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Minutes for October 30, 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

M

Gov. Mills

[Signature]

Gov. Robertson

[Signature]

Gov. Balderston

CCB

Gov. Shepardson

[Signature]

Gov. King

[Signature]

Gov. Mitchell

[Signature]

Minutes of the Board of Governors of the Federal Reserve System on Tuesday, October 30, 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. King
Mr. Mitchell

Mr. Sherman, Secretary
Mr. Kenyon, Assistant Secretary
Mr. Molony, Assistant to the Board
Mr. Cardon, Legislative Counsel
Mr. Fauver, Assistant to the Board
Mr. Hackley, General Counsel
Mr. Noyes, Director, Division of Research and Statistics
Mr. Solomon, Director, Division of Examinations
Mr. Leavitt, Assistant Director, Division of Examinations
Mr. Thompson, Assistant Director, Division of Examinations
Mr. Stephenson, Special Assistant, Division of Examinations
Mr. Landry, Assistant to the Secretary
Mr. Bakke, Senior Attorney, Legal Division
Mr. Lyon, Review Examiner, Division of Examinations

Discount rates. The establishment without change by the Federal Reserve Bank of Boston on October 29, 1962, of the rates on discounts and advances in its existing schedule was approved unanimously, with the understanding that appropriate advice would be sent to that Bank.

Circulated items. The following items, copies of which are attached to these minutes under the respective item numbers indicated, were approved unanimously:

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	<u>Item No.</u>
Letter to The Bank of Commerce, Charlotte, North Carolina, approving its application for membership in the Federal Reserve System.	1
Letter to the Federal Reserve Bank of San Francisco interposing no objection to the housing in a new building of certain services, functions, and departments of Union Bank, Los Angeles, California.	2

Report on competitive factors (New York-Huntington, New York).

Copies had been distributed of a draft report to the Comptroller of the Currency on the competitive factors involved in a proposed merger of Bank of Huntington, Huntington, New York, into The Meadow Brook National Bank, New York, New York.

It being made evident in a discussion that members of the Board desired a substantial revision of the conclusion of the report, it was understood that such revision would be prepared by the staff for consideration at another meeting of the Board.

Report on competitive factors (Front Royal-Flint Hill, Virginia).

There had been distributed copies of a draft report to the Comptroller of the Currency on the competitive factors involved in a proposed merger of The First National Bank of Flint Hill, Flint Hill, Virginia, into The Citizens National Bank of Front Royal, Front Royal, Virginia.

The report was approved unanimously for transmission to the Comptroller of the Currency, with the following conclusion:

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The proposed merger of The First National Bank of Flint Hill into The Citizens National Bank of Front Royal would not have an adverse effect on competition.

Report on competitive factors (Virginia Beach-Princess Anne County, Virginia). Distribution had been made of a draft report to the Federal Deposit Insurance Corporation on the competitive factors involved in a planned merger of Bank of Princess Anne, Princess Anne County, Virginia, into Bank of Virginia Beach, Virginia Beach, Virginia.

Without objection the report, which contained the following conclusion, was approved unanimously for transmission to the Federal Deposit Insurance Corporation:

Competition in the area would not be significantly altered by the proposed merger of these two closely related banks.

Rules of Procedure (Item No. 3). In a letter dated October 11, 1962, Senator Carroll, Chairman of the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee, requested information, in connection with a Subcommittee study, concerning changes made in the Board's administrative practices and procedures during 1961 and 1962 directed toward "strengthening and accelerating those procedures." A draft of reply, citing changes in the Board's Rules of Organization and Procedure, had been distributed with a memorandum from the Legal Division dated October 24, 1962.

Mr. Bakke referred to certain suggestions that had been made for possible improvement of the proposed reply, with particular reference to the statements therein as to the filing of proposed findings

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of fact and conclusions of law and as to procedures applicable in connection with the Board's reconsideration of bank holding company or bank merger applications.

After a discussion during which certain modifications in language were agreed upon, the letter was approved unanimously for transmission to Senator Carroll in the form of attached Item No. 3.

Application of Marine Midland Corporation. Copies had been distributed of several memoranda from the Division of Examinations, the most recent dated October 11, 1962, regarding the application of Marine Midland Corporation, Buffalo, New York, to acquire shares of the Security National Bank of Long Island, Huntington, New York, with respect to which a public oral presentation had been held before the Board on September 17, 1962. The New York Superintendent of Banks and the New York Reserve Bank recommended approval of the application, whereas the Department of Justice, as stated in its letter of July 16, 1962, believed it should be denied. The Comptroller of the Currency had also recommended denial.

