bank for whatever proposal he might make to the Board. He would not urge that the Board formally accept a proposal made by Mr. Sullivan personally, but in the negotiation stage he thought it was appropriate to consider such a proposal, and he believed that almost anything Mr. Sullivan might submit would be approved by the necessary people within Continental Bank. He felt that within 48 hours Mr. Sullivan could make another offer that would contemplate a change in the amount of stock to be sold and a different arrangement regarding the proceeds of liquidation of the insurance company, along with a guarantee to retain earnings in a certain amount. All of this, he believed, could be accomplished through President Swan in expeditious fashion.

Governor Shepardson said he assumed Mr. O'Connell would not contemplate formal acceptance of any offer from Mr. Sullivan without appropriate action of Continental's board of directors, to which Mr. O'Connell replied that he was just suggesting that anything submitted informally by Mr. Sullivan for the purpose of receiving the comments and views of the Board should be considered by the Board. If such a proposal appeared reasonable to the Board, Mr. Swan could so advise Mr. Sullivan and suggest that Mr. Sullivan have Continental Bank submit a formal offer.

Mr. Powell commented that normally the Board would instruct Mr. Swan--or whoever was going to represent it in negotiations--in a general way as to what the Board would find acceptable. The Board's representative would not reveal to Mr. Sullivan what his instructions were, but he would attempt to negotiate with Mr. Sullivan a proposal that would come as close as to what the Board had in mind as he could get Mr. Sullivan to submit. The Board would not commit itself until it knew it had an acceptable proposition from Continental Bank.

Chairman Martin said he understood Board Counsel was suggesting that the Board make no effort to postpone the show cause hearing scheduled to begin on September 10.

Governor Shepardson commented that there were a few days available in which the hearing could be postponed if that should be deemed desirable. In the meantime the Board could request that

President Swan--or whoever else it might designate--take the kind of suggestions Mr. O'Connell had made and see whether Mr. Sullivan wanted to come up with a different offer.

At this point Governor Mitchell inquired how long the further steps in the administrative proceeding would take, assuming that the possibility of a settlement was left out of consideration.

Mr. O'Connell replied that show cause hearing would commence on September 10. If Counsel for both sides agreed to stipulate, that would mean that no witnesses would be put on the stand, but he did not know whether Counsel for Respondent would stipulate. He would expect that Counsel for Respondent would not agree fully to stipulate the matters outlined in the reply of Board Counsel. If Counsel for Respondent did not agree so to stipulate, witnesses would have to be put on the stand. The testimony of the Board's witnesses and documentary evidence could be put in the record within a matter of five or six days.

Mr. Powell agreed, even giving time for cross-examination by Counsel for Continental. He noted that Counsel for Continental had indicated that the bank did not wish to put in any evidence.

As to the next step, Mr. Powell said there would be the certification of the record to the Board by the Hearing Examiner, with his recommended decision. It should not take long for the Hearing Examiner to make his evaluation.

Governor Mitchell noted that this would possibly take up to about the first of November. Then the Board would have to make a judgment on the recommendation of the Hearing Examiner.

Mr. Powell noted that the Board could also have oral argument before the Board if it so desired.

Governor Mitchell observed that these further steps might take until some time in December. He inquired what would happen if the Board should decide against the bank.

Mr. O'Connell pointed out that the bank could ask the Board to reconsider its decision; the bank might desire to do that before seeking court review. Then, if unsuccessful, the bank could seek a declaratory judgment, possibly in the District Court or possibly in the Court of Appeals. The final step would be to go to the Supreme Court.

Mr. O'Connell expressed agreement with Governor Mitchell that all of these steps, taken together, might require another year.

Mr. Powell added that if the Supreme Court were to grant certiorari, probably there would be no decision until about this time next year. He doubted, however, that the Supreme Court would grant certiorari. He thought the Board's chances for ultimately winning the case were excellent, and Mr. O'Connell concurred.

Chairman Martin returned to the question of what the Board should do this morning, and Mr. O'Connell said that if, for reasons known to the Board, it wished to continue the date of the September 10 hearing, either for purposes of negotiation or otherwise, he would urge that the Board do so only after contacting the Hearing Examiner. There had been an indication that the Hearing Examiner would appreciate some prior notice if the Board expected to postpone the date of the show cause hearing.

