

609
9/61

Minutes for April 30, 1963

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

RM

Gov. Mills

[Signature]

Gov. Robertson

R

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, April 30, 1963. 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. Hackley, General Counsel
Mr. Noyes, Director, Division of Research
and Statistics
Mr. Solomon, Director, Division of Examinations
Mr. Hexter, Assistant General Counsel
Mr. Hooff, Assistant General Counsel
Mr. Dembitz, Associate Adviser, Division of
Research and Statistics
Mrs. Semia, Technical Assistant, Office of the
Secretary
Mr. Bakke, Senior Attorney, Legal Division
Mr. Doyle, Attorney, Legal Division

Discount rates. The establishment without change by the Federal Reserve Banks of Boston and Atlanta on April 29, 1963, of the rates on discounts and advances in their existing schedules was approved unanimously, with the understanding that appropriate advice would be sent to those Banks.

Agenda for Federal Advisory Council meeting (Item No. 1). There had been distributed a draft of letter to the Secretary of the Federal Advisory Council suggesting topics for inclusion on the agenda for the meeting of the Council to be held on May 20-21, 1963.

After discussion during which several changes were agreed upon, the letter was approved unanimously in the form attached as Item No. 1.

4/30/63

-2-

United States Administrative Court (Item No. 2). There had been distributed a memorandum dated April 25, 1963, from the Legal Division in connection with a request from the House Committee on the Judiciary for the Board's views on H. R. 43, a bill to provide for a United States Administrative Court. It was contemplated that such a Court would provide a judicial forum where, at the option of a Federal department or agency or of a party to a proceeding before such a department or agency, certain cases might be heard.

The memorandum noted that similar proposals had been advanced from time to time during the past twenty-five years. The principal argument that had been urged in favor of such proposals was that there could be no effective protection of private rights unless there was a complete separation of prosecuting functions from decision-making functions with respect to administrative adjudication. The principal negative argument was that administrative adjudications usually involved highly complex and technical issues that the agencies themselves were better equipped to handle; that to give a court jurisdiction in the first instance would deprive both the Government and litigants of the expertise of the agencies in the formulation of decisions.

The current proposal contemplated that the Court would have concurrent jurisdiction with Federal departments and agencies in specified classes of cases of a disciplinary or enforcement nature. Upon examination of the Board's operations, it appeared that the Board only infrequently had instituted proceedings such as would fall within the concurrent jurisdiction of an Administrative Court.

4/30/63

-3-

The Legal Division concluded that on balance the creation of an Administrative Court would be beneficial and in the interests of the Board, by creating a forum to which the Board could transfer jurisdiction over the occasional cases of adjudication that came before it. Accordingly, the Division recommended that the Board interpose no objection to the bill. However, in view of the relatively slight impact that the proposal would have on the Board's operations, it was believed appropriate for the Board not to express a strong affirmative position. Attached to the memorandum was a draft of reply to Chairman Celler of the Committee on the Judiciary.

At the Board's request Mr. Bakke commented on the proposed legislation, following which Mr. Hackley added supplementary remarks.

In further discussion, Governor Mills stated that he could find no pressing reason for the establishment of an Administrative Court. He would prefer that the reply sent to the Committee be adverse; at least, that it be distinctly noncommittal. He subscribed to the line of reasoning that an agency that had responsibility in a certain field developed an expertise that made it better qualified to reach decisions in that field than an Administrative Court. Further, the availability of such a Court would not relieve an agency of its burden of work to any extent, because the agency would have to develop the information on the basis of which the Court would consider a case.

Governor Robertson remarked that, since the Board only infrequently had cases of the nature that might be referred to an Administrative Court,

4/30/63

-4-

if one were established, he would not object if the Board's reply to the Committee on the Judiciary were relatively noncommittal. More broadly speaking, however, he considered the proposal important and in the right direction. In his view, the contention that only the agency charged with responsibility in a particular area had the expertise necessary to judge a case arising in that area in effect impugned the whole court system of the United States; no court could be completely familiar with the technicalities of all of the cases brought before it, but this process afforded impartial decisions by judges who were not parties to the controversy. It seemed to him a Government agency ought not have to divide its efforts and those of its staff in an administrative proceeding. Instead, it should bend its full efforts to the prosecution of the matter.