The memoranda of the Division of Examinations expressed the opinion that the first three factors required to be considered under the Bank Holding Company Act of 1956 did not weigh heavily in favor of approval of the application, although it was recognized that the management problems of Security National would in all probability be remedied within a relatively short time should the application be approved. As for the fourth factor--convenience, needs, and welfare--the memorandum

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pointed to lack of strong evidence that banking needs of the area concerned were going unserved. It was noted further that with Security National having deposits in excess of \$200 million and with prospects, as stated in its 1961 annual report, that its resources would reach \$400 million in five years, expanded and more complete services could come about through the natural growth of the bank. In consequence, the Division believed that this factor did not lend strong support for approval. In connection with the fifth or competitive factor, the memorandum pointed out that consummation of the proposal would allow Marine Midland, the only bank holding company in New York State, to extend its operations materially through the acquisition of a bank having offices in Nassau and Suffolk Counties, with the principle impact believed to be in Suffolk, in which county Security National had a sizable concentration (28 per cent of the deposits and 27 per cent of offices) of the commercial banking business. It was noted that of the two larger banks in Nassau County, one (Meadow Brook National Bank) presently had no offices in Suffolk County and the other (Franklin National Bank) had a smaller concentration (15.8 per cent of deposits and 7.4 per cent of offices) than Security National. In the opinion of the Division of Examinations the proposal would eliminate some present competition, although not considered significant, along with potential competition between Security National and Marine Midland Trust Company, New York, New York, in Nassau County, where the latter bank had the legal power to establish de novo branches. Taking all factors into

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account, the Division believed that, on balance, the favorable elements with respect to the first four factors did not outweigh the unfavorable considerations with respect to the fifth factor. Accordingly, the Division's recommendation was for denial of the application.

At the request of the Chairman, Mr. Thompson commented on the application, basing his remarks on the memoranda of the Division of Examinations. A discussion ensued as to the distribution of stock ownership in Security National, it being brought out that the eight directors of the bank and its principal officers as a group owned approximately 4 per cent of the stock outstanding. Given the indication of close control of the affairs of the bank by its directors, it was suggested that the shareholdings of the bank must in all probability be widely dispersed. In this regard, it was stated that the bank had some 8,000 stockholders, but that full information as to the size of individual holdings was not available. With respect to the statement in the October 11 memorandum as to the possible use of Security National as a correspondent bank, it was noted that there was no evidence of Security National's having at the present time a large correspondent banking business. Question was then raised as to the law suit initiated by some of Security National's stockholders against the bank, its directors, certain present executive officers, certain former executive officers or directors, and corporations in which a director of the bank was alleged to have or have had interests. The suit charged many acts of misfeasance and malfeasance in office by the directors and officers

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of Security National. In reply it was noted that the suit referred to, as well as another suit by stockholders that was "on the shelf," were essentially directed at the directors and officers of the bank and not against the bank itself. Should the proposed acquisition take place, it was generally believed the suits would be terminated.

At the conclusion of the discussion the Chairman asked for the Board members' views on the application, starting with Governor Mills.

Governor Mills stated that after studying the application and after listening to the oral presentation, he felt obliged to abstain from voting on the application in view of the earlier denial by the Board of the merger proposals by Chemical Bank New York Trust Company and Chase Manhattan Bank to enter Nassau County, both of which he had favored. His affirmative vote on the two earlier applications had been premised on the belief that it was appropriate to permit downtown New York City banks, within limits, to extend their services into Nassau County. Board denial of the earlier applications had, in his opinion, changed the character of the present proposal by Marine Midland Corporation; the effect of approval would be to give the holding company a greater competitive advantage than would have been the case had the Chemical and Chase applications been approved. He was not sure whether he would have approved or disapproved the instant application had Board approval been given to the two earlier applications. However, since the latter had been denied, he considered himself foreclosed from reaching

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a decision on the Marine Midland application that would give equitable consideration to all of the interrelated merits and demerits of the case.

Governor Robertson said that he would disapprove the application for the reasons stated in the October 11 memorandum from the Division of Examinations and the July 16 letter from the Justice Department. With respect to the position taken by Governor Mills on the application, this appeared to involve a matter of judgment. So far as he was concerned, each application made to the Board needed to be considered on a case-by-case basis, and the Board's denial of the two earlier merger applications was to be viewed as one of the facts requiring consideration in appraising the present case.

Governor Shepardson said that he found a number of difficult features in the Marine Midland application, including the management situation at Security National Bank. However, the total picture included the fact that Marine Midland, the only bank holding company in New York State, was seeking to expand further its operations through the present proposal. In addition, Governor Shepardson said, there was the factor mentioned by Governor Mills. Recent denial by the Board of attempts by Chemical Bank and Chase Manhattan to enter Nassau County by way of merger suggested to him that the Marine Midland application also should be denied. Therefore, he would vote to deny the application.

