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Minutes for January 27, 1964

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

R

Gov. Robertson

CRB

Gov. Balderston

WMO

Gov. Shepardson

WMO

Gov. Mitchell

WMO

Gov. Daane

Minutes of the Board of Governors of the Federal Reserve

System on Monday, January 27, 1964. 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. Mitchell

Mr. Sherman, Secretary
Mr. Kenyon, Assistant Secretary
Mr. Broida, Assistant Secretary
Mr. Young, Adviser to the Board and Director,
Division of International Finance
Mr. Noyes, Adviser to the Board
Mr. Fauver, Assistant to the Board
Mrs. Semia, Technical Assistant, Office of the
Secretary
Mr. Morgan, Staff Assistant, Board Members'
Offices

Messrs. Brill, Holland, Koch, Garfield, Williams,
Dembitz, Fisher, Gehman, Pickering, Sigel,
Trueblood, and Wernick of the Division of
Research and Statistics

Messrs. Furth, Hersey, Katz, Wood, Gekker, Gemmill,
Kaufman, Maroni, and Swerling of the Division
of International Finance

Messrs. Leslie K. O'Brien, Director, Bank of
England, and John A. Kirbyshire, Alternate
Executive Director for the United Kingdom,
International Monetary Fund

Economic review. The Division of International Finance presented a summary of international economic and financial developments, after which the Division of Research and Statistics reported on domestic business and credit conditions. The staffs of both Divisions then responded to questions raised by members of the Board.

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Messrs. O'Brien and Kirbyshire then withdrew, as did all of the members of the staff except Messrs. Sherman, Kenyon, Noyes, Fauver, Brill, and Furth, and Mrs. Semia, and the following entered the room:

Mr. Molony, Assistant to the Board
Mr. Cardon, Legislative Counsel
Mr. Hackley, General Counsel
Mr. Solomon, Director, Division of Examinations
Mr. Shay, Assistant General Counsel
Mr. Goodman, Assistant Director, Division of Examinations
Mr. Doyle, Attorney, Legal Division
Mr. Poundstone, Review Examiner, Division of Examinations

International operations of national banks. There had been distributed a memorandum dated January 17, 1964, from the Legal Division attaching for the Board's consideration a draft letter to the Comptroller of the Currency commenting unfavorably on his proposed regulation regarding the "international operations of national banks." The draft letter was in reply to a letter of December 19, 1963, from the Office of the Comptroller of the Currency enclosing a copy of the proposal, as published for comment in the Federal Register for December 20, 1963, and inviting the Board's views.

The memorandum pointed out that the proposed regulation would require prior approval by the Comptroller for a national bank, after the effective date of the regulation, to engage in "any international operation," such as the establishment by the bank of a foreign branch, investment by the bank in an Edge corporation, or acquisition by the bank of controlling interest, directly or indirectly, in a foreign bank or corporation. The

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proposed regulation also specified that the Comptroller's approval, if granted, would be subject to such terms and conditions as he might prescribe.

In a letter to all national banks published in the American Banker on December 23, 1963, explaining and inviting comments on his proposed regulation, the Comptroller said that, in keeping with his "prime responsibility for the proper operation of national banks," he must take "a more affirmative role" in the supervision of the steadily increasing overseas operations of national banks "to ensure that the financial condition of those banks is in no way jeopardized" by such operations. His letter also stated that "It will be our policy to facilitate every useful activity in this area, consistent with the continued sound financial condition and proper operation of the institution involved."

After summarizing the provisions of sections 9, 25, and 25(a) of the Federal Reserve Act through which Congress had centralized in the Board power to authorize and regulate the overseas operations of all member banks, national as well as State, the Legal Division's memorandum noted that the Comptroller's proposed regulation would not relieve national banks of the legal necessity for obtaining Board approval for any transactions requiring such approval under these sections of law. So far as national banks were concerned, the Comptroller, of course, had a statutory supervisory interest in their financial condition. However,

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assuming that the proposed regulation was adopted by the Comptroller, it was not believed that a national bank that, for example, there- after established a branch or formed a subsidiary pursuant to section 25 of the Federal Reserve Act and in accordance with the required approval of the Board, as a legal matter would be guilty of any legal infraction merely because it failed or refused also to obtain the Comptroller's approval pursuant to his regulation. Of course, practical considerations might discourage national banks from testing the Comptroller's authority; nevertheless, it was difficult not to regard the proposed regulation as an attempt to duplicate, if not to decentralize or fragmentize, the power that Congress had vested in the Board. In any event, orderly procedures of Government obviously would suggest that the subject of the proposed regulation was a matter for legislation, as had been the case in 1962 with respect to the transfer to the Comptroller of authority over trust powers of national banks. Indeed, proposals had already been made for legislation that would transfer to the Comptroller some of the Board's authority in the area of foreign operations of United States banks. The Board had replied unfavorably on July 18, 1962, to a request from the Secretary of the Treasury for comments on one such proposal, and on June 12, 1963, had made an unfavorable report to the House Banking and Currency Committee on H.R. 5800, a more limited proposal understood to have been introduced at the Comptroller's request.

