

Minutes for July 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

Gov. Mills

Gov. Robertson

Gov. Balderston

Gov. Shepardson

Gov. Mitchell

Gov. Daane

The image shows handwritten initials and signatures on horizontal lines next to the names of the Board members. The initials are: a stylized 'M' for Martin, 'RM' for Mills, 'R' for Robertson, 'CB' for Balderston, 'SS' for Shepardson, 'MM' for Mitchell, and 'DD' for Daane.

Minutes of the Board of Governors of the Federal Reserve System
on Monday, July 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. Shepardson
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
Mr. Hackley, General Counsel
Mrs. Semia, Technical Assistant, Office of
the Secretary

Messrs. Brill, Holland, Koch, Partee, Williams,
Dembitz, Altmann, Axilrod, Eckert, Fisher,
Gramley, Keir, Taylor, Thompson, Weiner, and
Wernick of the Division of Research and
Statistics

Messrs. Furth, Hersey, Irvine, Wood, Dahl,
Gekker, Gemmill, Gomez, Maroni, and Mills
of the Division of International Finance

Economic review. The Division of International Finance presented
a summary of international financial conditions, after which the Division
of Research and Statistics commented on domestic business and credit
developments.

All members of the staff then withdrew except Messrs. Sherman,
Kenyon, Broida, Young, Noyes, Fauver, Brill, and Hackley, and Mrs. Semia,
and the following entered the room:

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Mr. Molony, Assistant to the Board
 Mr. Cardon, Legislative Counsel
 Mr. Solomon, Director, Division of Examinations
 Mr. Hexter, Assistant General Counsel
 Mr. O'Connell, Assistant General Counsel
 Mr. Shay, Assistant General Counsel
 Mr. Leavitt, Assistant Director, Division of Examinations
 Miss Hart, Senior Attorney, Legal Division
 Mr. Young, Senior Attorney, Legal Division
 Mr. Robinson, Attorney, Legal Division
 Mr. Lyon, Review Examiner, Division of Examinations
 Mr. Rumbarger, Review Examiner, Division of Examinations

Ratification of actions. Actions taken by the available members of the Board during that part of the meeting on July 24, 1964, when a quorum was not present, as recorded in the minutes of that meeting, were ratified by unanimous vote.

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

	<u>Item No.</u>
Letter to Chairman Robertson of the Senate Committee on Banking and Currency reporting on S. 2883, a bill "To permit the establishment and operation of certain branch offices by the Michigan National Bank, Lansing, Michigan."	1
Letter to the Federal Reserve Bank of Kansas City regarding the applicability of provisions of the Banking Act of 1933, as amended, to the proposed purchase of a controlling interest in a securities company by a controlling stockholder of a member bank.	2

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Item No.

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Letter to Mr. C. H. Hosler, President, The Fullerton National Bank, Fullerton, Nebraska, regarding the reconciliation statement requested by the Federal Reserve of all national banks in connection with their reports of condition as of June 30, 1964. (With the understanding that the same type of reply would be made to any similar inquiries and that the substance of the Board's letter would be sent to the Federal Reserve Banks for their information.)

A memorandum dated July 24, 1964, from the Legal Division, which had been distributed relevant to Item No. 2, explained that one of the tests for applicability of the statute to the proposed relationship was the question whether or not the securities company involved was "principally engaged," under section 20, or "primarily engaged," under section 32, in the types of activity described in the statute. It was brought out that in the situation presented the percentage of gross income of the securities company derived from section 20 and section 32 business apparently did not fall below 30 per cent in the years 1960 through 1963, and rose as high as 45.4 per cent in 1960.

In comments in supplementation of the memorandum, Miss Hart called attention to the fact that she and Mr. Shay (who had jointly prepared the memorandum) believed that the term "principally engaged" in section 20 contemplated such a volume of the types of business cited in the statute as to comprise one of the chief enterprises of the securities business, even though that volume did not constitute the majority of the business. The securities company involved in the

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immediate inquiry, with a volume of section 20 and section 32 business ranging from 30 to 45 per cent of its gross income in recent years, therefore was deemed to be "principally engaged" in such business.

No disagreement with the construction mentioned was indicated by members of the Board.

Payment of interest on "borrowed" funds (Items 4 and 5). On February 17, 1964, the Board discussed an inquiry from Wachovia Bank and Trust Company, Winston-Salem, North Carolina, as to whether it would be permissible for a member bank to "borrow" at an agreed rate of interest, from correspondent banks and other depositors, by means of transfers from "deposits" to "bills payable," "borrowed money," or other similar liability account. A draft reply, prepared on the basis of views then expressed, was sent to the Reserve Banks for comment, and a summary of the replies from the Reserve Banks was later distributed. At the meeting on May 27, 1964, there was further discussion of the principles at issue, and a revised draft of reply was sent to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the General Counsel of the Treasury Department. Like the earlier draft, the proposed reply took the position that transactions of the kind described in the inquiry from the member bank would not involve a violation of section 19 of the Federal Reserve Act or of Regulation Q, Payment of Interest on Deposits. It would also point out that whenever a transfer was made from a deposit account to "bills payable" or similar account,

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the amount transferred must be taken into account in applying statutory or other limitations on the borrowing bank's power to borrow and the lending bank's power to lend, must be included on reports of condition and other reports as "borrowed money" by the borrowing bank and as "loans" by the lending bank, and must be supported by appropriate documentary or other evidence of indebtedness.

