

April 2, 1929

REPORT OF MAJORITY COMMITTEE.

WHEREAS there now exists a lack of uniformity among the twelve Federal reserve banks in their construction of Regulation J, as promulgated by the Federal Reserve Board, which lack of uniformity has given rise to litigation in the past and holds promise of increased litigation in the future with conflicting decisions in various judicial districts; and

WHEREAS, we deem it of the utmost importance that all of the Federal reserve banks follow a uniform policy in the respect stated:

BE IT RESOLVED that the following represents the consensus of opinion of the Conference of Counsel to the various Federal reserve banks, assembled pursuant to the call of the General Counsel to the Federal Reserve Board:

1. We construe Regulation J of the Federal Reserve Board as intended to provide that the Federal reserve banks shall take for collection checks sent to them for such purpose by other banks, merely as agents of the banks from which the same are received. We regard this policy as being economically sound, legally proper and fair in its operation.
2. We believe that it would be extremely unwise to take any step or to formulate any policy which would tend to change this relationship and, specifically, that it would be unwise to attempt to superimpose upon a pure agency status any indicia of ownership with respect to the subject matter of the agency.
3. We believe that it is incompatible with such agency status for Federal reserve banks to set-off amounts due to them, as agents for collection, against indebtedness due by them to insolvent member or non-member clearing banks; hence, we are of the opinion that after a bank has been closed the reserve bank of its district being notified of its suspension, should not thereafter attempt to charge unpaid cash items against the reserve

account of the closed bank. For the same reason we believe that after notice of suspension a remittance draft, drawn by the closed bank, should not be charged against its reserve account.

4. When a Federal reserve bank takes from one of its members collateral for the payment of indebtedness due to it by such member, such collateral should be applicable only to the satisfaction and discharge of the obligations due to the reserve bank in its own right. It would be an unwise policy, in our opinion, to permit such collateral to be utilized in the liquidation or satisfaction of debts payable to the Federal reserve bank as a collection agent.

5. The status of the capital stock holdings of a member bank in its Federal reserve bank, upon the insolvency or liquidation of such member, is fixed by the Federal Reserve Act and, as we construe the same, the proceeds of such holdings could only be applied in or toward the satisfaction of debts due to the Federal reserve bank in its own right, as contradistinguished from debts which might be payable to the reserve bank as a collection agent.

6. In our opinion, any deviation from these policies, in furtherance of which Regulation J was promulgated, would entail grave dangers to Federal reserve banks and would result in the preferring of a limited number of creditors of an insolvent bank, contrary to the letter and spirit of the law as it exists in the various States and as administered in the Courts of the United States.

7. In view of the conflicting interpretations which have been placed upon Regulation J by the Federal reserve banks, resulting in conflicting judicial decisions in relation thereto, we deem it of the utmost importance that Regulation J be so clarified by amendment as to result in uniformity in its interpretation and application. Such amendment, we believe, should be made

(- 3 -)

at the earliest possible time. To accomplish this purpose we recommend that subject to the approval of General Counsel to the Federal Reserve Board, paragraph 6 of Section V of Regulation J be amended to read substantially as follows:

"(6) The amount of any check for which payment is actually and finally collected funds is not received shall be charged back to the forwarding bank, regardless of whether or not the check itself can be returned. The owner or holder of any such check so charged back shall, in such event, have no right of recourse upon, interest in or rights of payment from any fund, reserve, collateral or other property in the possession of the Federal reserve bank."

We further recommend that subject to the approval of General Counsel to the Federal Reserve Board, paragraph 4 of Section V of Regulation J be amended to read substantially as follows:

"(4) Checks received by a Federal reserve bank on its member or nonmember clearing banks will ordinarily be forwarded or presented direct to such banks and such banks will be required to remit or pay therefor at par. Such remittance or payment may be made in cash, by bank draft acceptable to the collecting Federal reserve bank, by other funds or transfers acceptable to the collecting Federal reserve bank, or by authorizing the collecting Federal reserve bank to charge their reserve accounts or clearing accounts."