Noting that, like Governor Mills, he had voted for approval of the Chemical and Chase merger applications, Governor King said that

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he had re-examined his approach to the present application in light of the point raised by Governor Mills. Upon such re-examination, however, he found himself willing to participate in the Marine Midland decision on the basis that the Chase and Chemical decisions had already been made and constituted a part of the background circumstances against which the Marine Midland application must be viewed. The Board was being urged by the applicant, in the present instance, to agree to the proposition that the best way to solve Security National's managerial problem was to approve the holding company application. On the contrary, Governor King went on to say, he did not believe that in the long run the public interest would best be served by the Board's acting as an easily accessible refuge for the solution of bank management problems. In his opinion, the better solution would come through a recognition by independent banks of their problems and through a procedure whereby the banks would themselves work out those problems. Therefore, although the acquisition of Security National by the holding company might result in improved management of the bank, he would deny the application.

Governor Mitchell indicated that he was inclined to approve the application. He did not believe that approval would change the competitive situation in the New York City metropolitan area, which to his way of thinking was the relevant one to be considered. As the eighth in size in the city, the holding company's subsidiary bank in New York City was not too important a factor in the area, and it would not be even if the current proposal were approved. Furthermore,

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Governor Mitchell observed, he did not believe it was possible to contend that the public interest, in a general sense, would be injured by the management of the holding company supplanting that of Security National. As Mr. Roth, Chairman of the Board of the Franklin National Bank of Long Island, had stated at the oral presentation, new management would put Security National in a much better position. For several years Security National had been poorly operated by persons who in his estimation should not have been in the banking business. The problem was to get new stockholders who would provide new management, and that did not seem likely under the present setup. For example, according to the most recent report of examination of the bank, four of its directors were self-serving and ineffectual. Despite some improvements the bank was still poorly managed, a situation for which the stockholders should be held responsible. The question was to find new stockholders who would supply good management to the bank, and in his estimation the proposed acquisition by the holding company would meet this need. He regarded the fact that the holding company had not made derogatory remarks about Security's management as a matter of cautious behavior. Governor Mitchell said further that although the premium proposed to be paid to Security National's stockholders was substantial, the figure involved had been arrived at in arm's length trading. Therefore, although he was not particularly happy in reaching this conclusion, he believed that if Security National were to be made a good bank it required a change in ownership, and the management that Marine Midland would provide.

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With respect to recent Board denial of the Chemical and Chase Manhattan applications to enter Nassau County by way of merger, Governor Mitchell said he did not regard these two decisions as involving principles and precedents to the same extent as the Morgan New York State holding company case. The reason for this view was, he said, that in the large New York metropolitan area it was only realistic to expect that competition was going to be provided in the form of several large branch systems operating throughout the area. This was unlike the situation in central and upper New York State involved in the Morgan application. Finally, he did not believe that the good earnings and prospects enjoyed by Security National reflected credit on its management. Economic expansion in the area of the bank's operations would be expected almost automatically to generate volume for a bank so advantageously situated. As to the competitive situation, it could be expected that Franklin, Meadow Brook, and eventually the New York City banks would supply all the competition for which anyone could ask. This was a transitional period; it would not be too long before the City banks were established in the area. In view of the foregoing considerations, Governor Mitchell said, he would approve the application.

Governor Balderston stated that his thinking on the application had centered on two problems: first, consistency with past decisions of the Board; second, the problem of size and scale as it affected holding company decisions, and in this regard how Marine Midland Corporation differed from the proposed Morgan New York State holding company,

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whose formation the Board had denied. On the question of size and extent of operations, he could see no difference between the two holding companies substantial enough to affect the Board's decision. He noted that applicant was the second largest registered bank holding company in the United States. Should the present application be approved, it would be the twelfth banking institution in size in the country and would control five to six per cent of commercial bank deposits in New York State. With regard to the competitive situation, Governor Balderston noted the inability of Marine Midland Trust Company, the holding company's subsidiary in New York City, to branch into Suffolk County under New York State law, unlike the ability of Chase Manhattan and Chemical Bank New York Trust with regard to Nassau County. Although Security National was the largest bank in Suffolk County, it could hardly be regarded as being as dominant as Franklin or Meadow Brook in Nassau County. Although New York City banks could not enter Suffolk by means of de novo branches or mergers, Meadow Brook National could enter Suffolk and, in fact, had pending an application to merge with Bank of Huntington. Continuing, Governor Balderston said that Security National was of such size that its acquisition by Marine Midland Corporation would seem to constitute entry into Suffolk County by the holding company on a massive scale. So far as the management situation at Security National was concerned, despite the several undesirable features of this problem, he did not believe that it was of such seriousness as to mean that the bank's acquisition would represent a salvaging operation

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by the holding company. All in all, Governor Balderston said, he did not think that the circumstances of this case were sufficiently different from those that caused the Board to disapprove the Chase, Chemical, and Morgan applications to lead to anything but denial. At the same time, he found himself wondering what his decision would be if Marine Midland were smaller. If it were, he felt that he might see his way clear to approve. On balance, however, he would deny the application.

