RECORD OF PROCEEDINGS OF CONFERENCE OF COUNSEL OF ALL FEDERAL RESERVE BANKS HELD IN WASHINGTON, D. C., ON APRIL 1 and 2, 1929.

The conference convened on April 1, shortly after 9 a. m. in the Washington Hotel, Washington, D.C. Those present were:

Mr. A. H. Weed,	Federal	Reserve	Bank	of	Boston,
Mr. K. K. Carrick,	"	"	"	"	Boston,
Mr. W. S. Logan,	"	"	"	"	New York,
Mr. J. S. Sinclair,	"	"	"	"	Philadelphia,
Mr. S. B. Newell,	"	"	"	"	Cleveland,
Mr. P. L. Holden,	"	"	"	"	Cleveland,
Mr. M. G. Wallace,	"	"	"	"	Richmond,
Mr. J. S. Walden,	"	"	"	"	Richmond,
Mr. R. S. Parker,	"	"	"	"	Atlanta,
Mr. Carl Meyer,	"	"	"	"	Chicago,
Mr. J. G. McConkey,	"	"	"	"	St. Louis,
Mr. A. Ueland,	"	"	"	"	Minneapolis,
Mr. Sigurd Ueland,	"	"	"	"	Minneapolis,
Mr. H. O. Leedy,	"	"	"	"	Kansas City,
Mr. E. B. Stroud, Jr.,	"	"	"	"	Dallas,
Mr. A. C. Agnew,	"	"	"	"	San Francisco.

Mr. Newton D. Baker was present during part of the time on April 1st.

Mr. Walter Wyatt, Mr. B.M. Wingfield and Mr. George B. Vest, from the Federal Reserve Board.

After a brief introductory statement, Mr. Wyatt, who was at a previous conference elected permanent chairman of all such conferences, explained that it would be necessary for him to be absent for a few hours to attend the argument in the Court of Appeals of the District of Columbia, of the case of United States ex rel. Apfel, et al. v. Mellon, et al., to be argued on behalf of the Federal Reserve Board by Honorable Newton D. Baker. Mr. Wyatt asked Mr. Weed to act as temporary chairman during his absence. Mr. Weed took the chair and Mr. Wyatt left the meeting.

The conference then proceeded to the consideration of the business before it: The question whether reserve balances, collateral accounts and the proceeds of cancelled Federal reserve bank stock should be utilized by Federal reserve banks to pay checks handled by them for collection which have been marked paid by the drawee banks and charged to the accounts of the drawers, but for which no remittance or remittances not finally collectible have been made, on account of the insolvency of the drawee banks. In considering these questions the view that the reserve balances, collateral accounts and proceeds of Federal reserve bank stock should be so used was designated for convenience as Policy A and the contrary view as Policy B. In order to open up the discussion the temporary chairman called

upon Messrs. Ueland and Mr. Wallace to explain their views with regard to the questions before the conference. Messrs. Ueland and Mr. Wallace, who favored Policy A, then presented their views in the matter, other members of the conference interpolating comments or asking questions from time to time. This was followed by a statement of the views of Mr. Stroud, who favored Policy B, on the questions at issue, with a continuation of interrogations and expressions from other members of the conference.

After some further discussion Mr. Weed, the temporary chairman, asked for an expression of the views of counsel to each Federal reserve bank on the questions which were under consideration. It was found that counsel for eight of the Federal reserve banks favored Policy B. Counsel for four of the Federal reserve banks - Philadelphia, Richmond, Chicago and Minneapolis - favored Policy A.

At this point Mr. Wyatt returned to the conference and assumed the chair. Honorable Newton D. Baker also came in at this time.

A resolution was then submitted by Mr. Agnew with regard to the desirability of a uniform policy among Federal reserve banks on the questions under consideration. The resolution as originally submitted was as follows:

> "RESOLVED, That it be the sense of this conference that uniformity among all of the Federal reserve banks in the treatment of reserve balances, collateral accounts and the cash surrander value of capital stock in relation to outstanding cash items, is desirable and that whether the policy outlined by Messrs. Ueland and Wallace on the one hand or the policy outlined by Mr. Stroud on the other hand be adopted, the action of all of the Federal reserve banks in relation to the matter under discussion should be of one accord."