During further discussion Chairman Martin suggested, in light of the views expressed, deleting from the proposed letter to the Committee on the Judiciary a sentence stating that the availability of an Administrative Court might be useful in certain cases in which the Board's adjudicatory functions were called into play.

This deletion and a minor editorial change in the wording of the letter having been agreed upon, approval was given to a letter in the form attached as Item No. 2.

Litigation involving First Bank Stock Corporation (Item No. 3).

There had been distributed a memorandum dated April 22, 1963, from the

4/30/63

-5-

Legal Division regarding action initiated by the State of South Dakota in the Federal District Court of South Dakota challenging the merger of three small State banks into The National Bank of South Dakota, Sioux Falls, a subsidiary of First Bank Stock Corporation, Minneapolis, Minnesota. First Bank Stock, in a letter dated March 15, 1963, requested that the Board file a brief amicus curiae or an affidavit in support of First Bank Stock's contention that the merger did not require Board approval under section 3(d) of the Bank Holding Company Act. The Legal Division recommended, for reasons set out in the memorandum, that the Board not file a brief or affidavit, but that instead a letter be sent to First Bank Stock containing a statement of the Board's general position with respect to the scope and applicability of sections 3(d) and 3(a)(3) of the Holding Company Act. A draft of such a reply was attached to the memorandum.

After discussion, the letter was approved unanimously. A copy is attached as Item No. 3.

Mr. Bakke then withdrew from the meeting.

Interpretation of banking laws and regulations. In connection with the question whether a subsidiary of Bankers Trust Company, New York, New York, might lawfully purchase stock of a national bank, the Comptroller of the Currency, in a letter dated March 11, 1963, asked if the Board reserved to itself the right to interpret "all sections of the National Banking laws and regulations issued by the Comptroller of the Currency"

4/30/63

-6-

insofar as they applied to State member banks. On April 19, 1963, in discussing the Bankers Trust matter, the Board supported the Legal Division's opinion that the Board may properly interpret a provision of the national bank laws that applies to State member banks.

There had now been distributed a memorandum dated April 23, 1963, from the Legal Division relating to the right of the Board to interpret regulations of the Comptroller of the Currency insofar as they applied to State member banks. The majority of the legal staff saw no logical distinction between the Board's right to interpret national bank laws and its right to interpret the Comptroller of the Currency's regulations, where applicable to State member banks. At the same time, it was believed that, where Congress had authorized an agency to issue regulations, that agency's interpretations of its own regulations should be given persuasive weight unless clearly erroneous. The Legal Division's position was reflected in a draft letter, attached to the memorandum, replying to the Comptroller of the Currency's letter of March 11.

The same principle, it was noted in the memorandum, would conversely apply to interpretation by the Comptroller of the Board's regulations that applied to national as well as State member banks, such as Regulation Q, Payment of Interest of Deposits. The latter point was pivotal in a recent matter. In a letter to a national bank dated March 4, 1963, which had been published, the Comptroller of the Currency held that Associated Hospital Service, Philadelphia, Pennsylvania, was eligible to maintain

4/30/63

-7-

a savings deposit with a national bank, despite a contrary ruling by the Board in 1960. At its meeting on March 18, 1963, the Board instructed the Legal Division to prepare a letter to the Comptroller of the Currency reaffirming its 1960 ruling. This reaffirmation was incorporated in the draft of reply to the Comptroller's letter of March 11, 1963.

After explaining the basis for the Board's opinion that Associated Hospital Service was not in fact a charitable institution and therefore was not entitled to the privilege accorded such institutions under the definition of "savings deposits" in Regulation Q, the draft letter noted that an identical definition of "savings deposits" was set forth in the Board's Regulation D, relating to reserves of member banks, which was also issued pursuant to the first paragraph of section 19 of the Federal Reserve Act. Consequently, deposits of Associated Hospital Service would be regarded as demand deposits, rather than savings deposits, in determining compliance by member banks with the reserve requirements of that section.

At the Board's request, Mr. Hackley commented on the issues presented, after which Mr. Hooff made supplementary comments.