Chairman Martin stated that he also would deny the application, although with some reluctance. The essential problems were the same as those involved in the Chemical and Chase decisions. The question was how to evaluate the public interest aspect--both short and long run. In the longer run, he was convinced that the banking laws would have to be revised, but he did not think that the Board should take steps that would in effect accomplish the revision. In many respects, he felt that in this instance the applicant had made quite a good case. Some of the value judgments that had been made might be questioned; to do a complete job, the Board would have to get into factors such as the motivation of individuals, but that would be impractical. In brief, he felt that this must be regarded as a transitional period, one that would continue until people were sufficiently aroused to demand improved banking laws. While the Chase and Chemical decisions were difficult, he felt that in retrospect his vote on them would have been the same. In his judgment, less harm had been done by those decisions than might have developed over the longer run if the applications had been approved.

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Governor King then made a further statement of his views in which he stressed the importance of people assuming responsibility for solving their own problems. He felt that an attempt on the part of an agency like the Board to assume responsibility and solve problems, as through approval of the Marine Midland application, would work in the wrong direction from the standpoint of the public interest. As he saw it, those connected with Security National should be expected to shoulder their responsibilities. The fact that there appeared to be so many dissatisfied shareholders held out some promise that a change in ownership and management might occur.

After further discussion, it was voted to deny the application of Marine Midland Corporation, Governor Mitchell voting "no" and Governor Mills abstaining. It was understood that the Legal Division would prepare for the Board's consideration drafts of an order and statement reflecting this decision, and that a dissenting statement by Governor Mitchell also would be prepared.

Mr. Koch, Associate Director, Division of Research and Statistics, joined the meeting at this point and Messrs. Leavitt, Thompson, Stephenson, Bakke, and Lyon withdrew.

Committee on Federal Credit Programs. On March 28, 1962, the President established a Committee on Federal Credit Programs to be headed by the Secretary of the Treasury (and with the Chairman of the Board of Governors as a member) for the purpose of reviewing legislation and administrative practices relating to Federal credit programs, using

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as a point of departure the relevant recommendations of the Commission on Money and Credit. In his memorandum the President pointed to "the need for a thorough review of the impact of these programs on the economy, their effectiveness for the special purposes for which they were established, and the policies and techniques employed in administering them." As more specifically defined by the President, the task of the Committee was "to consider what changes, if any, in Federal credit programs would contribute to achieving the nation's economic goals."

In addition, the Committee was requested to consider the following specific topics:

- (a) The circumstances under which Federal credit programs should be self-supporting and the criteria for and character and extent of subsidy where subsidies are appropriate.
- (b) The criteria for determining whether a particular program should take the form of direct Federal lending, loan insurance, loan guarantee, or other form.
- (c) The budgetary treatment of Federal credit programs.
- (d) The appropriate degree of coordination of Federal credit programs with the general monetary and fiscal policies of the Federal Government, and the use of credit programs for counter-cyclical purposes.
- (e) The role and effectiveness of statutory and administrative interest rate ceilings in Federal credit programs.

The President had requested that the Committee's report and recommendations be submitted by November 1, 1962.

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There had been distributed under date of October 24, 1962, for the purpose of providing members of the Board an opportunity to comment, a memorandum from Mr. Noyes attaching the draft report of the Committee on Federal Credit Programs. As noted in the memorandum, the report was not one for which the Board had a primary responsibility; the membership of the Committee included the Director of the Bureau of the Budget and the Chairman of the Council of Economic Advisers, as well as the Chairman of the Board of Governors.

The views expressed in a discussion of the draft report indicated that on the whole the Board members believed the recommendations therein to be reasonable. Although some criticisms might be made, the report was regarded as reasonably well done.

All members of the staff except Messrs. Sherman, Kenyon, Molony, and Fauver then withdrew.

Director appointments. It was agreed to ascertain through the Chairman of the Federal Reserve Bank of Boston whether Dr. Barnaby C. Keeney, President of Brown University, Providence, Rhode Island, would accept appointment if tendered as Class C director of the Boston Bank for the three-year term beginning January 1, 1963, with the understanding that if it were ascertained that he would accept, the appointment would be made.

Secretary's Note: It was subsequently ascertained that Dr. Keeney would be unable to accept the appointment.

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It was agreed to ascertain through the Chairman of the Federal Reserve Bank of Richmond whether Dr. Wilson H. Elkins, President of the University of Maryland, College Park, Maryland, would accept appointment if tendered as Class C director of the Richmond Bank for the three-year term beginning January 1, 1963, with the understanding that if it were ascertained that he would accept, the appointment would be made.

Secretary's Note: It having been ascertained that Dr. Elkins would accept, an appointment wire was sent to him on November 21, 1962.

The meeting then adjourned.

Secretary's Notes: The Board today issued an order terminating the administrative proceeding involving The Continental Bank and Trust Company, Salt Lake City, Utah, the issuance of such order having been approved by the Board on October 11, 1962. A copy of the order is attached as Item No. 4.

