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

CONFIDENTIAL (FR)
CLASS III - FOMC

TO: Federal Open Market Committee DATE: September 4, 1984

FROM: Normand Bernard N.B.

The attached memorandum, prepared by the Committee's General Counsel and two of his associates, provides an update on litigation regarding the constitutionality of appointments of Reserve Bank members to the Committee.

Attachment

TO: Federal Open Market Committee

FROM: Legal Division (Messrs. Bradfield, Ashton & Siciliano)

DATE: September 4, 1984

SUBJECT: Update on litigation on constitutionality of appointment of Reserve Bank members

FOR INFORMATION ONLY

The purpose of this memorandum is to advise the Committee of the current status of pending lawsuits challenging the constitutionality of the composition of the FOMC. The current litigation is part of a series of recent lawsuits asserting that the Constitution requires that the Reserve Bank members of the FOMC must be appointed by the President and confirmed by the Senate.

In 1978 and 1981, the courts ruled that neither Congressman Reuss nor Senator Riegle, respectively, were proper parties to bring an action to challenge the composition of the FOMC. In rejecting Senator Riegle's lawsuit, the federal appeals court for the District of Columbia ruled that the courts have the power to hear a lawsuit brought by a Senator challenging the method of appointment of Reserve Bank FOMC members, since the Senator's right to vote to confirm such members has allegedly been infringed. The court of appeals ruled, however, that the courts should, in the exercise of their discretion, elect not to hear the Senator's case, because his "injury" could be redressed by legislation enacted by his colleagues. The appeals court noted in passing that it was

conceivable that a private party could bring a lawsuit attacking the method of appointment of FOMC members and therefore it is unlikely that the legality of the method of appointment would go unreviewed by the courts.

In June 1983, the self-styled Committee for Monetary Reform, together with approximately 900 private individuals, businesses and associations filed a lawsuit in federal district court in the District of Columbia again asserting the unconstitutionality of the appointment of Reserve Bank FOMC members, among other claims. In October 1983, the district court dismissed this lawsuit. The district court found that it lacked the power to hear the case because, among other things, the Committee for Monetary Reform and other plaintiffs had failed to show that their alleged economic injuries can fairly be traced to the actions of the FOMC and not to some other cause. The Committee for Monetary Reform and the other plaintiffs appealed this dismissal. Both sides have filed their briefs in the court of appeals and it is expected that the case will be argued in the near future.

In April of this year, after the dismissal of the Committee for Monetary Reform lawsuit by the district court, Senator John Melcher filed a lawsuit in the same court raising the same allegations concerning the constitutionality of the appointment of the Reserve Bank FOMC members that had been advanced in that case and by Senator Riegle. In bringing his lawsuit, Senator Melcher relied on the statement by the court

of appeals in the Riegle case that private parties might be able to attack the constitutionality of the FOMC. Arguing that the dismissal of the Committee for Monetary Reform lawsuit means that private parties in all likelihood will not be able to sue the FOMC, Senator Melcher contends that the discretionary bar against hearing legislators lawsuits imposed by the court on itself in Riegle, which was based on the likelihood of lawsuits by private parties, should be lifted. We have moved to dismiss Senator Melcher's lawsuit, on the grounds that this case is identical to Senator Riegle's, that there still may be some private parties who can sue the FOMC, and that in any event even if no private parties may sue, this lawsuit should be dismissed since Senator Melcher's alleged injury can be redressed by his legislative colleagues.

Because of the timing of these lawsuits, it is likely that both the private and congressional plaintiffs will be before the same court at some stage of the proceedings. Thus, if the Courts will permit any lawsuit to be brought challenging the method by which Reserve Bank FOMC members are appointed, it is possible that one or the other of these parties will be judged the proper plaintiff to bring it. The issue of whether there is any qualified party that may challenge the constitutionality of appointment of Reserve Bank Presidents has never been so sharply drawn. Although we have a reasonable chance of persuading the court that no one has standing to bring this challenge, we cannot be entirely optimistic about the result.

In this connection, it is important to recall that the issues raised thus far in the pending cases are only threshold questions, relating to which parties, if any, are the proper ones to bring lawsuits in this area. Even if some party is permitted to bring such a lawsuit, we will defend these suits, as we have done in some of the prior cases, on the grounds that the method of appointment of Reserve Bank members is consistent with the Constitution.