In the discussion that ensued, Governor Mitchell raised a question as to whether the record clearly showed that Associated Hospital Service was not a charitable organization. In response to this question, Messrs. Hackley and Hooff reviewed the facts on which the Board's 1960 interpretation was based.

As the discussion continued, it developed to be the consensus that the proposed letter to the Comptroller reflected an appropriate

4/30/63

-8-

analysis of the situation. It was brought out that the problem involved was inherent in the structure of divided responsibility for bank supervision at the Federal level, which could admittedly introduce certain practical difficulties in the absence of cooperation among the supervisory authorities. Over the years, however, a substantial degree of uniformity of interpretations had been achieved, with a notable exception in regard to absorption of exchange charges. It was pointed out, also, that there had been no challenge to the Board's regulations, but rather an interpretation thereunder. This suggested that the Board, if necessary, could always resort to amendment of its regulations in the event of differing interpretations. The matter of enforcement was cited as a fundamental problem in the division of supervisory responsibility, again calling for interagency cooperation to assure equality of treatment to supervised institutions of various classes. Despite these recognized difficulties, it was the consensus, as indicated previously, that the analysis of the Legal Division was correct and that the proposed letter to the Comptroller was appropriate.

Accordingly, the letter to the Comptroller was approved unanimously.

Mr. Hackley pointed out, in this connection, that Congressman Multer had written to the Board on April 17, 1963, asking the Board's comments on the Comptroller of the Currency's letter of March 4, 1963, regarding the Associated Hospital Service matter. He suggested that the reply to Mr. Multer consist of sending him a copy of the Board's letter to the Comptroller of the Currency. Mr. Hackley suggested also

4/30/63

-9-

that copies of the letter to the Comptroller be sent to the Federal Reserve Banks, several of which had made inquiries as to the Board's position regarding the Associated Hospital Service matter.

There was general agreement that the procedures suggested by Mr. Hackley should be followed.

Secretary's Note: Following the meeting, it was noted by the staff that certain provisions of the Federal Reserve Act not mentioned in the letter to the Comptroller of the Currency seemed to have a bearing on the Associated Hospital Service matter. Accordingly, the subject was again discussed by the Board on May 6, 1963, at which time a revised letter to the Comptroller was approved.

Bankers Trust-Farmingdale question (Item No. 4). At its meeting on April 19, 1963, the Board considered the question presented by the proposal of BT New York Corporation, a wholly-owned subsidiary of Bankers Trust Company, New York, New York, to purchase the stock of First National Bank of Farmingdale, Farmingdale, New York, a new bank organized for the purpose of acquiring the assets and assuming the liabilities of The First National Bank of Farmingdale, an existing national bank. The decision as to the formation of the new national bank was, of course, within the jurisdiction of the Comptroller of the Currency. The pertinent question within the sphere of the Board's responsibilities was whether the proposed purchase of stock of the new national bank by the subsidiary of Bankers Trust would result in a violation of the provisions of section 5136 of the Revised Statutes

4/30/63

-10-

regarding purchases of corporate stock by national banks (made applicable to State member banks by section 9 of the Federal Reserve Act).

At its April 19 meeting the Board approved a letter to the Comptroller of the Currency indicating that it would be glad to have any comments he might wish to make on a draft of proposed letter to Bankers Trust Company that would express the opinion that the proposed acquisition of national bank stock by its wholly-owned subsidiary would result in a violation of section 9 of the Federal Reserve Act and section 5136 of the Revised Statutes; the letter would also say that the Board was inclined to feel that the continued holding by Bankers Trust of stock of BT New York Corporation would be unlawful.

At today's meeting Mr. Hackley reported that under New York law the proposed transaction must be acted upon by the State Banking Board within 120 days of the filing of the application. This period would expire about the end of May, but the State Banking Board met only once each month, on the first Wednesday of the month, which would be tomorrow. The Comptroller of the Currency had not replied to the Board's letter of April 19 in writing, but in telephone conversation with Chairman Martin he had indicated adherence to the view that the transaction would not violate section 5136 of the Revised Statutes. Accordingly, the Board might wish to consider sending to Bankers Trust the proposed letter on which it had asked the Comptroller of the Currency's comments.