Governor Shepardson today approved on behalf of the Board the following items:

Memorandum from the Division of Personnel Administration dated October 29, 1962, recommending increases in the per diem and hourly wage rates of the following part-time and substitute employees:

Annie W. Becton, Substitute Maid, Division of Personnel Administration, from \$12.32 to \$12.96 per day.
Ruth Page, Substitute Maid, Division of Personnel Administration, from \$12.32 to \$12.96 per day.
Frances L. Hornbeck, Substitute Charwoman, Division of Administrative Services, from \$1.69 to \$1.77 per hour.

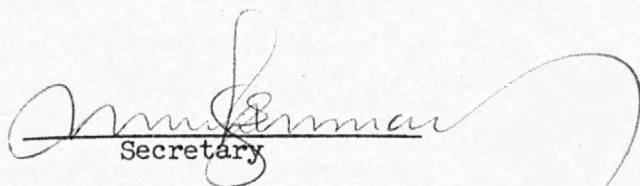
Memorandum from the Division of Administrative Services recommending acceptance of the resignation of Herbert E. Haney, Senior Programmer in that Division, effective at the close of business November 10, 1962.

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Letter to the Federal Reserve Bank of Dallas (attached Item No. 5) approving the designation of Gerald B. Garrett and J. Lero Griffin as special assistant examiners.

Letter to the Federal Reserve Bank of San Francisco (attached Item No. 6) approving the appointment of Stephen L. Eschler as assistant examiner.


Secretary

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

Item No. 1
10/30/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD



October 30, 1962

Board of Directors,
The Bank of Commerce,
Charlotte, North Carolina.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the application of The Bank of Commerce, Charlotte, North Carolina, for stock in the Federal Reserve Bank of Richmond, subject to the numbered conditions hereinafter set forth.

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

In connection with the foregoing conditions of membership, particular attention is called to the provisions of the Board's Regulation H, regarding membership of State banking institutions in the Federal Reserve System, with especial reference to Section 208.7 thereof. A copy of the regulation is enclosed.

The Bank of Commerce

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If at any time a change in or amendment to the bank's charter is made, the bank should advise the Federal Reserve Bank, furnishing copies of any documents involved, in order that it may be determined whether such change affects in any way the bank's status as a member of the Federal Reserve System.

Acceptance of the conditions of membership contained in this letter should be evidenced by a resolution adopted by the board of directors and a certified copy of such resolution should be transmitted to the Federal Reserve Bank. Arrangements will thereupon be made to accept payment for an appropriate amount of Federal Reserve Bank stock, to accept the deposit of the required reserve balance, and to issue the appropriate amount of Federal Reserve Bank stock to the bank.

The time within which admission to membership in the Federal Reserve System in the manner described may be accomplished is limited to 30 days from the date of this letter, unless the bank applies to the Board and obtains an extension of time. When the Board is advised that all of the requirements have been complied with and that the appropriate amount of Federal Reserve Bank stock has been issued to the bank, the Board will forward to the bank a formal certificate of membership in the Federal Reserve System.

The Board of Governors sincerely hopes that you will find membership in the System beneficial and your relations with the Reserve Bank pleasant. The officers of the Federal Reserve Bank will be glad to assist you in establishing your relationships with the Federal Reserve System and at any time to discuss with representatives of your bank means for making the services of the System most useful to you.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.


Enclosure

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

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Item No. 2
10/30/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

October 30, 1962



Mr. Eliot J. Swan, President,
Federal Reserve Bank of San Francisco,
San Francisco 20, California.

Dear Mr. Swan:

This refers to Mr. Ahlf's letter of September 19, 1962, with respect to services, functions, and departments the Union Bank, Los Angeles, California, expects to house in a new service building.

The Board has no objection to these operations being carried on by Union Bank in a service building. However, a more fundamental question is whether the Board's express permission is required by statute (R. S. 5155; 12 U.S.C. 36) for these operations, on the ground that they constitute a branch. The bank-by-mail feature, at least, raises a question whether "deposits are received" at this office, and, accordingly, whether a branch authorization by the Board is necessary.

As you know, the Bank Service Corporation law has been signed by the President and under that law banks are authorized to participate in the operation of a bank service corporation, and the functions of such a corporation may have a definite relation to the question now under consideration. Therefore, it seems inadvisable to take a definite position on the question whether Union Bank will be operating a "branch" in its service building until the Board has had an opportunity to consider the entire question of "internal" services being performed by or for banks at a central location. In the meantime, Union Bank may be assured that the Board will issue a branch permit for these operations if it is concluded that such permission is required by statute.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

Item No. 3
10/30/62

OFFICE OF THE CHAIRMAN

October 31, 1962.

The Honorable John A. Carroll, Chairman,
Subcommittee on Administrative
Practice and Procedure,
Committee on the Judiciary,
United States Senate,
Washington 25, D. C.

Dear Mr. Chairman:

This is in response to your letter of October 11, 1962, requesting information regarding changes made in the Board's administrative practices and procedures during 1961 and 1962 directed toward strengthening and accelerating such procedures.