There had now been distributed a memorandum dated July 24, 1964, from the Legal Division reporting that the Federal Deposit Insurance Corporation concurred in the proposed position. The Comptroller's Office saw no reason to take exception to the position, as it was "applicable to State non-member (sic) banks." (The Comptroller's Office referred to the "sale of excess funds," which indicated that such "sales" transactions would be open to national bank participation without limitation, if cast in the form of Federal funds transactions.) The General Counsel of the Treasury questioned what the ultimate effect of the transactions might be on the practical effectiveness of the prohibition of payment of interest on demand deposits, but he raised no question as to the proposed response that the contemplated arrangements would not violate existing law or regulation. He offered cooperation if the Board should feel in the future that the language of existing law or regulation needed to be reappraised. The Legal Division recommended that the proposed reply now be dispatched, and that the substance of the reply be published as an interpretation in the Federal Register and in the Federal Reserve Bulletin.

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After discussion, the letter was approved unanimously, with the understanding that its substance would be published as suggested by the Legal Division. A copy of the letter is attached as Item No. 4. A copy of the interpretation in the form transmitted to the Federal Register is attached as Item No. 5.

Applications of Citizens and Southern. There had been distributed a memorandum dated July 20, 1964, from the Division of Examinations, with other pertinent papers, relating to the applications of The Citizens and Southern National Bank and Citizens and Southern Holding Company, both of Savannah, Georgia, for approval of the acquisition of additional shares of American National Bank of Brunswick, Brunswick, Georgia. The Division recommended approval.

After summary comments by Mr. Lyon, the staff responded to several questions by members of the Board of an informational or clarifying nature.

The applications were then approved unanimously, it being understood that the Legal Division would prepare for the consideration of the Board drafts of an order and statement reflecting this decision. (It was noted during the discussion of this matter that the Comptroller of the Currency had recommended favorably on the applications by letter dated July 20, 1964, after the memorandum from the Division of Examinations had been distributed to the Board. It was understood that the Board's order would not be issued until after thirty days from July 7, 1964, the

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date on which notice of receipt of the applications was published in the Federal Register.)

Application of Society Corporation (Items 6, 7, and 8). There had been distributed drafts of an order and statement reflecting the Board's action on July 2, 1964, approving the application of Society Corporation, Cleveland, Ohio to become a bank holding company through acquisition of stock of The Fremont Savings Bank Company, Fremont, Ohio. Also distributed was a dissenting statement by Governor Robertson.

After discussion, the issuance of the order, statement, and dissenting statement was authorized. Copies of the documents, as issued, are attached as Items 6, 7, and 8.

The meeting then adjourned.

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

Letter to the Federal Reserve Bank of Minneapolis (attached Item No. 9) approving the appointment of Steven J. Johnson as examiner.

Letter to Mr. Daniel L. Goldy, National Export Expansion Coordinator, Department of Commerce Building, advising of the designation of Glenn M. Goodman, Assistant Director, Division of Examinations, to participate as representative of the Board in the work of the interagency working group on export financing.

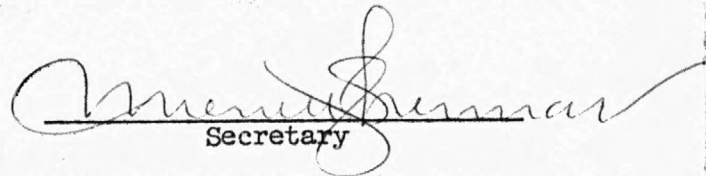
Memorandum from the Division of Bank Operations recommending the appointment of John T. Madigan as Analyst in that Division, with basic annual salary at the rate of \$6,380, effective the date of entrance upon duty.

Governor Shepardson also noted today on behalf of the Board memoranda from the

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Division of Administrative Services
advising (1) that Florence Norman Thayer,
Relief Cook in that Division, had applied
for retirement effective at the close of
business July 31, 1964; and (2) that J.
Robert Surguy, Clerk (Composition) in that
Division, died on July 14, 1964.


Secretary

Item No. 1
7/27/64BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

OFFICE OF THE CHAIRMAN

July 27, 1964



The Honorable A. Willis Robertson, Chairman,
Senate Banking and Currency Committee,
U. S. Senate,
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request of June 2, 1964, for a report on the bill, S. 2883, "To permit the establishment and operation of certain branch offices by the Michigan National Bank, Lansing, Michigan."

This bill would permit Michigan National Bank to "reestablish and operate" as branches one office in Saginaw and three offices in Grand Rapids. Prior to December 31, 1940, these offices had been operated as branches of certain banks, which, on that date, were consolidated with five other banks under the name of Michigan National Bank. It is the Board's understanding that at the time of this consolidation the Comptroller of the Currency ruled that the four offices in question could not be operated as branches under the provisions of the McFadden Act (section 5155 of the Revised Statutes). Here the matter rested until 1956 when the United States Court of Appeals for the District of Columbia Circuit upheld a denial by the Comptroller of an application by Michigan National Bank to establish a branch in Saginaw on the grounds that the Comptroller had no statutory authority to grant the application. Michigan National Bank v. Gidney, 237 F.2d 762.

The Board would not recommend favorable consideration of this bill. Under its terms, one bank would be singled out for favored treatment. The Board believes that a private bill of this kind would constitute an undesirable and unwarranted precedent that could be damaging to State and Federal relationships and to bank supervision. Should it be determined that amendments to Federal laws relating to branch banking are needed, the Board believes that the proper course would be to enact general legislation which would provide the same rights and privileges to all banks that might be affected.

Sincerely yours,

(Signed) Wm. McC. Martin, Jr.

Wm. McC. Martin, Jr.

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BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

Item No. 2
7/27/64



ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 27, 1964.