Chairman Martin then reviewed his telephone conversations with the Comptroller, including reasons for which the latter urged that the

4/30/63

-11-

Board not take an adverse position. Chairman Martin had indicated to the Comptroller that, while he could not speak for the Board, as a result of a careful analysis of the question the Board would probably decide that the proposed stock acquisition by Bankers Trust's subsidiary would violate the statute. The Comptroller had stated that he intended to issue later today a decision approving the acquisition of assets of the present Farmingdale bank by the new national bank organized for that purpose.

During the ensuing discussion it was brought out that, while it was legal for a member bank to organize a corporation to liquidate assets that had been pledged as collateral for a defaulted loan, and BT New York Corporation had been formed in 1952 for that purpose, the salvage operation had now been completed. If the currently proposed transaction should be passed without question, the way would seem to be open for banks with subsidiaries to use them for purposes contrary to the apparent intent of the Congress, including the acquisition of other banks outside the purview of the Bank Merger Act.

At the Board's request the proposed letter to Bankers Trust Company that the Board had tentatively approved on April 19 was read again in full, following which there was a general discussion of the provisions of section 5136 and their applicability, along with interpretations made by the Board in the past, which it was noted were not inconsistent with the position proposed to be taken in the letter to Bankers Trust Company. In addition, question was raised as to the applicability

4/30/63

-12-

of the Bank Merger Act and reasons were suggested why Bankers Trust Company may have elected to proceed in the manner it had, rather than to apply for approval of a merger with the Farmingdale bank, a transaction that would have fallen within the Board's jurisdiction under the Bank Merger Act. Mr. Hackley stated that the Legal Division had carefully considered whether the proposed transaction would represent an indirect acquisition of another bank by Bankers Trust Company and thereby would be subject to the Bank Merger Act. However, for reasons that he outlined, the Division had reached a negative conclusion.

Accordingly, at the end of the discussion the proposed letter to Bankers Trust Company was approved unanimously. A copy is attached as Item No. 4.

Messrs. Hooff and Doyle then withdrew from the meeting.

Proposed amendments to Securities Exchange Act. On April 26, 1963, there was preliminary discussion by the Board of proposed amendments to the Securities Exchange Act being drafted by the Securities and Exchange Commission and the Bureau of the Budget. Sections 13, 14, and 16 of the Securities Exchange Act relate, respectively, to financial reporting, proxy regulation, and controls on insider trading. Those provisions apply to issuers of securities registered on securities exchanges, but generally do not apply to issuers of securities traded over the counter. The amendments being drafted would make those sections applicable to all securities of corporations with stock held by 300 or more persons. Similar

4/30/63

-13-

amendments proposed on previous occasions had contained a specific exemption for bank stocks, whereas the bill now being drafted did not. In a distributed memorandum dated April 23, 1963, Messrs. Hexter and Dembitz had set out the major questions raised by the draft bill that were of concern to the Board, namely, the Board's general position on the proposed legislation, the advisability of applying the requirements of the sections in question to banks with 300 or more stockholders, and, if the Board was favorably disposed with respect to the second question, by what agency or agencies those sections should be administered in their application to banks.

At today's meeting Mr. Hackley reported that the Bureau of the Budget had arranged a meeting this afternoon for discussion of the draft legislation by technically qualified representatives of interested agencies. At his suggestion, it was agreed that Messrs. Hexter and Dembitz would attend the meeting.

In a discussion that ensued, there was a reiteration of the view of the Board that it would favor extension of the pertinent provisions of the Securities Exchange Act to issuers of securities traded over the counter. There was also an expression of position that there would be no objection on the part of the Board to making the amended provisions of the Securities Exchange Act applicable to banks with 300 or more stockholders of record. As to the administration of such amended provisions of the Act insofar as they applied to banks, Mr. Hexter described the administrative requirements in some detail. After consideration of the

4/30/63

-14-

matter, a consensus was reached that it would be preferable if administration were vested in the Securities and Exchange Commission rather than the bank supervisory agencies, although a provision calling for consultation by the Commission with the bank supervisory agencies in matters such as the adoption of reporting forms was looked upon with some favor. The point was made that particularly difficult problems of administration might evolve if responsibility in this area were divided among the three Federal bank supervisory agencies, and the general experience of the Securities and Exchange Commission in the securities field was cited as an affirmative reason for placing responsibility for administration with the Commission.