The Board's Rules of Organization and Procedure were revised in late 1961 and again in early 1962. The revised rules reflect a number of changes which are believed to serve the objectives referred to in your inquiry. These changes are discussed below.

1. The rule regarding disclosure of unpublished information (12 CFR 261.2(b)) was amended to permit disclosure by appropriate officers, employees, or agents of the Board to persons properly interested of unpublished economic, statistical, or similar information and unpublished information regarding interpretations by the Board of statutory or regulatory provisions, without prior Board approval, unless such information is scheduled for public release at a subsequent specified time, relates to or discloses the affairs of any identified person, or is of a nature where disclosure is not in the public interest. Previously, formal Board approval for disclosures of unpublished information was required. As applied to administrative proceedings, the present rule can serve to expedite matters which are or may be before the Board by facilitating access to pertinent factual information in the Board's possession. It can also serve to strengthen the record of proceedings before the Board by making more readily available to parties and interested persons factual information and interpretive precedents regarding prior Board actions.

2. A new rule was added, spelling out the procedures applicable in connection with the Board's consideration of bank holding company or bank merger applications (12 CFR 262.2(f)).

The Honorable John A. Carroll -2-

Subparagraph 6 thereof was designed to encourage parties to present all relevant facts in the first instance, and discourage capricious petitions for reconsideration. Also of interest may be subparagraph 7 of the rule here under consideration, wherein it is provided that in any case in which the Board orders a public hearing or a public oral presentation of views on an application, as soon as practicable following publication in the Federal Register of notice of such public proceeding the subject application shall be available for inspection by the public except such portions thereof as to which the Board finds that disclosure would not be in the public interest. In making available an application to persons desirous of expressing views thereon, it is believed that more pertinent and relevant expressions will be received, thus assuring the Board, applicant, and public of the most reasonable basis for decision.

3. The rule relating to hearings for the purpose of taking evidence (12 CFR 263.2(c)) was amended to provide for the designation of an attorney, to be known as "Board Counsel," to represent the Board. Particularly with respect to hearings on applications under the Bank Holding Company Act of 1956, which are non-adversary in nature, this provision can expedite the proceeding and strengthen the record by providing an impartial participant, thoroughly familiar with the statute involved and the Board's administration thereof, through whose activity development of a fair and complete record would be more assured.

4. The rule relating to the submission of evidence at hearings (12 CFR 263.2(h)) was amended to provide that written exhibits will not, unless otherwise permitted by the Hearing Examiner, be accepted unless submitted in duplicate for the record, and that copies of such exhibits must be furnished to other parties to the proceeding. This rule is intended to obviate the delay incurred when copies of exhibits offered in evidence are not supplied in sufficient number to satisfy basic procedural requirements. Further, the rule is calculated to strengthen the record of a hearing by permitting more thorough and intelligent formulation of cross-examination and rebuttal, particularly where the exchange provision is implemented by a pre-hearing order requiring exchange to take place prior to the opening of the hearing.

5. The rule regarding objections to the admission or exclusion of evidence (12 CFR 263.2(i)) was changed to provide that exceptions to rulings of the Hearing Examiner thereon need not be noted in order to preserve the right to urge such exceptions in consideration of the matter by the Board. This change can expedite a hearing by eliminating the time consumed in making formalistic

The Honorable John A. Carroll -3-

pleadings on the record, and it also can serve to strengthen the record before the Board by not foreclosing counsel from pursuing a meritorious objection, which pursuit might have been foreclosed under the previous rule had counsel not preserved his objection by proper exception.

6. The rule relating to the filing of proposed findings of fact and conclusions of law (12 CFR 263.5) was revised to permit Board Counsel, in non-adversary proceedings such as those under the Bank Holding Company Act, to file comments concerning the evidence of record or on the proposed findings and conclusions submitted by any party; previously, the only way in which Board Counsel could place his views in such proceedings before the Hearing Examiner was by filing proposed findings of fact and conclusions of law. This change, by permitting Board Counsel to await the submission of proposed findings and conclusions by parties to the proceeding before making his submission, can have the effect of expediting the proceeding by avoiding repetitious or cumulative submissions. It can also strengthen the record in such proceedings by giving the Hearing Examiner the benefit of an objective appraisal of the proposed findings and conclusions of parties by a disinterested and experienced observer. (This latter point takes on added significance when it is noted that the Board does not have Hearing Examiners on its staff; when the occasion for an examiner arises, one is borrowed from another agency pursuant to the provisions of section 11 of the Administrative Procedure Act.)