AIR MAIL

Mr. George D. Royer, Jr.,
Vice President,
Federal Reserve Bank of Kansas City,
Kansas City, Missouri. 64106

Dear Mr. Royer:

This refers to your letter of July 17, 1964, forwarding a letter of the same date from Mr. Charles E. James, Chairman of the Board of the First National Bank, Liberty, Missouri ("First"), that requests the Board's views on the question whether Mr. James' proposed purchase of a majority of the shares of Prescott, Wright, Snider Company, Kansas City, Missouri ("Prescott"), a member of the Midwest Stock Exchange, and related transactions, would violate section 32 or section 20 of the Banking Act of 1933, as amended. It is noted that Mr. James has only a limited time in which to take advantage of the opportunity and that you have stated that time is of the essence.

Briefly, Mr. James owns 210 shares of the 500 outstanding shares of stock of First, 200 of these shares being held in a voting trust covering shares of the bank. The voting trust controls the election of directors of First because it includes 269-1/2 of the bank's shares. Of these, 18-1/2 belong to Mrs. Emogene James and 10 to Mr. C. Gerald James, Mr. James' wife and son, respectively. Mrs. James also owns 10 additional shares outside the voting trust. Thus, inside and outside the voting trust, the James' interests own a total of 248-1/2 shares, less than a majority of the shares in the bank. However, the voting trust, which was established on May 20, 1960, to continue for ten years, provides that the trustee must vote all First shares held in the trust as directed by holders of a majority of the shares in the trust, which means that the trustee must vote the 269-1/2 shares as directed by Mr. James.

There is no provision for termination of the voting trust prior to May 20, 1970, except with the consent of all the registered

Mr. George D. Royer, Jr.

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holders of trust certificates. The trust can be amended at a special meeting which must be called if requested by the trustee or the holders of certificates representing at least 20 per cent of the shares in the trust. Mr. James is the only individual controlling that proportion of shares in the trust. The amendment will be made if approved by a majority of the shares in the trust. Thus, an amendment will pass if Mr. James votes his shares in favor, and will not if he votes his shares against the proposal.

In addition, Mr. James is optionee under a restrictive stock agreement covering all the shares that have been deposited in the trust, and has first call on any shares any other holder of a trust certificate desires to sell, if willing to meet a bona fide offer. He has, in fact, apparently exercised this option on one occasion to purchase 10 shares belonging to one of the original depositors in the trust.

Although the information supplied by Mr. James is not clear on the point, it appears that the purchase of Prescott would be carried out by means of a de facto exchange of 228-1/2 shares of First (presumably including the 200 of Mr. James' shares now in the trust, the 18-1/2 shares of Mrs. James which are now in the trust and her 10 shares outside it) for Prescott shares. At some point, Prescott's wholly-owned subsidiary, referred to below, will "purchase" the First shares, "subject to the voting trust". Your letter states, and Mr. James does not negate the statement, that he proposes to continue to control First through the subsidiary's control of a majority of shares in the voting trust.

In the information submitted by him, Mr. James implicitly concedes that Prescott and its wholly-owned subsidiary, Selected Financial Plans, Inc., a dealer in mutual fund shares, must be treated as one enterprise for purposes of both section 32 and section 20, and on the facts before it, the Board reaches the same conclusion. According to the data presented, the dollar volume of mutual fund shares the single enterprise has handled has ranged from 8.7 per cent to 14.1 per cent of its total dollar volume; of securities sales with respect to which Prescott was a member of a selling group, from 0 to 2.3 per cent of the total dollar volume; and of underwriting from 0 to 5.06 per cent of the total dollar volume. Income from sales of mutual fund shares has ranged from 29.7 per cent to 42 per cent of the enterprise's total gross income; income from acting as member of a selling group, from 0 to 1.41 per cent of its total gross income; and income from underwriting, from 0 to 5.2 per cent of the total gross income. These figures are for the years 1960 through 1963. In a national directory of securities dealers, Prescott lists itself as "underwriters, participating distributors, and dealers", as well as brokers.

Mr. George D. Royer, Jr.

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Section 32 of the Banking Act of 1933, as amended, provides that

"No officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve the same time as an officer, director, or employee of any member bank"

It seems clear from the information submitted that Prescott (including its wholly-owned subsidiary) is "primarily" engaged in business of the kind described in that section. Mr. James is a director of First. Hence, the section would forbid his serving as a director, officer, or employee of Prescott. While he states that he does not plan to serve Prescott in any of these capacities, it should be noted that under the circumstances of this case, if he were to carry out his plan to acquire control of Prescott and were then to become an active participant in the affairs of Prescott or of its subsidiary or both, it might be necessary to conclude that he was engaged "as an individual" in business of the kind described in section 32, so that he would be forbidden to serve First at the same time as a director, officer, or employee.

Section 20 of the Banking Act of 1933, as amended, provides that

". . . no member bank shall be affiliated in any manner described in section 2(b) hereof with any corporation, association, business trust, or other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes, or other securities"

and section 2(b)(2) of the same Act provides that

". . . the term 'affiliate' shall include any corporation, business trust, association, or other similar organization . . . (2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of a member bank who own or control either a majority of the shares of such bank or more than 50 per centum of the number of shares voted for the election of directors of such bank at the preceding election"

Mr. George D. Royer, Jr.

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The conclusion seems clear that, under the proposed transactions, Prescott and its wholly-owned subsidiary would both be "affiliates" of First within the terms of section 2(b)(2). Prescott would be controlled directly and the subsidiary would be controlled indirectly by Mr. James. Mr. James also would have to be regarded as the controlling shareholder of First because he would own approximately 76.98 per cent of Prescott, which owns all of the mutual fund subsidiary, which, in turn, would own a majority of the shares in the irrevocable voting trust that includes more than 50 per cent of the shares of First; and all of such shares must be voted by the trustee as directed by holders of a majority of the shares in the trust, as noted above.

