

February 18, 1970.

To: Board of Governors Subject: Possible further delegations
From: Governor Sherrill of Board responsibilities and other
 measures to expedite Board procedures.

This is a first report on possible measures to expedite the handling of matters before the Board, either by further delegations of functions or by other means.

All suggested actions are subject to three overriding considerations: (1) The Board has no authority to delegate any of its functions "relating to rule making or pertaining principally to monetary and credit policies"; (2) any delegations of Board functions prescribed by statute or by regulations of the Board must be set forth in rules published in the Federal Register, whereas delegations of nonstatutory and nonregulation functions need not be so published but should be added to the list of such delegated functions now contained in an outstanding letter to the Federal Reserve Banks; and (3) any delegatee is expected to refer to the Board itself any matter of an unusual nature or as to which he has any doubt.

1. Competitive factor reports

I recommend that the Board delegate to the Director of Supervision and Regulation authority to approve competitive factor reports subject to the guideline that the staffs of the appropriate Reserve Bank and of the Board unanimously concur in the view that the merger in question would have no adverse competitive effect. Such a delegation could be accomplished by adding to section 265.2(c), relating to delegations to the Director of the Division of Supervision

and Regulation, the following new paragraph:

"() Under section 18(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(4)), to furnish to the Comptroller of the Currency and the Federal Deposit Insurance Corporation reports on competitive factors involved in a bank merger required to be approved by one of those agencies if the appropriate departments or divisions of the appropriate Federal Reserve Bank and the Board of Governors are in unanimous agreement that the proposed merger would have no adverse competitive effects."

Under the Bank Merger Act, the Board is required to furnish to the Comptroller of the Currency and the FDIC reports on "the competitive factors involved" in merger cases requiring the approval of those agencies. Several weeks ago, the Board considered and rejected a proposal contained in a memorandum from the Office of the Secretary dated November 7, 1969, that the Director of the Division of Supervision and Regulation be delegated authority to approve competitive factor reports "in cases in which the staffs of the Reserve Bank and the Board are unanimously agreed that the proposed merger would have no more than slightly adverse competitive effects."

As in any case of delegation of functions, arguments may be made for and against the present proposal. In my opinion, however, the desirability of expediting such reports outweighs arguments against some delegation of authority in this area.

It may be argued that competitive factor reports, unlike approvals or denials of merger applications, do not reflect definitive actions of the Board but represent only advisory opinions; that the law contemplates that these opinions should be those of the Board itself; that the other banking agencies might resent, or not give great weight to, reports submitted by an official of the Board's staff; and that there is a possibility that one or more Board members may not agree with the staff that the competitive effects of a merger may not be adverse. On the other hand, it may be contended that since 1960 the Board has been given authority to delegate its functions and that the other banking agencies would not resent reports given by an official on behalf of the Board.

2. Re-establishment of discount rates

Although the Board cannot delegate its responsibility for approving discount rates, I recommend that the Board consider adopting a practice under which it would give blanket advance approval for the re-establishment of existing discount rates by the Reserve Banks until such time as either (a) any Reserve Bank submits a recommendation for a change in rates or (b) the Board itself considers a change in rates desirable and advises the Secretary that such advance blanket approval of the re-establishment of existing rates shall be considered as having been terminated.

Such a procedure would have some precedent. In the past, when the Board has approved changes in discount rates by two or three Reserve Banks, the Board has given advance approval for any similar changes recommended by the other Reserve Banks.

3. FOMC policy record

I recommend that the Secretary of the Open Market Committee (or in his absence the Deputy Secretary of the Committee) be given (1) delegated authority to approve an entry for inclusion in the Board's Annual Report if (a) no Board member had asked for a Board review and (b) the Secretary believed that any revisions made in earlier drafts were not likely to be controversial, and also (2) delegated authority to release an entry to the press on the regularly scheduled date (a) if all available Board members had indicated individually that they had no objection to release in the form proposed and (b) if the Secretary did not anticipate any particular problems in connection with release that in his judgment warranted discussion by the Board.

Under present procedures, the Board formally considers the policy record entry for each Federal Open Market Committee meeting on two separate occasions: (1) when the entry, revised to take account of comments received on a preliminary draft, is submitted for approval for inclusion in the Board's Annual Report; and (2) when the entry in the form approved (and sometimes reflecting subsequent additional revisions) is submitted for "final review" shortly before it is released to the press 90 days after the meeting.

Under the proposed new procedure, Board members would continue to have an opportunity to comment on drafts of each entry and to review the text proposed for release in advance of the release date, but the Secretary of the Committee would submit an entry for

consideration by the Board (for either of the present purposes) only in cases in which (a) a Board member so requested; (b) a Board member and the Secretary disagreed about the appropriateness of some revision proposed by the former; (c) the Secretary believed that some change proposed by a Board member, Reserve Bank President, or staff member was desirable but thought that one or more Board members might question it; or (d) the Secretary thought that release of an entry in its existing form might prove prejudicial to the conduct of open market operations.