Thus it was agreed, for the guidance of Messrs. Hexter and Dembitz at the meeting this afternoon at the Budget Bureau, that they might proceed on the basis that the Board favored including banks with 300 or more stockholders of record in the coverage of the proposed legislation and that the Board was inclined to feel that the administration of the proposed legislation, as it related to banks as well as other corporations, should rest with the Securities and Exchange Commission. Subject to further developments, at the meeting or otherwise, it was understood that views along such lines would be expressed by the Board in reporting by letter to the Budget Bureau on the proposed legislation.

All of the members of the staff except Mr. Sherman withdrew from the meeting at this point.

4/30/63

-15-

Hearings by Multer Subcommittee. In a letter dated April 16, 1963, Congressman Multer, Chairman of the Subcommittee on Bank Supervision and Insurance of the House Banking and Currency Committee, invited testimony by members of the Board on Wednesday, May 8, 1963, in connection with hearings being held by the Subcommittee on bills to establish a Federal Banking Commission and to establish a Federal Deposit and Savings Insurance Board.

After discussion of the matter, it was agreed that four members of the Board (Chairman Martin and Governors Mills, Robertson, and Mitchell) would testify before the Subcommittee, each on a personal basis, and that Chairman Multer would be advised accordingly.

Secretary's Note: The Board later decided to report by letter to the Subcommittee its views on the bill to establish a Federal Deposit and Savings Insurance Board, so that the testimony of the Board members appearing on May 8 might be restricted to the bill to establish a Federal Banking Commission.

The meeting then adjourned.

Secretary's Note: Governor Shepardson today approved on behalf of the Board the following items:

Letter to the Federal Reserve Bank of Philadelphia (attached Item No. 5) approving the appointment of David H. Scott as assistant examiner.

Letter to the Federal Reserve Bank of Kansas City (attached Item No. 6) approving the designation of William H. Leedy as special assistant examiner.


Secretary

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

Item No. 1
4/30/63



ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

April 30, 1963.

Mr. Herbert V. Prochnow, Secretary,
Federal Advisory Council,
c/o The First National Bank of Chicago,
Chicago 90, Illinois.

Dear Mr. Prochnow:

The Board suggests the following topics for inclusion on the agenda for the meeting of the Federal Advisory Council to be held on May 20, 1963, and for discussion at the joint meeting of the Council and the Board on May 21:

1. How do the members of the Council appraise current business developments and economic prospects for the remainder of the year? What factors are most important in influencing the Council's judgment about the economic outlook? Does the Council anticipate a substantial reduction in unemployment in the near-term future?
2. In the Council's opinion, should the scattered price increases reported in recent weeks be regarded as forerunners of a broad upward movement in commodity prices and wages, or are they more in the nature of selective adjustments to changing demand and supply relationships? Reports of significant instances of price decreases or cost reductions would be of interest to the Board.
3. Has the Council observed a general movement toward increased business investment in plant and equipment? If so, do the increases seem likely to result in greater actual spending for such purposes this year than indicated by recent surveys? Are the tax credit and liberalized depreciation rules, made effective in 1962, now regarded in business and financial circles as more stimulative to investment in plant and equipment than was thought earlier?
4. Does the Council now regard early tax reduction as essential to sustained business expansion this year?
5. What are the prospects for loan demand at banks during the next several months, including demand in various loan categories?

Mr. Herbert V. Prochnow

-2-

6. What are the Council's observations regarding current attitudes in the business and financial community toward U. S. balance of payments developments?

7. How does the Council evaluate the impact of current monetary and credit policy?

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

Item No. 2
4/30/63

OFFICE OF THE CHAIRMAN

May 3, 1963

The Honorable Emanuel Celler,
Chairman,
Committee on the Judiciary,
House of Representatives,
Washington 25, D. C.