The remaining question is whether Prescott (including its wholly-owned subsidiary) is "principally" engaged in the activities described in section 20. In the light of the information before it, the Board concludes that Prescott is so engaged.

Based on the foregoing, the Board's opinion is that purchase by Mr. James of a controlling interest in Prescott, under the proposal in question, would violate the prohibition of that section. The Board's opinion is necessarily based on its understanding of the facts before it. If you or Mr. James should conclude that any facts or circumstances essential to the matter have been omitted or misunderstood, the Board will of course be happy to have the relevant information laid before it.

A copy of this letter is enclosed to be transmitted to Mr. James.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

Enclosure

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Item No. 3
7/27/64

WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 27, 1964.

Mr. C. H. Hosler, President,
The Fullerton National Bank,
Fullerton, Nebraska.

Dear Mr. Hosler:

This is in reply to your letter of July 11, 1964 with reference to the reconciliation statement (FR OT) that was sent to all national banks in connection with their reports of condition as of the close of business June 30, 1964.

The purpose of this form is to gather information on four specific items in the balance sheets of national banks that cannot be obtained from the Call Report issued by the Comptroller of the Currency. The information called for on the reconciliation statement is the absolute minimum needed to make data obtained from the Comptroller's Call Report form compatible with figures obtained by the supervisors of banks in each of the 50 states, by the Federal Deposit Insurance Corporation, and by the Federal Reserve System.

As a matter of fact, the only figure that the majority of small national banks will have to provide will be that called for under Item 3, corporate stocks, a figure easy for any bank to supply.

You will appreciate that it is essential to have comparable reports of condition from time to time for all 13,500 commercial banks in the United States for the use of the general public, the Government, and the banking system. In addition, many bank managements find the operating ratio and balance sheet data obtained from these combined reports useful in furthering the progress and efficiency of their institutions. These various uses can be served only if comparable statistics periodically are collected from, or can be derived for, all banks.

Both Form FR OT, which you received, and the procedure adopted for obtaining the information necessary to achieve compatibility between the Comptroller's Call Report and those of the other supervisors, are in conformity with the President's memorandum to which you referred; they were, in fact, approved by the Bureau of the Budget, a part of the Executive Office of the President, as being essential and in the public interest. The filing of the report is mandatory.

Mr. C. H. Hosler

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Representatives of the 50 State supervisors, the FDIC, and the Federal Reserve were all agreed that the form for the June 30 call should be the same as that used in December 1963. Thus, mid-year and end-of-year figures would be comparable and could be used as benchmarks to which more simplified interim reporting could be linked. If the cooperation of the Comptroller could have been obtained, no reconciliation form would have been needed. Your reporting burden would have been less and, similarly, the System's task of tabulating combined data for all banks in the United States would have been considerably lightened.

We appreciate your giving us your views and the opportunity to explain the circumstances that led to the use of this special form.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

WASHINGTON, D. C. 20551

Item No. 4
7/27/64



ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 27, 1964.

Mr. Edward A. Wayne, President,
Federal Reserve Bank of Richmond,
Richmond, Virginia. 23213

Dear Mr. Wayne:

This refers to an inquiry from the General Counsel of your Bank addressed to the General Counsel of the Board, relating to a question presented by an officer of Wachovia Bank and Trust Company, Winston-Salem, North Carolina. The member bank's letter described a procedure under which a country bank requests its city correspondent to "invest for a certain period of time" - overnight or for a few days or weeks - a specified portion of the country bank's deposit balance with the city correspondent. The city correspondent itself agrees to "borrow these funds . . . at the Federal funds rate". The specified amount is thereupon transferred, on the books of the city correspondent, from the deposit account to "bills payable", and the country correspondent is paid interest thereon at the rate that is being paid currently for Federal funds.

The question is whether such transactions violate the provision of section 19 of the Federal Reserve Act (12 U.S.C. 371a) that "No member bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand." The same prohibition appears in section 217.2(a) of Federal Reserve Regulation Q.

It is assumed, for these purposes, that the city correspondent is legally authorized to borrow on the terms agreed upon. It has never been questioned that a member bank may "purchase" (that is, borrow) so-called Federal funds from other banks, and the "seller" of Federal funds may be either a member bank or a nonmember that is in a position to arrange for funds to be transferred to the "purchaser" from a member bank's Federal Reserve deposit account.

The Board is unable to find any basis on which to distinguish similar transactions when the funds to be borrowed are on deposit in the "purchasing" bank. If such a distinction were drawn the "selling" bank could readily have the funds transferred temporarily to its

Mr. Edward A. Wayne

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account in a third bank and then have the same amount transferred back to the borrowing bank by entries on the books of the Federal Reserve Bank. If the transaction were handled in this way, the second step would take the form of a typical Federal funds transaction.

There appears to be no reason, in these circumstances, to insist upon two transactions that would simply cancel each other, in effect.

The prohibition of section 19 and Regulation Q relates only to the payment of interest on demand deposits. It does not prohibit the payment of interest on "money borrowed" by member banks, and the System has long recognized the legality and propriety of borrowing in certain circumstances, including the situations enumerated in the third paragraph of this letter. Accordingly, the Board concludes that transactions of the kind described in the letter from the member bank would not involve a violation of section 19 or Regulation Q.

It should be made clear to the inquiring bank that whenever a transfer is made from a deposit account to "bills payable" or similar account, the amount transferred must be (1) taken into account in applying statutory or other limitations on the borrowing bank's power to borrow and the lending bank's power to lend; (2) shown on reports of condition and other reports by the borrowing bank as "borrowed money" and by the lending bank as "loans"; and (3) supported by appropriate documentary or other evidence of indebtedness.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

TITLE 12 - BANKS AND BANKING

CHAPTER II - FEDERAL RESERVE SYSTEM

SUBCHAPTER A - BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Q]

PART 217 - PAYMENT OF INTEREST ON DEPOSITS

Transfer from Deposit Account to "Borrowed Money" Account and Payment of Interest thereon

§ 217.137 Transfer from deposit account to "borrowed money" account and payment of interest thereon.