Mr. Logan moved as an amendment that the part of the proposed resolution following the word "desirable" be stricken out. This motion was carried and the resolution in the following form was then unanimously adopted:

> "RESOLVED, That it be the sense of this conference that uniformity among all of the Federal reserve banks in the treatment of reserve balances, collateral accounts and the cash surrender value of capital stock in relation to outstanding cash items, is desirable."

Mr. Parker then read the following draft of a resolution embodying what he considered to be the views of the majority of the conference:

> "BE IT RESOLVED that the following represents the consensus of opinion of a majority of Counsel to the various

Federal Reserve Banks, assembled in conference pursuant to the call of the General Counsel to the Federal Reserve Board:

"1. We construe Regulation J of the Federal Reserve Board as providing 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 the policy of the Board in this regard as being economically sound, legally proper and equitable in its application.

"2. We believe that it would be 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 banks or to non-member clearing banks; hence, we are of the opinion that after a bank has been closed the Reserve Bank of its District should not thereafter attempt to charge unremitted cash letters against the reserve account of the closed bank. For the same reason we believe that after insolvency 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 itself. 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 itself, as contradistinguished from debts which might be payable to the Reserve Bank as a collection agent.

"6. In our opinion, any deviation from the

policies, in furtherance of which Regulation J (as we construe it) 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."

Mr. Stroud moved that the chairman of the conference appoint two committees, one representing Policy B, the majority view, and one representing Policy A, the minority view, to draft proposed amendments to the Federal Reserve Board's Regulation J and to the check collection circulars which would have the effect of incorporating into the Regulation and the circulars the views of the majority and of the minority, respectively; these committees to report back to the conference at 5:00 p. m. The chairman then appointed as the committee that represented the majority view, Mr. Stroud, Chairman, Mr. Parker, Mr. Agnew and Mr. Newell; and as the committee representing the minority view, Judge Ueland, Chairman, Mr. Wallace, Mr. Meyer and Mr. Sinclair.

The conference then recessed, to meet again at 5:00 p. m.

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The conference re-convened at 5 p.m. Mr. Stroud stated that his committee had not yet formulated a report. Judge Ueland stated that his committee had prepared a resolution but that it was not yet typewritten.

The Secretary to the Governors' Conference attended this session of the Conference of Counsel and reported that the Governors would be glad to confer with the Conference of Counsel and suggested 2:30 p.m. on Tuesday as the time for such joint conference.

On motion made and duly adopted it was decided to meet with the Governors on Tuesday at 2:30 p. m. The Conference then adjourned to meet at 9 a.m. on Tuesday.

Tuesday Session.

The conference again assembled on Tuesday, April 2, at 9:00 a. m.

Mr. Stroud then presented to the conference the following report of the committee representing Policy B, the majority view:

"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 at the earliest possible time. To accomplish this purpose we recommend that paragraph 6 of Section V of Regulation J be amended to read as follows:

> '(6) The amount of any check for which payment in 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 the elimination from paragraph 4 of Section V of Regulation J the following:

> 'or at the option of such Federal reserve bank to authorize such Federal reserve bank to charge their reserve accounts or clearing accounts.'"

The report of the committee representing the majority view was then made the subject of general discussion. Certain amendments to the

language of the report of the committee representing the majority view were then offered and adopted. The report as thus amended, is as follows:

"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 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 in 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.'"

Mr. Agnew then moved the adoption by the conference of the amended report of the committee representing the majority view. Mr. Weed moved as a substitute that the report be returned to the committee with instructions that a reservation clause be drafted by the committee to cover the right of Federal reserve banks in special or exceptional cases to charge unremitted for cash letters to collateral taken for this specific purpose. Mr. Weed's substitute motion was put to a vote and was lost by a vote of three to five, counsel for the Federal reserve banks of Philadelphia, Richmond, Chicago and Minneapolis not voting on this motion. Counsel for the Federal reserve banks of Boston, New York and Dallas voted in the affirmative on the motion.