Dear Mr. Chairman:

This is in response to your request of April 8, 1963, for the views of the Board of Governors on H.R. 43 of the 88th Congress, a bill to amend Title 28 of the United States Code to provide for a United States Administrative Court.

Although the various statutes administered by the Board contain some provisions for adjudicatory proceedings of the nature referred to in the proposed legislation, in the Board's fifty-year history it has had only infrequent occasion to institute such proceedings. Accordingly, the impact of the bill in question on the operations of the Board would be relatively slight.

While the Board perceives no reason for strong objection to the bill, it feels that to express a strongly affirmative point of view would not be appropriate in light of the insignificant impact which the proposed legislation would have on the Board's operations. The evaluation of those agencies that would be more substantially affected by the bill would appear to be of greater value to the Committee.

Very truly yours,

(Signed) Wm. McC. Martin, Jr.

Wm. McC. Martin, Jr.

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

Item No. 3
4/30/63



ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

April 30, 1963.

Mr. Joseph H. Colman,
Chairman of the Board,
First Bank Stock Corporation,
First National Bank Building,
Minneapolis 2, Minnesota.

Re: State of South Dakota v. The National Bank of
South Dakota, Sioux Falls and First Bank Stock
Corporation (U.S.D.C. So. Dak.)

Dear Mr. Colman:

In reference to your letter of March 15, 1963, requesting that the Board submit a brief amicus curiae or an affidavit relative to the legal issues raised by the sixth paragraph of Count II of the Complaint filed on February 20, 1963, to commence the above-captioned litigation, the Board does not consider submission of such a brief or affidavit to be advisable in this case. However, since the Board is charged with the responsibility of administering the Bank Holding Company Act of 1956, it does seem appropriate in this connection for the Board to state its general position with respect to the scope and applicability of section 3(d) thereof.

Since shortly after passage of the Act in 1956 the Board has consistently construed section 3(d) to apply only to cases in which Board approval is required under section 3(a). The Board has also taken the position in various cases that section 3(a)(3) does not necessitate Board approval of a holding company bank's acquisition of the assets of another bank, although Board consent would now be required in such a case under the Bank Merger Act of 1960 if the acquiring bank were a State member bank.

For a more complete statement of the Board's views in this matter, attention is called to the discussion of Recommendation 15 in the Board's special report submitted to Congress on May 7, 1958 [44 Fed. Reserve Bull. 776, 787-89 (1958)], recommending deletion of the words "other than a bank" in section 3(a)(3) of the Bank Holding Company Act. It should be noted, however, that Recommendation 15 was withdrawn in the Board's Forty-Seventh Annual Report to Congress for the year 1960, on pages 98-99 of which it is stated as follows:

Mr. Joseph H. Colman

-2-

"Under present law, a bank in a holding company system may expand by absorbing another bank without obtaining the prior approval of the Board of Governors under the Bank Holding Company Act. In its May 1958 Report, the Board expressed the view that effectuation of the purposes of the Act required that a holding company bank's absorption of an independent bank, by merger or otherwise, should be subject to the provisions of the Act.

"On May 13, 1960, Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828) was amended to provide that, in practically all cases, bank mergers and absorptions must have the prior approval of one of the Federal bank supervisory agencies and that those agencies must take into consideration factors that are substantially similar to those enumerated in the Bank Holding Company Act. In view of the provisions of this so-called Bank Merger Act, the Board believes that extending the coverage of the Holding Company Act to comprise bank mergers involving holding company banks would produce an unjustified duplication of supervision. Accordingly, the Board withdraws its recommendation (Recommendation 15 of the May 7, 1958 Report) that the Holding Company Act be amended in this respect."

The foregoing constitutes a general statement of relevant interpretations of sections 3(a)(3) and 3(d) of the Bank Holding Company Act applied by the Board in previous cases. No attempt has been made to apply these interpretations to the facts of the above-captioned litigation; nor does the Board express any views regarding other legal issues before the District Court in that case.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

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

Item No. 4
4/30/63



ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

April 30, 1963.

Bankers Trust Company,
16 Wall Street,
New York 15, New York.