(a) The Board of Governors has received an inquiry regarding a procedure under which a country bank requests its city correspondent to "invest for a certain period of time" - overnight or for a few days or weeks - a specified portion of the country bank's deposit balance with the city correspondent. The city correspondent itself agrees to "borrow these funds . . . at the Federal funds rate". The specified amount is thereupon transferred, on the books of the city correspondent, from the deposit account to "bills payable", and the country correspondent is paid interest thereon at the rate that is being paid currently for Federal funds.

(b) The question is whether such transactions violate the provision of section 19 of the Federal Reserve Act (12 U.S.C. 371a) that "No member bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand." The same prohibition appears in section 217.2(a) of this Part.

(c) It is assumed, for these purposes, that the city correspondent is legally authorized to borrow on the terms agreed upon. It has never been questioned that a member bank may "purchase" (that is, borrow)

so-called Federal funds from other banks, and the "seller" of Federal funds may be either a member bank or a nonmember that is in a position to arrange for funds to be transferred to the "purchaser" from a member bank's Federal Reserve deposit account.

(d) The Board is unable to find any basis on which to distinguish similar transactions when the funds to be borrowed are on deposit in the "purchasing" bank. If such a distinction were drawn the "selling" bank could readily have the funds transferred temporarily to its account in a third bank and then have the same amount transferred back to the borrowing bank by entries on the books of the Federal Reserve Bank. If the transaction were handled in this way, the second step would take the form of a typical Federal funds transaction.

(e) There appears to be no reason, in these circumstances, to insist upon two transactions that would simply cancel each other, in effect.

(f) The prohibition of section 19 and this Part relates only to the payment of interest on demand deposits. It does not prohibit the payment of interest on "money borrowed" by member banks, and the System has long recognized the legality and propriety of borrowing in certain circumstances, including the situations enumerated in paragraph (c) above. Accordingly, the Board concludes that transactions of the kind described in the inquiry would not involve a violation of section 19 or this Part.

(g) Whenever a member State bank makes a transfer from a deposit account to "bills payable" or similar account, the amount transferred must, of course, be (1) taken into account in applying

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statutory or other limitations on the borrowing bank's power to borrow and the lending bank's power to lend; (2) shown on reports of condition and other reports by the borrowing bank as "borrowed money" and by the lending bank as "loans"; and (3) supported by appropriate documentary or other evidence of indebtedness.

(12 U.S.C. 248(i). Interprets or applies 12 U.S.C. 371a and 461.)

Dated at Washington, D. C., this 27th day of July, 1964.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

UNITED STATES OF AMERICA
BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D. C.

 In the Matter of the Application of
 SOCIETY CORPORATION,
 Cleveland, Ohio,
 for permission to become a bank holding company
 by acquiring stock of The Fremont Savings Bank
 Company, Fremont, Ohio

ORDER APPROVING APPLICATION UNDER
BANK HOLDING COMPANY ACT

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)) and section 222.4(a)(1) of Federal Reserve Regulation Y (12 CFR 222.4(a)(1)), an application on behalf of Society Corporation, Cleveland, Ohio, for the Board's approval of action whereby Applicant would become a bank holding company through the acquisition of a minimum of 80 per cent of the outstanding common stock and 100 per cent of the preferred stock of The Fremont Savings Bank Company, Fremont, Ohio.

As required by section 3(b) of the Act, the Board notified the Superintendent of Banks for the State of Ohio of the receipt of the application and requested his views and recommendation. The Superintendent interposed no objection to approval of the application. Notice of receipt

of the application was published in the Federal Register on March 7, 1964, which provided an opportunity for submission of comments and views regarding the proposed acquisition. Time for filing such comments and views has expired and all comments and views filed with the Board have been considered by it.

IT IS ORDERED, for the reasons set forth in the Board's Statement of this date, that said application be and hereby is approved, provided that the acquisition so approved shall not be consummated (a) within seven calendar days after the date of this Order or (b) later than three months after said date.

Dated at Washington, D. C., this 27th day of July, 1964.

By order of the Board of Governors.

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

Voting against this action: Governor Robertson.

Absent and not voting: Governor Mitchell.

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

(SEAL)

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Item No. 7
7/27/64

APPLICATION BY SOCIETY CORPORATION FOR APPROVAL OF THE ACQUISITION
OF SHARES OF THE FREMONT SAVINGS BANK COMPANY

STATEMENT

Society Corporation ("Applicant"), Cleveland, Ohio, owns all of the shares except directors' qualifying shares of Society National Bank of Cleveland ("National"), Cleveland, Cuyahoga County, Ohio. Applicant, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 ("the Act") has applied for Board approval to become a bank holding company through the acquisition of a minimum of 80 per cent of the outstanding common stock and 100 per cent of the preferred stock of The Fremont Savings Bank Company ("Fremont Savings"), Fremont, Ohio.

Views and recommendation of supervisory authority. - Pursuant to section 3(b) of the Act, the Superintendent of Banks for the State of Ohio was asked for his views and recommendation on the Applicant's proposal. The Superintendent interposed no objection to the Board's approval of the application.

Though not required by section 3(b) of the Act, notice of the Board's receipt of the application was given to the Comptroller of the Currency, who recommended approval of the application.