Governor Balderston said he gathered there were two decisions to be made this morning. One was whether to go ahead with the show cause hearing. The second was whether to instruct President Swan, or some other person, regarding further discussions with Mr. Sullivan.

There followed comments on the short time that would remain for President Swan to contact Mr. Sullivan before the date of the show cause hearing. The known demands upon Mr. Swan's time under his present schedule also were noted.

Governor Balderston then observed that the mere fact that the show cause hearing was opened by the Hearing Examiner did not mean that further negotiations with Mr. Sullivan would thereby be cut off.

Mr. O'Connell agreed, pointing out that a settlement could be reached at any time up to the date that the Board issued its final order.

Chairman Martin said at this point that it was clear to him that the Board probably should go ahead with the show cause hearing. Anything that the Board might want to do separately by way of providing for further negotiations with Mr. Sullivan was a different matter.

Governor Shepardson said he did not feel that the Board at this point would have justification for postponing the hearing, and Governor Balderston concurred in that view.

Chairman Martin then said it seemed to be agreed that the Board should go ahead with the show cause hearing.

Mr. O'Connell noted that if the Board wished to proceed along the lines of a stipulation of the record, and Board Counsel was so advised, Counsel could act immediately. He added that it might seem that Board Counsel was suggesting a great deal of material for inclusion in any stipulation. Much of it was published material. It would form the basis, however, for a judgment as to the present degree of capital adequacy of Continental Bank, which would be lacking under the type of stipulation suggested by Counsel for Continental. In his opinion it was not necessary to give Counsel for Continental additional time to reply to the response filed by Board Counsel; the matter, he thought, was in a posture for a decision to be made by the Board. If Counsel for Continental refused to stipulate within the framework of the outline set forth in the reply by Board Counsel, that

would be discovered and would be known at the opening of the hearing. If that were the case, Board Counsel was prepared to put witnesses on the stand. Conceivably there could be a combination of stipulation and additional testimony.

Messrs. Powell, Chase, O'Connell, and Bakke then withdrew from the meeting.

Question was raised as to the action that should be taken by the Board in light of the Acceptance of Stipulation filed by Counsel for Continental and the reply filed by Board Counsel.

Mr. Shay pointed out that the Board's Rules of Practice for Formal Hearings provide that matters of this kind shall proceed under the supervision of the Hearing Examiner. Counsel for the Board and the bank could agree, in that setting, to stipulate whatever they might desire. Then that stipulation would become part of the record that would come before the Board. It would be his suggestion that the Board issue an order, or letter, saying in effect that if any material was to be stipulated in this case, that should be worked out under the supervision of the Hearing Examiner.

After further discussion, it was agreed (Governor Robertson abstaining) that a document embodying the approach proposed by Mr. Shay would be issued.

Secretary's Note: A copy of the letter sent later in the day to Counsel for Continental is attached as Item No. 1. Copies of the letter were sent to Board Counsel and to the Hearing Examiner.

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

There followed discussion as to who should be designated by the Board to represent it in any further negotiations with Mr. Sullivan concerning a possible settlement of the administrative proceeding. At the conclusion of this discussion, it was agreed (Governor Robertson abstaining) to designate Mr. O'Connell to represent the Board in such negotiations, with the understanding that his approach would be generally along the lines that Mr. O'Connell had outlined in his comments to the Board earlier during this meeting.

Messrs. Solomon and Leavitt returned to the meeting at this point and Messrs. Molony, Assistant to the Board, Cardon, Legislative Counsel, and Goodman, Assistant Director, Division of Examinations, entered the room.

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

	Item No.
Letter to The Central Trust Company, Cincinnati, Ohio, approving the establishment of a branch in the Village of Forest Park.	2
Letter to United California Bank, Los Angeles, California, approving the establishment of a branch in the Larwin Plaza Vallejo Shopping Center, Vallejo.	3

	Item No.
Letter to Chairman Robertson of the Senate Banking and Currency Committee reporting on H. R. 12577, a bill "To place authority over the trust powers of national banks in the Comptroller of the Currency."	4
Letter to Chairman Robertson of the Senate Banking and Currency Committee reporting on H. R. 12899, a bill to "To amend section 5155 of the Revised Statutes relating to bank branches which may be retained upon conversion or consolidation or merger."	5

Statement by Mr. Solomon. There had been distributed a draft of statement to be presented by Mr. Solomon on behalf of the Board before the Senate Banking and Currency Committee on August 30, 1962, with respect to H. R. 8874, a bill relating to bank service corporations.