Gentlemen:

In a letter to your bank dated March 6, 1963, the Board of Governors indicated that it was studying the question whether the proposed purchase of the stock of the newly-organized First National Bank of Farmingdale, New York, by BT New York Corporation ("BTNY"), a wholly-owned subsidiary of Bankers Trust Company ("Bankers"), would violate the provision of section 5136 of the Revised Statutes (12 U.S.C. 24) regarding the purchase of stock by national banks, which is made applicable to State member banks by the twentieth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335).

Because of its importance, this question has been given thorough consideration by the Board's staff and by the Board; and, in this connection, the Board has carefully considered the views and arguments set forth in support of the validity of the proposed transaction in a letter to the Board of March 15, 1963, from Mr. Robert H. Brome, General Counsel and Secretary of Bankers, and in an enclosed memorandum prepared by the law firm of White & Case.

Initially, because of statements contained in Mr. Brome's letter and the White & Case memorandum, the Board has considered whether the question at issue is one with respect to which the Board may appropriately express an opinion. In order to discharge properly its statutory supervisory functions with respect to State member banks, the Board believes that it must necessarily interpret all provisions of the Federal banking laws applicable to such banks, including provisions that, like the stock-purchase provision of section 5136, are contained in the national banking laws. Obviously, it is desirable that provisions of Federal law applicable to both national banks and State member banks be interpreted in the same manner as to both categories of banks, but in general this objective has been achieved through consultations between the Comptroller of the Currency and the Board in cases of this kind.

Bankers Trust Company

The facts and statutory provisions that give rise to the substantive question here presented may be summarized as follows:

There is now pending before the Comptroller of the Currency under the Bank Merger Act an application by First National Bank of Farmingdale, New York, a newly-organized national bank, to acquire the assets and assume the liabilities of an existing national bank, The First National Bank of Farmingdale. All the stock of the new First National Bank of Farmingdale would be acquired by BTNY. That corporation was organized in 1952 for the purpose of acquiring and liquidating certain oil properties pledged as security for a loan made by Bankers; such properties were sold in November 1960; BTNY now has assets of approximately \$2,900,000, mostly cash; and the corporation is not now engaged in any business activity.

Paragraph "Seventh" of section 5136 of the Revised Statutes provides that "Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association [i.e., national bank] for its own account of any shares of stock of any corporation." The twentieth paragraph of section 9 of the Federal Reserve Act provides that "State member banks shall be subject to the same limitations and conditions with respect to the purchasing * * * of * * * stock as are applicable in the case of national banks under paragraph 'Seventh' of section 5136."

The question presented is whether BTNY's proposed purchase of stock of the new First National Bank of Farmingdale would be, in legal effect, a purchase of stock by Bankers Trust Company that is not "permitted by law".

Counsel for Bankers contend that the stock-purchase provision of section 5136 is not a "prohibition" but a confirmation of whatever authority national banks may have under court decisions, as well as statutes, to purchase stock of other corporations; that national banks, under court decisions, have authority to purchase stock of corporations engaged in a business in which national banks could engage directly; that, by virtue of section 9 of the Federal Reserve Act, State member banks have like authority; that Bankers could directly acquire the assets of First National Bank of Farmingdale with appropriate supervisory approval under the Bank Merger Act; and that, therefore, the proposed stock acquisition as an incident to such acquisition of assets would not violate the law, even if regarded as a direct stock acquisition by Bankers itself.

Counsel for Bankers further contend that, even if it could not itself lawfully purchase the stock in question, section 5136 does not prohibit the acquisition of that stock by a subsidiary; that in

Bankers Trust Company

-3-

the present case the stock would be acquired by BTNY, a separate corporation using its own funds for the purpose; and that disregard of the separate corporate existence of BTNY would not be warranted in this case since the transaction would not evade or defeat any provision of law.

The Board has considered these and other arguments advanced by your Counsel in support of the validity of the proposed transaction.