Statutory factors. - Section 3(c) of the Act requires the Board to take into consideration the following five factors in acting on this application: (1) the financial history and condition of the holding company and the banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and area concerned; and (5) whether the effect

of the acquisition would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

Financial history, condition, and prospects of Applicant and the banks concerned. - Applicant was organized in 1958 under the laws of Ohio for the purpose of facilitating National's acquisition of assets and the assumption of liabilities of the Society for Savings in the City of Cleveland. Society for Savings, a mutual savings bank organized in 1849, carried on business in Cleveland until December 31, 1958, when it commenced dissolution and its assets were transferred to National. National's organization in 1956 resulted from State legislation which restricted the business activities of mutual savings banks in Ohio, but which authorized savings banks to organize and own the capital stock of a State or national bank, which would have all the powers denied to the mutual savings bank by the legislation mentioned. Society for Savings organized National and between 1956 and year-end 1958 Society for Savings and National were operated as separate institutions, although National was wholly owned by Society for Savings. Incident to National's takeover of Society for Savings, Applicant was organized by Society for Savings, and there were transferred to Applicant all but directors' qualifying shares of the common stock of National in exchange for all of Applicant's outstanding stock. In turn, and prior to its dissolution, Society for Savings deposited Applicant's shares under a voting trust of which the trustees of the Society for Savings and other individuals designated by the Common Pleas Court of Cuyahoga County, Ohio, were designated voting trustees. Presently,

Applicant's voting shares are held under a voting trust which, unless sooner terminated by vote of the trustees, will continue until December 31, 1968, when Applicant's shares will be exchanged for presently outstanding voting trust certificates representing such common shares. As indicated, National is a wholly-owned subsidiary of Applicant, conducting a general banking business with its head office and 14 branches (at year-end 1963) located in Cuyahoga County. National's head office and 6 of its 14 branches are located in the City of Cleveland. At December 20, 1963,^{1/} National had total deposits of \$479 million.

Fremont Savings, located in the City of Fremont (Sandusky County), 85 miles west of Cleveland, was originally organized as a savings bank in 1882, but converted to a State-chartered commercial bank in 1934 and has since conducted a general banking business. It operates a head office and drive-in facility in downtown Fremont with total deposits of \$16.5 million.

The financial history and condition of Applicant, National, and Fremont Savings are considered satisfactory. In major respects, a judgment of Applicant's prospects must be premised upon a judgment of the prospects both of its present subsidiary, National, and of the proposed subsidiary, Fremont Savings. While National's net earnings position in relation to its gross earnings and invested capital is somewhat lower than that of other commercial banks of similar size, due principally to

^{1/} Unless otherwise indicated, all banking data noted are as of this date.

the large portion of its total deposits represented by time and savings accounts, National's past operation and history of growth, particularly in demand deposits, warrants the conclusion that its prospects for sound and profitable future operations are satisfactory.

Fremont Savings has a satisfactory history of growth and service expansion. There is nothing to suggest that its prospects are anything but favorable, whether it continues to operate independently or as Applicant's subsidiary. However, since Fremont Savings' affiliation with Applicant envisions greater retained earnings by Fremont Savings, a greater potential for additional capital if needed, and, as hereafter discussed, a more assured source of management succession, it is concluded that such affiliation will cause the prospects of Fremont Savings to be somewhat more favorable as a subsidiary of Applicant than would otherwise be the case.

Character of management. - The policy management personnel of Applicant and National are essentially the same, since Applicant is governed by twenty-five trustees, of whom twenty compose the entire directorate of National. The management of each is considered satisfactory.

The Board finds the management of Fremont Savings to be satisfactory and that it would continue so following the proposed affiliation with National. This affiliation will afford Fremont Savings access to a source of successor management which at present appears lacking. While the issue of management succession within Fremont Savings is not a major consideration in this case, the extent

to which qualified management succession is better assured by the proposed affiliation of Fremont Savings with National does lend some weight toward approval of the application.

The convenience, needs, and welfare of the communities and the area concerned. - The area whose convenience, needs, and welfare would be most directly affected by this application is that comprising Fremont Savings' primary service area, namely, the City of Fremont and a major portion of the area included in the Fremont School District. This area has an estimated population of 25,000.

Fremont is situated on U. S. routes 20 and 6, four miles south of the Ohio Turnpike. It is served by two railroads, sixteen motor freight carriers, and two interstate bus lines. The city's access to electric power and gas in industrial quantities and an available industrial labor force have contributed to the expansion of industry and increase in commerce in the Fremont area. A 100-acre industrial park and a shopping center have recently been constructed. There are thirty industrial concerns in Fremont each of which employs over twenty-five persons. Five of these were established since 1954, and nine of the larger industries of the city have expanded their services and facilities since that time. There is every indication that the area's industrial and commercial expansion will continue.

There are three banks in Fremont, operating six banking offices and each offering essentially the same services. Of the three banks, Fremont Savings is the second largest. While it appears that the banking needs of the Fremont area are adequately served by these banks,

it is probable that the affiliation of Fremont Savings with Applicant and National will result in a broader spectrum and somewhat higher quality of banking service at Fremont Savings. For example, Fremont Savings has been obliged to engage in loan participations for borrowers whose credit needs were beyond Fremont Savings' ability to supply. Consumption of this proposal will enable Fremont Savings to respond more assuredly and more readily to larger borrowers through participations with National than it can now do through participations with non-affiliated correspondent banks. Further, under Applicant's control, Fremont Savings will have access to National's automated equipment, including a developed electronic data processing system, a facility which no bank in Fremont has. In view of the continued commercial and industrial growth forecast in the Fremont area, Fremont Savings' access to such equipment, as well as to readily available assistance in a variety of specialized banking services, should result in immediate benefit to Fremont Savings and ultimate benefit to the commercial and industrial concerns in the Fremont area.