7. The rule relating to submission of the Hearing Examiner's Report (12 CFR 263.6) was revised to provide specifically that such report shall contain findings and conclusions, with reasons or the basis therefor, upon all material issues of fact or law involved in the proceeding. This requirement in the Board's rules parallels the requirement of the Administrative Procedure Act and, although as a matter of course the requirement was adhered to in all proceedings prior to the revision of the rules, it makes explicit that the principle underlying the Administrative Procedure Act requirement shall apply to all proceedings of the Board even where that Act does not govern the conduct of a particular proceeding. This requirement can have the effect of assuring more expeditious action on a particular matter by precluding a later controversy as to what specific action was taken by the Hearing Examiner, and of strengthening the record by insuring that the Board will have before it an objective treatment of each and every factual and legal issue involved when it considers a case. In regard to Board action in adopting or rejecting the findings and conclusions of the Hearing Examiner, the provisions of 12 CFR 263.6 will assure formulation of a proper record for purposes of any judicial review.

The Honorable John A. Carroll -4-

8. A new section was included in the Board's Rules relating to the handling and disposition of motions (12 CFR 263.8). It is believed that this addition to the Rules will further assure orderly proceedings by establishing and apprising parties as to the point in any proceeding at which all motions must be made to and ruled on by the Hearing Examiner rather than the Board, thereby insuring that motions are properly directed in the first instance. Also, of course, in addition to expediting administrative proceedings by having the procedures to be followed in submission of motions spelled out in detail, the new rule can effect substantial savings of time by having motions addressed to and passed on by the Hearing Examiner, since the time-consuming requirement of formal Board action need not be involved with respect to motions filed during the Hearing Examiner's involvement with the case.

9. The rule dealing with service of papers (12 CFR 263.12) was revised to provide that the Board will serve all orders, notices, reports, and other papers issued by it when service thereof is required, as well as of reports of Hearing Examiners, and that every other paper requiring service, including motions, proposed findings and conclusions, exceptions, and briefs, shall be served on any party to a proceeding by the party filing the same. Previously, the Board's Rules provided that service of all papers and pleadings, by whomever initiated, was to be made by the Board. The change can expedite proceedings by obviating the delay incident to having all papers and pleadings which are not issued by the Board transmitted to it for service on parties to the proceeding.

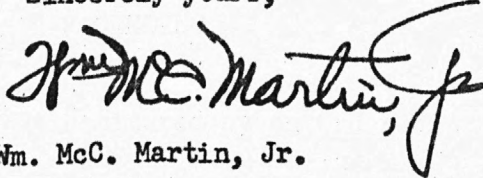
In summary, when the individual changes which have recently been made in the Board's Rules are viewed in total perspective, it is believed that the net result has been and will be to insure a better and more complete record in administrative proceedings, more expeditious disposition of such proceedings, and greater procedural and substantive fairness to parties thereto.

In addition to comments on changes in the Board's Rules, your letter requests copies of "the order, minute, memorandum, or other paper which put the change into effect and explained it." As noted previously, the changes referred to above were made in the course of a general revision of the Board's Rules of Organization and Procedure. Notices of the changes were, of course, published

The Honorable John A. Carroll -5-

in the Federal Register, but no explanatory or descriptive material accompanied such publication. However, with the thought that your subcommittee may find it helpful to have a convenient source of reference to the procedural provisions discussed above, there is enclosed a current copy of the Board's Rules of Organization and Procedure.

Sincerely yours,

A handwritten signature in cursive script that reads "Wm. McC. Martin, Jr." The signature is written in dark ink and is positioned above the printed name.

Wm. McC. Martin, Jr.

Enclosure

UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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

ORDER TERMINATING PROCEEDING

This proceeding was initially instituted by an Order of the Board of Governors of the Federal Reserve System dated June 29, 1956, in which the Board ordered a hearing to determine (1) the adequacy or inadequacy of the net capital and surplus funds of The Continental Bank and Trust Company of Salt Lake City, Utah (hereinafter called the "Bank"), (2) the additional amount of capital funds, if any, needed by the Bank, and (3) what period of time would be reasonable in which to allow the Bank to increase its capital funds to make them adequate.

By an Order dated July 18, 1960, based upon evidence contained in the record of that hearing, to the extent indicated in that Order, and upon examination and supervisory reports of the Bank equally available to the Bank, the Board found that the Bank's net capital and surplus funds as of that date were inadequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, and ordered that within six months of the date of the Order the Bank, by the sale of common stock for cash, effect

an increase in its net capital and surplus funds in the amount of not less than \$1,500,000.

Upon failure of the Bank to comply with such Order of July 18, 1960, the Board on June 28, 1961, issued an Order for a hearing at which the Bank might show cause why the Board should not require it 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 for failure to comply with the Bank's Condition of Membership No. 2; which provides:

"The net capital and surplus funds of such bank shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, and its capital shall not be reduced except with the permission of the Board of Governors of the Federal Reserve System."

The Show Cause Hearing was held before a duly appointed Hearing Examiner on October 29, 1962, the record of such hearing was closed on the same date by the Hearing Examiner, and such record has been certified by the Hearing Examiner to the Board.