The suggested procedure is further described in the attached memorandum from Mr. Broida.

4. Reporting regarding exercise of delegated authority

In order to assure effective surveillance by the Board of the exercise of all delegated functions, I recommend that I be charged with the responsibility of developing a program under which periodic reports would be made by each delegee regarding his performance of delegated functions.

Attachment

February 16, 1970

To: Mr. Hackley

Subject: Proposed changes in Board

From: A. L. Broida

procedures re FOMC policy record entries.

The purpose of this memorandum is to suggest revisions, including a delegation of certain authority, in the procedures now followed by the Board with respect to FOMC policy record entries. The objective is to limit the occasions on which the Board as a whole formally considers such entries to those on which one or more Board members, or the Secretary, believes Board consideration would be desirable.

At present, the Board members (as well as Reserve Bank Presidents and staff) individually have an opportunity to comment on the preliminary draft entry prepared for each meeting of the Committee. In addition, the Board as a whole considers the entry for each meeting on two subsequent occasions:

1. When a revised draft, prepared in light of comments received on the preliminary draft, is submitted for approval for inclusion in the Board's Annual Report. This is done pursuant to Section 10(10) of the Federal Reserve Act, which requires that the Board shall keep a complete record of the Committee's actions on all questions of policy relating to open market operations and that it shall include a full account of such actions in its Annual Report to the Congress.

2. When the text is submitted for "final review" by the Board shortly before public release. Under the Committee's Rules Regarding the Availability of Information, release usually is about 90 days after the date of the meeting. The final review was instituted in mid-1967, when the current procedure was adopted of publishing the records on a flow basis with a 90-day lag. (Earlier, the records had been published only for a full year at a time, in the Board's Annual Report.) The main purpose of this second review is to determine whether any material in the entry is likely to prove prejudicial to the conduct of open market operations following publication.^{1/}

It is proposed that both regular reviews of the records by the Board be discontinued in favor of a procedure of selective review, on occasions when either any Board member or the Secretary believes that such a review is desirable. The two sections below deal respectively with the two types of reviews. In each case the proposed new procedures are briefly described and contrasted with those used at present.

Approval for inclusion in Annual Report.

The staff would continue its present practices of distributing preliminary draft records for each meeting for comment to members of the Board, Reserve Bank Presidents, and staff; revising the preliminary drafts in light of comments received; and distributing the revised

^{1/} An example of the kind of risk this procedure is intended to guard against (cited in a staff memorandum of June 15, 1967) is a situation in which, in light of the market conditions existing around the scheduled release date, particular passages in the record for the meeting 90 days earlier might be read as foreshadowing some particular policy course.

drafts to members of the Board. At this stage, the present practice is to place the record on the Board's agenda for approval for inclusion in the Annual Report.

Under the proposed procedure, when the revised draft record was distributed the Board members would be asked, by some designated reply date, to transmit to the Secretary any comments they had on the draft and, if they wanted the entry to be considered by the Board as a whole, to so inform the Secretary. In the absence of any request for Board review, the Secretary would be authorized to approve the entry for inclusion in the Board's Annual Report, taking account of any suggestions for further changes that had been received from Board members (or staff). With respect to such changes, he would be authorized to incorporate any that he considered desirable if he thought they were noncontroversial and thus unlikely to be objected to by any other Board member.

The Secretary would be instructed to submit the entry for consideration by the Board if (a) a Board member so requested; (b) a Board member and the Secretary disagreed about the appropriateness of some particular revision proposed by the former; or (c) the Secretary believed that some change proposed by a Board or staff member was desirable, but also thought that it might be questioned by one or more Board members.

At present, after the entries are approved by the Board they are distributed to Reserve Bank Presidents and staff primarily for information, but with an indication of the date by which further comments, if any, should be received. In cases in which the Board has decided that some change should be made from the revised text submitted for approval, Board members are included in this distribution so that they will have at hand a copy of the approved text. Under the proposed procedure, the same practice would be followed after the entry had been approved, whether by the Secretary or the Board. In particular, if further revisions had been made from the "revised draft" distributed to the Board earlier, Board members would be included in the new distribution and their attention would be called to the changes. In addition to providing the Board members with a copy of the latest text, this step would provide an opportunity to verify any judgments by the Secretary to the effect that particular revisions were non-controversial.

Final review.

As indicated earlier, the Board's present "final review" of each entry just prior to publication is primarily for the purpose of determining whether its language is likely to be prejudicial to the conduct of future open market operations. However, it also serves a second purpose: to bring to the Board's attention any further