In discussion, Messrs. Cardon and Solomon noted that the hearing before the Senate Banking and Currency Committee had now been expanded to include also the consideration of three other bills. These were H. R. 12577, a bill "To place authority over the trust powers of national banks in the Comptroller of the Currency"; H. R. 7796, which would amend certain lending limitations on real estate and construction loans applicable to national banks; and H. R. 12899, a bill "To amend section 5155 of the Revised Statutes relating to bank branches which may be retained upon conversion or consolidation or merger." These were bills on which the Board had already taken a position, and it was proposed that Mr. Solomon's statement be expanded to reiterate the position taken on each bill previously by the Board.

There was general agreement that this should be done.

As to the portion of the statement dealing with H. R. 8874, certain minor changes were agreed upon for the purpose of clarification and emphasis. One of these changes was designed to emphasize the provisions of the bill that would make it clear that a bank could not avoid the examination and supervision of vital banking functions by the expedient of farming out such functions to bank service corporations.

At the conclusion of the discussion, it was understood that the statement would be presented by Mr. Solomon in a form reflecting the additions and changes that had been agreed upon at this meeting.

Messrs. Noyes, Director, and Solomon, Assistant to the Director, Division of Research and Statistics, entered the room at this point.

Committee on Financial Institutions. There had been submitted a memorandum from Mr. Noyes dated August 27, 1962, which indicated that he was being pressed from one source to "take a position" on the question of portfolio regulation of banks in the meetings of the President's Committee on Financial Institutions, which meetings Mr. Noyes had been attending as representative of Chairman Martin. Attached to the memorandum was a draft of position paper prepared by Mr. Solomon (Division of Examinations) in which Mr. Noyes indicated that he concurred. Mr. Noyes stated that he would like to have the

Board's reaction before the next meeting of the Committee on Financial Institutions on Wednesday, August 29. He did not think it was necessary that the Board give formal endorsement to the draft of position paper or take any formal position on the question at this time, but he would like to feel that his reply was reasonably close to the Board's views on the question.

The draft of position paper presumed that the term "portfolio regulation" referred to legislative or regulatory restrictions on the kinds or amounts of assets that banks or other financial institutions may hold. It enumerated Federal restraints on assets, the administration of limitations, and the nature of limitations. In general, the paper took the position that while several existing limitations could reasonably be repealed, clarified, or strengthened, in most cases the effects from the standpoint of the national economy probably would be negligible.

After comments by Mr. Noyes in supplementation of his memorandum, Chairman Martin commented that when a full Board was available some time should be devoted to the whole range of problems with which the Committee on Financial Institutions and the two other interagency committees were dealing. This fall the Board would have to take positions on matters currently under consideration by those committees.

With respect to the draft of position paper, Governor Robertson said he considered it an excellent document that covered the necessary

points yet did not become too specific. Governor Mitchell agreed, and Governor Shepardson stated that he would have no objection to the position expressed in the paper.

Chairman Martin then turned to Mr. Noyes and stated that he felt these comments by the members of the Board would suffice to afford him guidance.

The meeting then adjourned.

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

Appointments

Joyce Ann Davidson as Statistical Clerk, Division of Research and Statistics, with basic annual salary at the rate of $4,145, effective the date of entrance upon duty.

Erling Thorger Thoresen as Economist, Division of Research and Statistics, with basic annual salary at the rate of $7,820, effective the date of entrance upon duty.

Salary increases, effective September 2, 1962

Name and title	Division	Basic annual salary From	To
Ann R. Clary, Librarian	Research and Statistics	$ 6,015	$ 6,180
Robert F. Emery, Economist	International Finance	8,955	9,215
Warren J. McClelland, Assistant to the Director	Examinations	14,055	14,380

Salary increases, effective September 2, 1962 (continued)

Name and title	Division	Basic annual salary From	To
Walker White, Jr., Review Examiner	Examinations	$11,415	$11,675
Carol Lee Dixon, Clerk-Typist	Administrative Services	3,760	3,865

Kenneth A. Roy
Assistant Secretary

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

Item No. 1
8/29/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

August 29, 1962.