The record so certified contains a letter addressed by the Bank to the Board under date of October 9, 1962, enclosing a resolution of its Board of Directors which sets forth a plan for increasing the Bank's capital accounts. In substance that plan provides:

1. By the end of 1962 the capital, surplus, undivided profits, and unapplied reserve accounts of the Bank will be increased to a total of not less than \$6,500,000, which will require a cash increase of not less than \$1,111,000 over the June 30, 1962 total of these accounts.

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2. This cash increase of \$1,111,000 in its capital structure will be accomplished by the Bank in the following manner:

a. The issuance and sale of additional common stock for cash in the amount of \$540,000; and

b. Cash dividends from the two wholly owned building subsidiaries of the Bank; cash proceeds of the liquidation of the Paramount Life Insurance Company of Texas; and the declaration of a stock dividend in lieu of the Bank's 1962 year-end cash dividend, the total of such dividends and proceeds of liquidation amounting to \$571,000.

3. This \$1,111,000 cash increase in the Bank's capital structure will be allocated as follows:

\$810,000 to capital stock

\$270,000 to surplus, and

\$31,000 to undivided profits and/or reserves

4. Upon the accomplishment of this capital increase the Bank will have:

Capital stock	\$3,510,000
Surplus	1,700,000
Undivided Profits	505,000
Reserves	785,000
	<u>\$6,500,000</u>

In addition the Bank's letter of October 9, 1962, represented that the Bank would continue to improve its capital structure through net retained earnings.

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The Board has considered the fact that during the period between the aforesaid July 18, 1960 Order and the June 30, 1962 Report of Condition the Bank had increased its capital accounts by \$388,530 from retained earnings, which together with the additional \$1,111,000 will result in a total capital account increase since July 18, 1960 of \$1,499,530. The Board has further considered such changes as have occurred since July 18, 1960 in the amount, character, and condition of the Bank's assets and in its deposit liabilities and other corporate responsibilities. The Board has also noted that through earnings retained since the commencement of this proceeding in 1956, the Bank had increased its capital structure as of June 30, 1962 from \$3,488,202 to \$5,389,350. With the addition of the aforesaid \$1,111,000 by year end 1962, the Bank will have increased its capital structure by somewhat more than \$3,000,000 since the commencement of this proceeding.

On the basis of these considerations the Board addressed a letter to the Bank dated October 11, 1962, which is a part of the certified record, stating that accomplishment of the plan set forth by the Bank would constitute sufficient cause for terminating this proceeding.

Accordingly, the Board finds that, in the light of the Bank's current capital condition as reflected by the latest report of examination of the Bank, and by the Bank's latest reports of condition and of income and dividends, the anticipated accomplishment within a reasonable period of time of the actions to increase the Bank's capital funds, as

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described in the resolution of the Bank's Board of Directors enclosed with the said letter from the Bank dated October 9, 1962, constitutes sufficient cause for termination of this proceeding.

IT IS HEREBY ORDERED that the capital adequacy proceeding involving the Bank, originally instituted by the Board's Order of June 29, 1956, and culminating in the Board's Order to Show Cause and for Hearing Thereon of June 28, 1961, and the hearing held on October 29, 1962, pursuant to that Order, is hereby terminated, on the condition that if within the period of time proposed by the Bank, or by such later date as the Board, for good cause shown, may hereafter specify, the Bank shall not have furnished the Board with satisfactory evidence that the Bank has substantially accomplished the actions described in the resolution of its Board of Directors enclosed with such letter of October 9, 1962, then and in that event this Order shall be deemed to be of no effect and the Board may then reopen the record of the Show Cause Hearing or take such other action as may be appropriate in the circumstances at that time.

Dated at Washington, D. C., this 30th day of October, 1962.

By order of the Board of Governors.

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

(SEAL)

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

Item No. 5
10/30/62



ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

October 31, 1962

CONFIDENTIAL (FR)

Mr. Thomas R. Sullivan, Vice President,
Federal Reserve Bank of Dallas,
Station K,
Dallas 2, Texas.

Dear Mr. Sullivan:

In accordance with the request contained in your letter of October 24, 1962, the Board approves the designation of the following employees as special assistant examiners for the Federal Reserve Bank of Dallas for the purpose of participating in examinations of State member banks except those listed opposite their names:

- Gerald B. Garrett - The First State Bank,
Rockwall, Texas.
- J. Lero Griffin - Empire State Bank,
Dallas, Texas.

The authorizations heretofore given your Bank to designate these employees as special assistant examiners are hereby canceled.

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
10/30/62



ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

October 31, 1962

Mr. P. W. Cavan, Vice President,
Federal Reserve Bank of San Francisco,
San Francisco 20, California.

Dear Mr. Cavan:

In accordance with the request contained in your letter of October 23, 1962, the Board approves the appointment of Stephen L. Eschler as an assistant examiner for the Federal Reserve Bank of San Francisco. Please advise the effective date of the appointment.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.