Mr. Agnew's motion that the conference adopt the report of the majority committee was then voted upon. The motion was adopted by a vote of eight to four, counsel for the Federal reserve banks of Boston, New York, Cleveland, Atlanta, St. Louis, Kansas City, Dallas and San Francisco voting in the affirmative, and counsel for the Federal reserve banks of Philadelphia, Richmond, Chicago and Minneapolis voting in the negative.

In connection with the vote on the adoption of the report of the majority committee, Messrs. Weed, Logan and Stroud stated that they voted for this report with the understanding that the report of the committee is not intended to carry with it any implication that a Federal reserve bank may not make special arrangements to insure the payment of checks in special cases.

The following report of the committee representing Policy A, the minority view, was read to the conference:

"We, the undersigned, representing the Federal Reserve Banks of Chicago, Minneapolis, Philadelphia and Richmond, are unable to concur in the recommendation of the majority of the Conference of Counsel and in lieu of the amendment recommended by the majority we recommend that paragraph 4 of Section V of Regulation J be amended to read 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.'

"The object of this amendment is merely to clarify the meaning of the existing paragraph.

"We recommend that paragraph 6 of Section V of Regulation J be amended so as to have it read as follows:

'(6) The amount of any check for which payment in actually and finally collected funds is not received may be charged back to the forwarding bank regardless of whether or not the check itself can be returned, but the Federal reserve bank may charge the amount of any check not returned unpaid to the reserve account or clearing account, as the case may be, of the bank from which such payment was not received, and may hold any other property of such bank in its possession as security for payment of such check. The right so to do shall, however, be subordinate and without prejudice to all other rights of the Federal reserve bank upon such reserve account and clearing account and to such other property in its possession.'

"Our reasons for recommending the amendment last mentioned are as follows:

"The Federal Reserve Board in promulgating Regulation J has stated that it desires to afford to the public and to the various banks of the country a direct, expeditious, and economical system of check collection and settlement of balances and for that purpose has arranged to have each Federal reserve bank exercise the function of a clearing house and collect checks for such of its member and non-member clearing banks as desire to avail themselves of the privilege and the Board further required in its Regulation that each Federal reserve bank shall exercise the function of a clearing house and collect checks under the general terms and conditions thereinafter set forth and that each member bank and non-member clearing bank shall cooperate fully in the system of check clearance and collection for which provision is made in the Regulations. When the Federal reserve banks were made clearing houses for their member banks we think it was not contemplated that the banks on which checks were drawn should be at liberty to convert the checks and place the owners of checks presented through the clearing system in the position of creditors of an insolvent bank. This amendment is suggested from the point of view that the Federal Reserve Board should make provision for holding each member of the clearing house as far as possible to its obligation to the other members of the clearing house.

"Whenever a check is cancelled by the drawee bank and charged to the account of the drawer, the drawer is by the great weight of authority released from liability to the holder and the holder is required to look to the drawee bank. The holder seldom knows or has opportunity to investigate the condition of the bank upon which a check held by him is drawn. Hence, when he is forced to release the drawer, his original debtor, and to assume the position of a creditor of the drawee bank and sustains any loss because such bank fails to remit or pay for a check which has been cancelled so that he can neither obtain the return of the check nor collect the amount of it, the holder feels that he has a just cause of dis-

satisfaction with the System which has placed him in this position.

"Since the check collection system was, as we have pointed out above, established primarily for the safety, convenience, and benefit of the business public, it is highly desirable to avoid losses to the public from such a situation whenever it is possible to do so and such losses can be avoided in most cases if the Federal reserve bank has the right to resort to the reserve balance of a failed member bank and to the proceeds of existing collateral to protect the holders of checks deposited for collection after the prior demands of the Federal reserve banks are satisfied.

"We consider that the primary purpose of the reserve balance is to enable the member banks to meet withdrawals and the principal way in which withdrawals are made is by checks drawn on the member bank, most of which are presented through the Federal reserve banks. Hence, the reserve deposit of a member bank in the hands of a Federal reserve bank may appropriately and consistently within the spirit of the Federal Reserve Act be made applicable to the payment of checks presented through the Federal reserve banks rather than held as a protection for the general creditors of the member bank.