REGISTERED - RETURN
RECEIPT REQUESTED

Barron K. Grier, Esq.,
Miller & Chevalier,
1001 Connecticut Avenue,
Washington 6, D. C.

Dear Mr. Grier:

Reference is made to your letter of August 24, 1962, in the matter of The Continental Bank and Trust Company. The document submitted with that letter, together with the response thereto of Board Counsel dated and delivered to you on August 29, 1962, have been considered by the Board.

The Board's Rules of Practice for Formal Hearings provides, among other things, that "The hearing examiner shall . . . have authority to conduct pre-hearing conferences . . . [and] hold conferences for the settlement and simplification of the issues by consent of the parties . . ." (12 C.F.R. 263.2(g)). If Respondent in this case desires to stipulate all or any of the matters referred to in the submission to the Board with your letter of August 24, 1962, or in Board Counsel's submission in response thereto of August 29, 1962, such stipulations should be negotiated between Respondent's Counsel and Counsel to the Board under the supervision of the Hearing Examiner in accordance with, and as contemplated by, the provisions of the Board's Rules of Practice. Preferably, any such stipulations should be accomplished prior to commencement of the Show Cause Hearing in this matter scheduled to begin on September 10, 1962, although this could be done later in the proceeding.

Enclosed is a copy of this letter for The Continental Bank and Trust Company. Copies of your letter of August 24, 1962, and the submission enclosed therewith, the submission in response thereto by Board Counsel dated August 29, 1962, and this letter are being forwarded to the Hearing Examiner.

Very truly yours,

(signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.

Enclosure.

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

Item No. 2
8/29/62

August 29, 1962

Board of Directors,
The Central Trust Company,
Cincinnati, Ohio.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the establishment of a branch by The Central Trust Company at the southeast corner of Northland and Waycross Roads, Village of Forest Park, Ohio, provided the branch is established within one year 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. 3
8/29/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

August 29, 1962

Board of Directors,
United California Bank,
Los Angeles, California.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the establishment of a branch by United California Bank in the Larwin Plaza Vallejo Shopping Center, Vallejo, California, provided the branch is established within one year 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

Item No. 4
8/29/62

OFFICE OF THE CHAIRMAN

August 29, 1962

The Honorable A. Willis Robertson,
Chairman,
Committee on Banking and Currency,
United States Senate,
Washington 25, D. C.

Dear Mr. Chairman:

We have been advised by the Chief of Staff of your Committee that you would like to have a report from the Board on the bill H.R. 12577, "To place authority over the trust powers of national banks in the Comptroller of the Currency."

This bill would transfer from the Board to the Comptroller authority (1) to grant to national banks the right to act in fiduciary capacities, and (2) to regulate the exercise of fiduciary powers by national banks, including the operation of common trust funds.

The Board favors enactment of the bill.

Sincerely yours,

(Signed) Wm. McC. Martin, Jr.

Wm. McC. Martin, Jr.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

Item No. 5
8/29/62

OFFICE OF THE CHAIRMAN

August 29, 1962

The Honorable A. Willis Robertson,
Chairman,
Committee on Banking and Currency,
United States Senate,
Washington 25, D. C.

Dear Mr. Chairman:

It is understood from the Chief of Staff of your Committee that you would like to have a report from the Board on the bill H.R. 12899, "To amend section 5155 of the Revised Statutes relating to bank branches which may be retained upon conversion or consolidation or merger."

This bill would facilitate retention of branches by a national bank resulting from conversion of a State bank or from the consolidation or merger with either another national or a State bank, even though the branches were not in operation on February 25, 1927. Considerations relating to applications for branches in connection with conversions, consolidations, or mergers of the kinds above described are necessarily included among those taken into account by the Comptroller of the Currency in acting upon any such conversion, consolidation, or merger. Therefore, the bill, in effect, would permit avoidance of duplication of effort. It is noted that the bill would not permit the retention of branches in such situations if a State bank in a situation identical to that of the resulting national bank would be prohibited by the law of the State in question from retaining and operating as a branch an identically situated office.

The Board would have no objection to enactment of the bill.

Sincerely yours,

(Signed) Wm. McC. Martin, Jr.

Wm. McC. Martin, Jr.