Effect of proposed acquisition on adequate and sound banking, public interest, and banking competition. - National's total deposits of \$479 million represent 12 per cent of the total deposits of all banks in Cuyahoga County. Fremont Savings' total deposits of \$16.5 million are in excess of 33 per cent of the total deposits held by all banks in Fremont, and 22 per cent of the total deposits of all banks in Sandusky County. The combined total deposits of National and Fremont Savings represent 3.8 per cent of the total deposits of all banks in the State of Ohio.

There are two registered bank holding companies located in the State of Ohio. BancOhio Corporation, Columbus, the larger, operates principally in south-central Ohio. Its banking subsidiary closest to Fremont Savings is located twenty miles south of the City of Fremont. The remaining BancOhio subsidiary banks are at least seventy miles or more from Cleveland and Cuyahoga County.

The other bank holding company in Ohio is Springfield Savings Society of Clark County, Springfield, whose subsidiary banks are located some 100 miles southwest of both Sandusky and Cuyahoga Counties. The subsidiary banks of BancOhio and Springfield Savings Society, combined, hold 6 per cent of the total deposits of all banks in Ohio. Approval of this application, as a result of which Applicant would become the second largest bank holding company in Ohio, would increase to 10 the percentage of total bank deposits held by subsidiaries of bank holding companies.

Consummation of this proposal will not, in the Board's judgment, give Applicant a dominant position or an undue competitive advantage in any of the areas concerned. The three banks in Fremont are of about equal size, one slightly larger and one slightly smaller than Fremont Savings. No significant change in existing competition among these banks is likely to occur. Nor will National's association with Fremont Savings alter National's competitive position in the Cleveland area. In view of the widely separated areas of the State in which the respective holding company systems would be operating, the aforementioned resulting concentration of bank deposits is not a factor adverse to approval of this application.

Only minimal competition exists between National and Fremont Savings. Neither has any IPC deposits ("individuals, partnerships, and corporations") nor commercial and industrial, farm, or consumer loans originating in the others' primary service area. Further, their respective sizes and the distance separating these institutions foreclose any likelihood that significant competition between them would develop in the future. Accordingly, the Board finds that consummation of Applicant's proposal will be consistent with adequate and sound banking and the preservation of banking competition.

In the course of its decision on this application, the Board has considered averments, conclusions, and arguments raised in a brief filed with the Board on behalf of two named and other unnamed owners of voting trust certificates issued to former depositors of Society for Savings. These owners (hereinafter "Opposers") have urged that Applicant be compelled to take certain procedural steps hereafter discussed, including full compliance with all applicable securities laws, and that Applicant's proposal be made the subject of a public hearing in the City of Cleveland.

Among the procedural steps that Opposers urged the Board to require of Applicant was that Applicant, at its cost, effect personal service on some 64,000 persons (owners of voting trust certificates), informing them of the complete terms of the proposal contained in the application. The notice given by the Board regarding receipt and the nature of this application fully complied with and satisfied the notice requirements prescribed by law and by the Board's Regulation Y, the latter promulgated pursuant to the Bank Holding Company Act. Every reasonable

opportunity was provided for formulation by interested parties of their views on this application. That Opposers availed themselves of this opportunity is evidenced by the detailed manner in which their bases of opposition to the application were formulated and set forth in their brief filed with the Board.

In respect to Opposers' request for a trial type public hearing in the City of Cleveland, including full opportunity for discovery by Opposers, the Board denies Opposers' request for the reason that the Board is unable to find that a public hearing would better enable the Board to discharge its statutory responsibilities, or that it would result in the production of relevant facts, data, or opinion that would more fully develop the merits of all positions asserted than they have been developed in the record before the Board.

Opposers asserted that the Board, before passing on the merits of Applicant's proposal, should ascertain that Applicant's "securities are properly registered and all information required by the [Securities and Exchange Commission] [be] provided". In any event, Opposers urged that the Board require Applicant "to follow the procedures and make available the information required . . . by the SEC for holding companies and their securities".

Administration of the Securities Act of 1933 was vested by Congress in the Securities and Exchange Commission. It is not within the jurisdiction of the Board to administer the provisions of that Act nor, more specifically, to compel compliance with its registration requirements.

This does not suggest, however, that the Board, in the interest of orderly administrative procedure, could not determine, where appropriate, whether certain laws have been complied with by an applicant. In the present case, there is no evidence that Applicant has failed or will fail to comply with applicable provisions of the Securities Act of 1933 or provisions of State law that may be applicable in similar respects. Should the Board undertake in each case pending before it to determine an applicant's compliance with all applicable provisions of Federal and State law, its performance of functions required by statute would be critically impaired. While neither the Bank Holding Company Act nor Regulation Y contains any provision requiring an applicant to give evidence of compliance with or exemption from registration or publication requirements imposed by Federal or State law, in the present case, the agreement executed by Applicant and Fremont Savings contains sufficient representations of intent to comply with all applicable Federal and State laws as to make unnecessary Board action of the nature urged by Opposers.

Finally, Opposers have requested the Board, in the course of its decisional process, to review the State of Ohio courts' records relating to the proceedings involving the dissolution of Society for Savings, and the courts' approval of the plan of distribution of the Society for Savings' surplus funds. A reading of the courts' decisions in the above proceedings makes clear that a major portion of the issues litigated have no bearing on the issues raised by the application now before the Board. Implicit in Opposers' request of the Board that it review the judicial proceedings

incident to the dissolution of Society for Savings, and the distribution of its surplus, is the suggestion that wrongful and undue advantage has been taken of Opposers by the managements and directorates of the institutions involved in the proposal before the Board, and that the Board's approval of the application would further disadvantage the Opposers. The Board is neither required nor warranted in looking behind the decisions of the Ohio courts but, rather, must and does accord full faith and credit to those decisions. On this premise, and on the basis of the Board's study of the record before it, the Board has concluded that the character of the respective managements here involved is satisfactory and consistent with approval of the application, and that no disadvantage to Opposers cognizable by the Board under the Act will result from such approval.