"We are informed that commercial banks in the past, while limiting their liability for failure to collect checks deposited with them, have, nevertheless, used any funds or property in their possession belonging to the drawee bank for the benefit of endorsers. Practically all judicial decisions that have come to our attention are in accord in sustaining the right of the forwarding bank to do this and we believe that Federal reserve banks should adopt the position so sanctioned by the prior usage of commercial banks in collecting checks and afford to the depositors complete protection against the default of the drawee bank when it is practicable to do so.

"We do not think that this plan, which we recommended, gives any undue preference to persons collecting checks through Federal reserve banks, for such persons only obtain payment on checks on which the drawers are released and which are, therefore, deemed paid so far as the drawers, who are the depositors of the failed bank, are concerned.

"Federal reserve banks are frequently under compulsion to forward items direct to a member bank known to be in an extended condition. To send a messenger to collect in cash in such a case would often result in the suspension of the drawee bank, owing to a mere temporary shortage of available funds. Yet any other method of collection in such a case might constitute negligence and create liability on the part of the Federal reserve bank to depositors of checks. The policy we suggest has the advantage of

reducing such liability, which we believe is unavoidable in many cases, to a minimum."

Counsel for the Federal reserve banks of Philadelphia, Richmond, Chicago and Minneapolis stated that they favored the adoption of the above report representing the minority view.

On motion of Mr. Agnew, the conference then adopted the following resolution prepared by a committee consisting of Messrs. Parker, McConkey, and Wallace, in respect to the memory of the late Mr. Charles L. Powell, who was until his recent death, counsel for the Federal Reserve Bank of Chicago:

"The Counsel representing the various Federal Reserve Banks have learned with the deepest regret of the death of Mr. Charles L. Powell, late of the Chicago Bar and for many years counsel to the Federal Reserve Bank of that City.

"He passed from the scene of his varied and useful earthly activities on the eve of a Conference of his colleagues, the counsel of the several Reserve Banks. In that Conference, now preparing to adjourn, his genial presence and his sound conservative advice have been sorely missed, and it is desired that a tribute be paid to his life and character.

"He was a lawyer of splendid attainments and of unusual ability, profoundly learned in the law and possessed of a fund of wholesome common sense.

"As an advocate he was persuasive and forceful, and, being a man who respected the law and loved his profession, his viewpoints were never molded by considerations of mere expediency. Having a logical and judicial mind, he was peculiarly fitted to serve as an adviser and counsellor.

"He was the soul of honor and integrity - honest in thought as well as in his acts. His personality attracted at first acquaintance and his sterling qualities ripened such attractions into real affection and friendships.

"Within the restricted bounds of a resolution of sympathy and esteem it is impossible to do justice to the character, attainments and real worth of the friend, whose loss we so deeply feel. It is fitting, however, that others should know something of the high opinion in which he was held by those with whom he came in contact,

"THEREFORE, to the end that his memory may be honored and that the sympathy of this body may be expressed to the bereaved family, BE IT RESOLVED by the Counsel to the twelve Federal Reserve Banks, in conference assembled, that the above and foregoing be adopted as expressing in some measure our admiration, esteem and affection for Mr. Powell; that a copy of this resolution be spread upon the records of this Conference and a copy be furnished by the Secretary to the members of his family."

The Conference then adjourned at 12:30 p. m.

Meeting with Governors.

At 2:30 p. m. the Conference of Counsel met with the Governors' Conference to discuss the subjects which had been under consideration by the Counsel. The Chairman of the Governors' Conference first called upon Mr. Wyatt, the Chairman of the Conference of Counsel, to make a statement as to the matters under discussion and the recommendations of the Counsel. Mr. Wyatt stated the problem and the action taken by the Conference of Counsel. He read the resolution of the Conference of Counsel expressing the desirability of a uniform policy and then read the report of the committee representing the majority view as adopted by the Conference, together with the statement of reservation of Messrs. Weed, Logan and Stroud. He also read the report of the committee representing the minority view. The Chairman of the Governors' Conference then called upon various members of the Conference of Counsel to express their views upon the questions under consideration. Questions were addressed by the Governors to the Counsel and the subject generally discussed between the Governors and the Counsel.

No action was taken by the Governors while the Counsel were present and at 5:15 the joint conference between the Governors and the Counsel was concluded.

(Signed) George B. Vest,
Secretary.