The stock-purchase provision of section 5136 since its enactment in 1933 has been regarded, consistently and correctly, as constituting a prohibition against the purchase of corporate stock by national banks, except such purchases as are permitted or recognized by statute or as are embraced within the "incidental" powers of national banks, such as, for example, their power to purchase stock of Edge Act corporations, bank premises corporations, and corporations formed to liquidate assets acquired as a result of default on loans made by such banks. It is well settled that national banks have no authority under statute or under their incidental powers to purchase stock of other banks. While the separate existence of a subsidiary corporation should not lightly be disregarded, the Board has concluded that the circumstances of this case warrant regarding the purchase of the stock in question by BTNY as in legal effect constituting a purchase of that stock by Bankers, and that, therefore, such a purchase of stock would involve a violation by Bankers of the provisions of section 5136 as made applicable by section 9 of the Federal Reserve Act to State member banks.

In this connection, the Board has considered (1) whether the Bank Merger Act, which refers to a bank's acquisition of assets of another bank "either directly or indirectly", might be construed as impliedly permitting the purchase of stock of another bank and (2) whether, in that event, a transaction of the kind here contemplated should have the approval, under that Act, not only of the Comptroller of the Currency but also of the Board of Governors. However, it is the view of the Board that the Bank Merger Act may not properly be construed as impliedly permitting the purchase of stock of another bank and that the Act clearly indicates by its language that "dual approvals" of bank mergers were not contemplated by Congress.

To hold that subsidiaries of Federally supervised banks could acquire stock of other banks in the manner contemplated by the proposed transaction would, in the Board's opinion, be inconsistent

Bankers Trust Company

-4-

with the general intent of Congress, evident throughout the Federal banking laws, that a member or nonmember insured bank may not acquire control of additional banking offices without approval by the Federal banking agency charged with the responsibility of supervising the particular bank.

Apart from the substantive question heretofore discussed, the Board notes that the salvage operations for which BTNY was organized by Bankers apparently have been fully accomplished and that that corporation, although inactive, now holds considerable assets. Conceding that the original acquisition of stock of BTNY by Bankers was embraced within the incidental powers of the bank, the justification for such acquisition terminated when the legitimate functions of BTNY had been accomplished. (See enclosed copy of opinion of the Comptroller of the Currency) Accordingly, it is the view of the Board that, under section 5136 of the Revised Statutes and section 9 of the Federal Reserve Act, the indefinite continued holding of stock of BTNY by Bankers would not be in accordance with law.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

Enclosure

Excerpt from Digest of Opinions, Comptroller of the Currency

"350. Corporate stock and other equity securities

"(a) Corporate stock (either preferred or common) acquired by a national bank as 'salvage' on an uncollectible loan or otherwise, may not be held indefinitely or for speculative purposes, but must be disposed of within a reasonable time. Stock should not be held for any longer period of time than proves to be necessary to dispose of it for an amount equal to or reasonably near the amount of the indebtedness for which it was acquired. Failure to dispose of the stock for the benefit of the bank's shareholders when favorable market conditions permit a sale in an amount sufficient to pay the amount of the original indebtedness may create a personal liability of the directors in the event a subsequent depreciation in the value of the stock results in a loss.

"(b) There are only two ways in which corporate stock owned by a national bank can be properly disposed of by the bank. One is by a bona fide sale for adequate consideration, and the other is by the declaration of a dividend in kind. See Par. 6320. If the latter procedure is adopted, however, it must be borne in mind that each shareholder is entitled to receive his participating interest in the asset dividend and the disposition thereof cannot be determined without his consent. If it is planned to turn the stock over to trustees, see Par. 6322.

"(The principles outlined in the preceding paragraph are equally applicable to disposal of any other assets of a national bank.)"



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

Item No. 5
4/30/63

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

April 30, 1963

Mr. Joseph R. Campbell, Vice President,
Federal Reserve Bank of Philadelphia,
Philadelphia 1, Pennsylvania.

Dear Mr. Campbell:

In accordance with the request contained in your letter of April 23, 1963, the Board approves the appointment of David H. Scott as an assistant examiner for the Federal Reserve Bank of Philadelphia. Please advise the effective date of the appointment.

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
4/30/63



ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

April 30, 1963

AIR MAIL

Mr. L. F. Mills, Vice President,
Federal Reserve Bank of Kansas City,
Kansas City 6, Missouri.

Dear Mr. Mills:

In accordance with the request contained in your letter of April 22, 1963, the Board approves the designation of William H. Leedy as a special assistant examiner for the Federal Reserve Bank of Kansas City.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.