Summary and conclusion. - For the reasons herein given, the Board finds that the financial history and condition, prospects, and character of management of Applicant and the banks involved are satisfactory and, accordingly, consistent with approval of the application. Weighing toward approval of the application is the further finding by the Board that consummation of Applicant's proposal will make possible the rendition by Fremont Savings of additional and improved banking services to the developing area it serves, particularly the business sector of that area. As regards the competitive effects of Applicant's proposal, it is the Board's judgment that the size or extent of Applicant's system as proposed would be consistent with adequate and sound banking, the public interest, and the preservation of banking competition.

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On the basis of all the relevant facts as contained in the record before the Board, and in the light of the factors set forth in section 3(c) of the Act, it is the Board's judgment that the proposed acquisition would be consistent with the public interest and that the application should therefore be approved.

July 27, 1964.

DISSENTING STATEMENT OF GOVERNOR ROBERTSON

The Board's function in determining whether or not to approve a proposal under section 3(c) of the Bank Holding Company Act, viewed apart from the preciseness of the statutory language stating that function, is simply to form a reasonably calculated judgment of what best serves the public interest. It follows that Board decisions in such cases will reflect in part the convictions of its members as to whether the interest of a particular segment of a community or area will be better served by a banking structure composed of many competing independent units, or by a structure dominated by relatively few organizations operating through multiple outlets.

Multiple-office banking, whether in the form of branch banking, so-called "chain banking", or holding company banking, offers in varying degrees advantages such as economies in operation, application to the affiliated banks of uniform operational and decisional policies, and a relatively broad spectrum of banking services. To the extent that these advantages reach the public, the multiple-office operation can be said to benefit the public. However, real benefit results only where real need exists. In the present case, I am unable to find upon the record before the Board any significant unserved banking needs that would require or justify inauguration of Applicant's proposed system. The alleged improved convenience in respect to available banking services within the Fremont area - the principal basis upon which the Board's approval appears to be based - has neither the quality nor quantity of

benefit to the community which offsets sufficiently the disadvantages inherent in the proposal so as to justify approval of its consummation.

My concept of the philosophy underlying enactment of the Bank Holding Company Act is that the public is better and more assuredly served by a banking system composed of a relatively large number of competitive institutions than by a system made up of but a few regional or national institutions. Obviously, each formation of a bank holding company, as well as each additional acquisition by an existing holding company, reduces the number of remaining competing locally owned institutions. Accordingly, unless the Board can find that consummation of a particular bank holding company proposal offers measurable benefits to the public, it is my view that the Board is not warranted, by its approval, in advancing the systematic destruction of the traditional American banking system.

It is to the latter eventuality that my earlier reference to the disadvantages inherent in Applicant's proposal relates. Nothing in this proposal evidences either immediate and direct advantage or disadvantage to the public. The disadvantage to the public will occur during and following the systematic elimination, typified by the Board's action on this application, of independent banking units, with the result that the residents and businesses of the Fremont area, and eventually of other areas in the State, will be deprived of the advantages inherent in local promotional initiative, truly vigorous competition, and calculated risk-taking.

The Supreme Court of the United States, in discussing the legislative history of the 1950 amendments to Section 7 of the Clayton Act, identified in Brown Shoe Co. v. United States, 370 U.S. 294 (1962), Congressional concern over the continuing trend toward industrial concentration, and the ". . . desire [of Congress] to promote competition through the protection of viable, small, locally owned businesses." Id. at 344. Applying to the field of banking the evident Congressional design in Section 7 to prevent undue concentration, the Supreme Court has said in the more recent case of United States v. Philadelphia National Bank, et al., "There is no reason to think that concentration is less inimical to the free play of competition in banking than in other service industries. On the contrary, it is in all probability more inimical. . . . concentration in banking accelerates concentration generally." 374 U.S. 321, 369, 370 (1963).

In my opinion, the slight advantages that may result at some future time from creation of the proposed holding company are negligible and insignificant in the face of the probable resulting detriment to the public. The Board's approval of this application could not only provide Applicant with the sine qua non for future State-wide expansion, but could additionally provide the impetus to other of the large Cleveland banks to launch - as a protective measure - similar "satellite systems". With the presence in the State of two existing bank holding companies, and the addition of a third, it takes little imagination to foresee eventual domination of the State's banking structure by a handful of bank holding companies, especially if applications like this one - in which no offsetting benefit to the public is evidenced - are approved by the Board. Hence, I must vote to deny the application.

July 27, 1964.



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

2629
Item No. 9
7/27/64

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 27, 1964

CONFIDENTIAL (FR)

Mr. R. K. Grobel, Vice President,
Federal Reserve Bank of Minneapolis,
Minneapolis, Minnesota. 55440

Dear Mr. Grobel:

In accordance with the request contained in Mr. Strothman's letter of July 20, 1964, the Board approves the appointment of Steven J. Johnson as an examiner for the Federal Reserve Bank of Minneapolis effective August 10, 1964.

It is noted that Mr. Johnson is indebted to First National Bank, Minneapolis, Minnesota, and Metropolitan Airport State Bank, Minneapolis, Minnesota, a nonmember bank. Accordingly, the Board's approval of the appointment of Mr. Johnson is given with the understanding that he will not participate in any examination of either bank to which his indebtedness remains unliquidated.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.