Date: May 23, 1973

From the desk of **William E. Simon**

To: GENERAL HAIG

The Deputy Secretary of the Treasury

Room 3326 **Ext. 2801**

Office Memorandum • UNITED STATES GOVERNMENT

THE COMPTROLLER OF THE CURRENCY

TO : Mr. J. T. Watson
Acting Comptroller of the Currency

DATE: May 22, 1973

FROM : Robert Bloom
Chief Counsel

SUBJECT: United States National Bank, San Diego, California - SEC

I had telephone calls this morning from Irving Pollack, Director of Enforcement, and also from SEC Commissioners Loomis and Evans. They confirmed that the SEC was close to filing their fraud complaint against Westgate California Corporation and C. Arnholt Smith.

We had previously supplied SEC with drafts of our Notice of Charges and Cease and Desist Order and had kept them advised of our progress. Present plans call for the signing of the Order by Smith and the Board of Directors of U. S. National at a special meeting of the Board to be held Thursday, May 24.

Based on our obtaining the signed Cease and Desist Order, Commissioners Loomis and Evans stated that it was the intent of the Commission not to name the bank as a party to the Westgage complaint. We discussed the timing of the Commission's action, and it was tentatively agreed that if all goes well at the Board meeting on Thursday and our Order is signed, the Commission would file its complaint with a public announcement on Friday, May 25.

A matter of crucial importance is how the publicity concerning the SEC action is handled. Both the staff and the Commissioners were insistent about the necessity of our making some kind of simultaneous public announcement with them concerning the actions we have taken against Smith and the bank. The Commission's concern is about trading in the stock of the bank which may take place in ignorance of the self-dealing problems in the bank necessitating governmental action. I advised both the staff and the Commissioners of the provisions of 12 U.S.C. 1818 which require our proceedings to be private unless the Comptroller determines that the public interest requires otherwise. The SEC Commissioners and staff advised that their law is the opposite and prohibits a private proceeding. I pointed out to both the staff and the Commissioners that the value of the minority stock interest in U. S. National is much smaller than the amounts of uninsured deposits which could be lost in the event of insolvency of the bank. Commissioners Evans and Loomis appeared to understand the problem. Commissioner Evans especially was receptive because of his recent experience with the Senate Banking and Currency Committee prior to becoming a Commissioner.

Commissioner Loomis stated that in the absence of some method of informing the public of the existence of the problems of the bank, the Commission would have to consider the necessity and effect of suspending trade in the bank stock. I stated that I thought such a suspension of trading would probably create more serious problems than any press release.

The way I left it with the Commissioners was that we would continue close coordination with their staff advising them whether the Order was signed on May 24 as scheduled. If it is, the SEC will probably file their complaint on May 25 with publicity to be coordinated with this office.

In a later conversation with Mr. Pollack, I confirmed with him that we would be given an opportunity to review any press release to be issued by SEC prior to issuance. I also asked to see a copy of their complaint prior to filing. Pollack said that while this would ordinarily be no problem, that because of the recent heavy publicity about deletions from SEC complaints (Vesco and ICC cases), he doubted if he could do it and that even if I did see it, it wouldn't do me any good because they could not change anything in it. I pointed out that this could create serious problems because the financial reporters could go beyond the press releases and pick up derogatory information about the bank directly from the complaint.

About 3:00 P.M. Pollack called again and made an appointment for us to see the SEC complaint and press release at this office, 10:00 A.M., May 23. I plan to go over there with Wes Murphy and Gail Pohn.

Attached is a draft of a short press release which we may have to issue on Friday to satisfy the SEC as well as the press.

Attachment

The Acting Comptroller of the Currency today issued the following comments in connection with the filing by the Securities and Exchange Commission of injunction proceedings against Westgage California Corporation and Mr. C. Arnholt Smith:

The Board of Directors of U. S. National Bank, San Diego, recently [on Thursday of this week] entered into a consent cease and desist order with the Office of the Comptroller of the Currency agreeing to take all steps necessary to achieve the orderly liquidation of the loans presently held by the bank which involve Mr. C. A. Smith, Westgate California Corporation and other related companies. Mr. Smith, former board chairman of the bank, agreed in the order to indemnify the bank against any future losses in connection with such loans.

The above actions were taken by the Acting Comptroller in cooperation with the Securities and Exchange Commission.