The proposed regulation, the memorandum continued, would establish an overlay of administrative procedure under which the Comptroller could,

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for example, veto a proposed investment by a national bank that the Board had approved. In addition, the proposed regulation might provide a vehicle for unqualified approval by the Comptroller of proposals that the Board might subsequently disapprove or approve only conditionally. It might, therefore, increase the risk of further conflicts between the Board and the Comptroller.

The draft of reply to the Comptroller of the Currency, which urged that the proposed regulation not be adopted, included an analysis of the duplication and conflicts to be found between the proposed regulation and the authority vested in the Board by sections 9, 25, and 25(a) of the Federal Reserve Act.

Following comments by Mr. Shay in summarization of the Legal Division's memorandum, discussion explored the legal justification for the Comptroller's proposed regulation and the type of reply that should be made to his inquiry. In response to a question by Chairman Martin as to whether there would be any element of violation of law in the issuance of the proposed regulation, Mr. Shay responded that, although the Comptroller probably could not be said to be violating the law by superimposing his requirements on the requirements imposed by the Board pursuant to statute, it seemed doubtful whether a court would uphold the Comptroller in any effort he might make to apply a sanction or penalty upon a national bank that failed to obtain an approval called for by his regulation. Viewed from another approach, however, it appeared that the Comptroller might contemplate granting approvals to national

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banks to perform certain functions for which no specific authority was to be found in existing statutes. The view that such approvals would be beyond his authority was supported by the fact that the law was drawn in terms of specifics rather than of implication so far as foreign operations of banks were concerned; the things a bank might do, under regulation and with the Board's approval, were specified, and the lack of specific authority for a particular operation had heretofore been understood to mean that such an operation was not to be undertaken.

Question was asked also as to what extent there might be a comparison between the legal soundness of the Comptroller's proposed regulation and his interpretation published on December 24, 1963, that national banks had authority to accept savings deposits from profit-making corporations. Mr. Shay responded that with respect to corporate savings deposits, the Comptroller had issued a conflicting interpretation on a matter within the scope of the Board's legal authority. With respect to foreign operations of national banks, he was proceeding on the basis of his general supervisory authority over national banks in an area in which Congress had been silent so far as the Comptroller's power was concerned.

Chairman Martin inquired whether the different circumstances of the two situations might not affect the Board's position. As to foreign operations of national banks, the Comptroller was not contending, apparently, that the Board was without authority, but rather that he too had a responsibility in the matter.

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Mr. Hackley responded that if the Comptroller proposed merely to require national banks to obtain his approval--in addition to the Board's approval--for certain foreign operations, it probably could not be said that he was doing anything illegal. If he took the position, however, that under the proposed regulation he would grant approval to national banks to do something abroad that the statutes did not permit them to do, a question of scope of authority would be presented. As an analogy to the Comptroller's proposed regulation of foreign operations, he could conceivably, in the interest of maintaining sound conditions in national banks, hold that no national bank could pay interest at a rate of more than 3 per cent per annum on savings accounts, even though the Board had prescribed higher maximum rates under Regulation Q.

In further discussion it was noted that the Comptroller had expressed the view that the recent revisions of the Board's Regulation K, Corporations Engaged in Foreign Banking and Financing under the Federal Reserve Act, and Regulation M, Foreign Branches of National Banks, were unduly restrictive; hence, it seemed reasonable to expect that through his regulation the Comptroller hoped to liberalize rather than to restrict the foreign operations of national banks.

As to the approach to be taken in the draft reply, there developed to be a consensus that a less detailed response would be appropriate, omitting material such as references to the terms and effect of specific provisions of law. It was also the consensus that the summary of the

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Board's position, as stated in the letter, should be along the lines that the Board felt that adoption of the proposed regulation would be unwise.

Comment was made that, since the Comptroller's proposed regulation had been published in the Federal Register and a letter to national banks concerning it had also been published, it might be advisable for the Board's position also be made known to interested parties. In this connection, a suggestion was made that a copy of the Board's reply might be furnished to Chairman Fascell of the Legal and Monetary Affairs Subcommittee of the House Committee on Government Operations, since the Subcommittee's staff had expressed an interest in knowing of the Board's position. It was also suggested that the Board's reply might be made available to affected national banks.

At the conclusion of the discussion it was understood that a revised draft of reply would be prepared in the light of the comments at this meeting for the Board's consideration, and that the question whether the letter should be made available to parties other than the Comptroller would be considered further.

Mr. Goodman observed that it had been the customary practice to afford the Comptroller's Office an opportunity to express views on applications received from national banks to establish foreign branches, although on recent occasions no replies had been received. Since the revision of Regulation M, however, it had not been the practice to invite

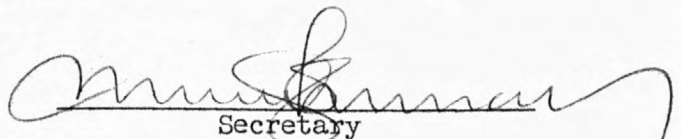
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the Comptroller's views when notice was received from a national bank of its intent, in the absence of Board objection, to establish an additional branch in a foreign country where it was already represented. Question was raised whether reason was seen by the Board to invite the Comptroller's views on receipt of such notices of intent.

In light of the liberalized provisions of Regulation M covering such situations, it was the view of the Board that in those cases there was no need to institute a practice of inviting the Comptroller's views.

The meeting then adjourned.


Secretary