April 29, 1947

To Israel Bernstein, Esq.

. . The Deputy Banking Commissioner, Mr. Noyes. . . has worked out a plan which he thinks. . . is a fair and equitable one.

As to your question regarding a distribution to the shareholders of the association with the larger capital fund, I suggested to Mr. Noyes that the agreement of consolidation may provide that on a specified date there shall be paid to the shareholders of Association A a dividend of a certain sum and to the shareholders of Association B a dividend which shall be larger because of the larger guaranty fund, but that thereafterwards at the next dividend day of the consolidated company the dividend shall be apportioned equally to all shareholders, so that all will be receiving a dividend of the same amount. Since this will thereafterwards be approved by the shareholders or at least two-thirds of them, that manner of distribution would, in my opinion, become binding on all of them.

As to the mechanics under Section 167 of Chapter 55, I don't think we can go wrong if we follow, so far as applicable, the procedure under Chapter 49, dealing with merger consolidations. I think that the directors of each of the associations may execute an agreement setting forth the terms of consolidation, including those things that are specifically provided for by statute, namely:

1) That the consolidation shall not prejudice the right of any creditor of any association to have payment of his debt, nor shall any creditor be thereby deprived of or prejudiced in any right of action then existing against the officers or directors of the association for any neglect or misconduct, and imposing on the consolidated association liability for all obligations of the associations;

2) This agreement or tentative agreement before it is adopted ought first to be submitted to the Bank Commissioner for his approval;

3) When said agreement is signed and executed, notice shall then be given to all the shareholders of such agreement and a meeting to be called thereon for their approval of said agreement, which notice is to be published three successive weeks, the last publication of each and the notice by mail to be at least fourteen days prior to the date of the meeting;

4) In each notice to the shareholders and in the notice of publication there shall appear a statement that any shareholder not present in person at the meeting shall be regarded as having voted for the consolidation and will be counted as among the required two-thirds afformative vote;

5) When such meetings has been held and two-thirds or more have voted affirmatively, then the directors of each corporation, or a majority of the directors of each, will sign a certificate to the effect that at the meeting as above held, and held separately by each association, two-thirds of the shareholders voted in the affirmative, or that all of them did so, whatever the fact may be. I think that they should explicitly recite in their certificate the number personally present who voted in the affirmative and likewise the number not present who were counted in the affirmative. The certificate should also recite the resolution adopted by the shareholders voting on the plan of consolidation.

When these certificates and the agreement have been filed with the Banking Commissioner and approved by him, the consolidation shall then take effect.

I would also suggest that when the agreement is drafted, it contain the name of the consolidated association and the names of its officers and the number thereof. . .

Abraham Breitbard
Deputy Attorney General

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